RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900598 SEPARATION DATE: 20040630

BOARD DATE: 20110224

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl (Radio Operator) medically separated from the Marine Corps in June 2004, due to chronic bilateral knee pain. The CI has a long history of knee pain. He was treated but did not respond adequately to treatment, and was unable to fully perform the duties of his military occupational specialty (MOS). He was referred to the Physical Evaluation Board (PEB) and was found unfit for continued military service. His low back pain was determined to be Category III (not separately unfitting, and not related to the unfitting knee condition). The CI accepted the PEB findings and was separated at 20% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Navy and DoD regulations.

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CI CONTENTION: The CI states, “I feel that my rating should be higher due to all my injuries.”

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RATING COMPARISON:

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| **Navy PEB (dated 20040406)** | **VA (2 mo. Pre-Separation) All effective 20040701** |
| **Conditions** | **Code** | **Rating** | **Exam** | **Conditions** | **Code** | **Rating** | **Exam** |
| Chronic Bilateral Knee Pain  | 5299-5003 | 20% | 20040406 | Left Knee Pain | 5099-5019 | 10% | 20040427 |
| Post-Operative Right Knee | 5259 | 10% | 20040427 |
| Low Back Pain | Not Unfitting | Lumbar Strain  | 5237 | 10% | 20040427 |
| Not addressed by PEB | Scar, Right Shoulder | 7804 | 10% | 20040427 |
| Residuals, Post-Operative Right Shoulder | 5299-5203 | 10% | 20040427 |
| Tietze’s Syndrome (Claimed as Chest Pain) | 5099-5019 | 10% | 20040427 |
| Tinnitus | 6260 | 10% | 20040507 |
| (4 x 0% / 3 x NSC) |
| **TOTAL Combined: 20%**  | **TOTAL Combined (*Includes Non-PEB Conditions*): 50%**  |

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ANALYSIS SUMMARY:

Chronic Bilateral Knee Pain. This Marine has been suffering with knee pain since 1999, when he injured the right knee during basic training. Treatment records show that he complained of left knee pain in 2001. He was diagnosed with bilateral patello-femoral syndrome and was referred to physical therapy. The right knee was worse than the left. Magnetic resonance imaging (MRI) of the right knee showed a lateral meniscal tear with degenerative changes. On 22 January 2003 he underwent arthroscopic partial lateral meniscectomy on the right knee. Post-operatively, he progressed with treatment initially, but then he reached a plateau with significant, ongoing right knee pain. The left knee was evaluated with MRI on 5 February 2003, and showed a lateral meniscal tear with possible medial meniscal tear. Various treatment options for the left knee were discussed with the CI. Since his right knee was still symptomatic following arthroscopic surgery, the CI decided to postpone any surgical procedures on the left.

As noted above, the Navy PEB on 6 April 2004 found him unfit for duty, due to his chronic bilateral knee pain. The treatment record shows that three goniometric range of motion (ROM) knee evaluations are available for the Board to use in arriving at its rating recommendation. Of the three knee examinations, the Board considers the 27 April 2004 VA exam to carry the greatest probative value, since it is closest to the time of separation from service. The three goniometric knee ROM evaluations are summarized in the charts below:

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| **Right Knee** |  | Separation Date: 20040630 |
| Goniometric ROM | MEB NARSUM (20031205) | VA (20040427) | VA (20061019) |
| Flexion (140⁰ is normal) | 130⁰ | 120⁰ | 120⁰  |
| Extension (0⁰ is normal) | 0⁰ | 0⁰ | 0⁰ |
| Comments |  | Pain at 120⁰ | No pain |

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| --- | --- | --- |
| **Left Knee** |  | Separation Date: 20040630 |
| Goniometric ROM | MEB NARSUM (20031205) | VA (20040427) | VA (20061019) |
| Flexion (140⁰ is normal) | 125⁰ | 140⁰ | 120⁰  |
| Extension (0⁰ is normal) | 0⁰ | 0⁰ | 0⁰ |
| Comments |  | No pain | No pain |

The Board carefully considered all evidentiary information available and determined that it was appropriate to consider each knee as a separate major joint. This is consistent with Board policy and precedent. At the time of separation from service, both knees were causing pain, but had good ROM. After due deliberation, and careful consideration of all available evidence, the Board unanimously recommends a separation rating of 10% for chronic, persistent right knee pain. The Board unanimously recommends a separation rating of 10% for chronic, persistent left knee pain. This determination by the Board is IAW VASRD §4.3, §4.59, and §4.71a.

Other PEB Conditions. The Board then turned its attention to low back pain. The MEB exam on 18 December 2003 noted a history of low back pain, but physical examination of the spine was normal. MRI on 9 January 2004 demonstrated degenerative disc disease at L5-S1 with mild central bulging. The narrative summary addendum of 12 March 2004 noted gradual onset of low back pain with no specific traumatic injury. Treatment included anti-inflammatory medicines, rest, and PT. He had received epidural steroid injection at L5-S1, with approximately 90% resolution of symptoms. Examination demonstrated full ROM, with no tenderness to palpation and no radiculopathy. Straight leg raise and deep tendon reflexes were normal bilaterally. The commander’s statement did not mention a back condition. Although the CI clearly had a history of low back pain that had required treatment, there was no evidence that the condition was unfitting at the time of separation. The Navy PEB found the low back pain to be Category III (not separately unfitting, and not contributing to the unfitting condition). After careful consideration of all the evidence, the Board unanimously agrees that low back pain was not unfitting at the time of separation. The Board recommends no reversal of the PEB adjudication of the low back pain condition as Category III.

Remaining Conditions. Right shoulder problem, chest pain, and headaches were also discussed and considered by the Board. Additional conditions were documented in the Disability Evaluation System (DES) file. However, none were judged to be clinically significant during the PEB period and none carried attached profiles. These conditions were all reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally, many other conditions were rated by the VA but were not documented in the DES file. The Board does not have the authority to render fitness or rating recommendations for any conditions not considered by the DES. The Board therefore has no reasonable basis for recommending any additional conditions for separation rating.

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BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised in this case. In the matter of the chronic right knee pain, the Board recommends a rating of 10% (coded 5299-5003) IAW VASRD §4.71a. For the chronic left knee pain, the Board recommends a rating of 10% (coded 5299-5003) IAW VASRD §4.71a. In the matter of the low back pain, right shoulder problem, chest pain, headaches, and any other conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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RECOMMENDATION: The Board therefore recommends that there be no re-characterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Right Knee Pain  | 5299-5003 | 10% |
| Chronic Left Knee Pain | 5299-5003 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090929, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

 BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXXXX, FORMER USMC

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 15 Apr 11

 I have reviewed the subject case pursuant to reference (a) and, for the reasons set forth in reference (b), approve the recommendation of the Physical Disability Board of Review Mr. XXXX’ records not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

 Assistant General Counsel

 (Manpower & Reserve Affairs)