RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900607 SEPARATION DATE: 20070228

BOARD DATE: 20110317

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a GySgt/E-7 (6046, Aviation Maintenance) medically separated from the Marine Corps Reserve in February 2007. The medical basis for separation was Degenerative Arthritis of both knees. The CI has had a long history of bilateral knee pain. Both knees have required arthroscopic surgery and periods of limited duty (LIMDU). In June 2006, the CI underwent An Informal Physical Evaluation Board (IPEB) and was found fit for duty. He requested reconsideration, including a specific request for consideration of his Posttraumatic Stress Disorder (PTSD). On 13 July 2006, the CI was granted a formal hearing. The Formal PEB (FPEB) (28 September 2006) found him unfit for continued military service, due to Arthritis of both knees. Four other conditions (listed on the left side of the Rating Comparison chart below) were determined to be Category II (conditions that contribute to the unfitting Degenerative Arthritis condition). The PTSD was determined to be Category III (not separately unfitting, and not contributing to the unfitting condition). The CI was not satisfied with the FPEB findings, and he submitted a Petition for Relief (PFR). The PFR was reviewed, and denied. The CI was then separated at 10% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Naval and DoD regulations.

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CI CONTENTION: The CI states, “Please see VA rating decision dated March 23, 2007. The PEB rated me as unfit for duty and rated at 10% for degenerative arthritis on bilateral knees. In contrast the VA rating based on service medical records as well as VA medical exams showed me as 30% on each individual knee for a combined 50% for osteoarthritis. I believe this to be the more appropriate rating for medical retirement.” The CI also submitted a hand-written note to the Physical Disability Board of Review (PDBR) dated 20091101, requesting consideration of his PTSD, which was rated by the VA.

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Navy FPEB (dated 20060928)** | | | **VA (8 Mo. Pre Separation) – All Effective Date 20070301** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Degenerative Arthritis, Both Knees | 5299-5003 | 10% | Arthritis, Left Knee | 5299-5262 | 30% | 20060622 |
| Arthritis, Right Knee | 5299-5262 | 30% | 20060622 |
| Bilateral Knee Pain | Category II | |  | | | |
| Medial Meniscus Tear |
| Gonarthrosis, Both Knees |
| Chondromalacial Changes |
| PTSD | Category III | | PTSD, with ED | 9411 | 30% | 20060622 |
| ↓No Additional MEB Entries↓ | | | Tinnitus | 6260 | 10% | 20060622 |
| Skin Condition | 7816 | 10% | 20060622 |
| Carpal Tunnel Syndrome | 8599-8515 | 10% | 20060622 |
| 0% X 3 / NSC X 5 | | | 20060622 |
| **Final Combined: 10%** | | | **Total Combined: 80%** | | | |

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ANALYSIS SUMMARY:

Chronic pain of both knees. The CI reported a long history of bilateral knee pain. After failing conservative therapy, he underwent arthroscopic chondroplasty of the left knee on 7 July 2005. He then continued to have worsening right knee pain. Magnetic Resonance Imaging (MRI) of the right knee showed chronic degenerative changes, tri-compartmental osteoarthritis (OA), moderately severe chondromalacia, and a tear of the posterior medial meniscus. In March 2006, he underwent arthroscopic chondroplasty and medial meniscal debridement of the right knee. Two months later (May 2006) the CI was evaluated by Orthopedics at Naval Medical Center San Diego. The CI reported that he was having daily pain and swelling. Symptoms were made worse with any type of strenuous activity. He had night pain as well, and was only able to do stairs one step at a time using hand rails for support. His walking endurance was less than 20 minutes. He had exhausted non-operative treatment and had very little improvement from physical therapy (PT). Imaging studies showed severe OA bilaterally, with changes in all three compartments. His symptoms were considered “near arthroplastic” and he would likely need bilateral total knee arthroplasty in the future.

As noted above, the IPEB (June 2006) found him fit for duty. The CI requested a formal hearing. The FPEB (28 September 2006) found him unfit at 10% (coded 5299-5003) because two major joints were involved with no incapacitation. The CI also filed a claim with the VA. The CI’s knees were examined by the VA on 22 June 2006 (8 mos. prior to separation), and again on 21 August 2007 (6 mos. after separation). At both of these VA exams, knee range-of-motion (ROM) was measured with a goniometer. Three of his goniometric knee ROM evaluations are summarized in the charts below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Right Knee** |  | Separation Date: 20070228 | |
| Goniometric ROM | VA C&P - 20060622 | MEB - 20061026 | VA C&P - 20070821 |
| Flexion (140⁰ is normal) | 130⁰ | 130⁰ | 130⁰ |
| Extension (0⁰ is normal) | 0⁰ | 0⁰ | 0⁰ |
| §4.71a Rating | 10% | 10% | 10% |
| Comments | 10% based on painful motion | 10% based on painful motion | 10% based on painful motion |

|  |  |  |  |
| --- | --- | --- | --- |
| **Left Knee** |  | Separation Date: 20070228 | |
| Goniometric ROM | VA C&P - 20060622 | MEB - 20061026 | VA C&P - 20070821 |
| Flexion (140⁰ is normal) | 130⁰ | 135⁰ | 140⁰ |
| Extension (0⁰ is normal) | 0⁰ | 0⁰ | 0⁰ |
| §4.71a Rating | 10% | 10% | 10% |
| Comments | 10% based on painful motion | 10% based on painful motion | 10% based on painful motion |

The Physical Disability Board of Review (PDBR) carefully considered all evidentiary information available. The Board determined that it was appropriate to “unbundle” the knees, and consider each knee as a separate major joint. This is consistent with PDBR policy and precedent. At the time of separation from service, both knees were painful to motion, but had good range-of-motion (ROM). In fact, all three goniometric exams described above showed no compensable ROM loss, because the ROM limitation did not meet VASRD criteria for a disability percentage (based upon Knee and Leg codes, 5260 through 5261). However, IAW VASRD §4.71a, when limitation of motion of a specific involved major joint is noncompensable under the appropriate diagnostic code, a rating of 10% is appropriate if there is satisfactory evidence of painful motion. Furthermore, VA code 5259 applies to this case. Both knees were symptomatic after arthroscopic surgery, and the surgery on right knee involved removal of meniscal (semilunar) cartilage. 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, status post removal of meniscal cartilage. The right knee is appropriately coded 5259, and meets criteria for the 10% rating. The Board unanimously recommends a separation rating of 10% for chronic, persistent left knee pain, status post arthroscopic surgery which was analogous to meniscal cartilage removal. The left knee is appropriately coded 5299-5259, and meets criteria for the 10% rating. This determination by the Board is IAW VASRD §4.3, §4.7, §4.14, §4.59, and §4.71a.

The Board then addressed the issue of knee instability. Review of the treatment record shows that the CI was examined on 22 June 2006 (8 mos. prior to separation) and on 17 October 2006 (just 4 mos. prior to separation). At both of these exams, there was no evidence of knee instability (varus/valgus or anterior/posterior). Both knees were stable. The CI was examined again on 21 August 2007 (6 mos. after separation). At that evaluation, the right knee had a positive valgus stress test and a minimally positive anterior drawer sign. The left knee was borderline positive on the anterior drawer test. After lengthy discussion of these clinical findings, the Board does not find sufficient evidence to support an additional disability rating for knee instability. Based upon the preponderance of evidence, the Board unanimously agrees that it was more likely than not that the CI’s knees were stable at the time of separation.

Other PEB Conditions. The Board then considered Bilateral Knee Pain, Degenerative Posterior Horn Medial Meniscus Tear, Bilateral Knee Gonarthrosis, and Bone-on-Bone Grade IV Chondromalacial Changes. The Navy FPEB had determined that these four conditions were Category II (contributing to the unfitting condition). The Board unanimously agrees that these four conditions are all related to the bilateral Degenerative Osteoarthritis of his knees. All evidence considered there is not reasonable doubt in the CI’s favor supporting re-characterization of the PEB adjudication for these four knee conditions.

The Board then directed its attention to the CI’s mental condition. The CI was seen for a VA Compensation and Pension (C&P) examination on 22 June 2006. At that exam, he reported symptoms of anger, insomnia, nightmares, flashbacks, intrusive thoughts, and depression. He was drinking 6 beers a night to get to sleep. Other symptoms included hyper-vigilance, increased startle, irritability, isolation, withdrawal, decreased libido, and erectile dysfunction. Mental status examination (MSE) revealed an apprehensive and anxious male, oriented to time, place and person. He performed flawlessly on cognitive tests. No evidence of dementia, schizophrenia or bipolar disorder. Memory was intact for recent and distant events. His judgment and insight were intact. The Global Assessment of Functioning (GAF) score was 60.

The FPEB determined that PTSD was Category III (not separately unfitting, and not contributing to the unfitting condition). The FPEB noted that the CI’s Post Deployment Health Assessment indicated no history of events or exposures during deployment that would affect his health, and that he had not and did not intend to seek counseling or care for Mental Health (MH) issues. The FPEB also weighed heavily that the member sought medical treatment over 30 times in two years, but none of his visits were for PTSD.

The CI was seen at the Camp Pendleton Mental Health (MH) Clinic on 30 October 2006 (4 mos. pre-separation). He reported symptoms of nightmares, disrupted sleep, social avoidance, easily startled, mood swings, decreased appetite, low self-esteem, poor concentration, loss of pleasure in previously enjoyed activities, loss of sex drive, strained relationships, and occasional crying spells. He described himself as scared and anxious. Mental Status Exam (MSE) revealed dysphoric mood, with humorless and worried affect. Remote memory was not impaired and short term memory was normal. No thought disorder, suicidal ideation, or homicidal ideation. On a PTSD symptom rating scale, 16 out of 17 symptoms were severe, with one symptom in the moderate category. This treatment note did not describe specific combat stressors, noting only that CI’s combat experience involved the death and wounding of men he was responsible for. No medications were given at that time to treat the PTSD symptoms. The GAF score was 55, indicating moderate symptoms or moderate difficulty in functioning.

The Board carefully considered all of the evidence. The CI did not seek MH care until long after his return from deployment. The Commander’s statements noted that, although the CI had some physical limitations, he made up for them with his high standard of professionalism, dedication and the hours he put in on the weekend to ensure that duties were accomplished and that he was looking out for the welfare of his Marines and Sailors. It further indicated that his command could “effectively utilize and employ Gunnery Sergeant Bernal in his present physical condition.” There was no evidence of significant social or occupational impairment at the time of separation. After thorough review of all available evidence the Board unanimously agrees that it could not find sufficient evidence supporting re-characterization of the PEB adjudication for this condition. The Board recommends that the PTSD condition be considered not unfitting at the time of separation from service.

Remaining Conditions. Additional conditions were documented in the Disability Evaluation System (DES) file. However, none were clinically significant during the MEB/PEB period; none carried attached profiles; and, none were implicated in the Commander’s statement. These conditions were 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; Erectile Dysfunction, Tinnitus, Carpal Tunnel Syndrome, Scar on left heel, Wrist Degenerative Changes, and Onychomycosis were all rated by the VA. None of these conditions were documented in the Disability Evaluation System (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 5259) IAW VASRD §4.71a. For the Chronic Left Knee Pain, the Board recommends a rating of 10% (coded 5299-5259) IAW VASRD §4.71a.

In the matter of the PTSD 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation.

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Right Knee Pain, status post arthroscopic surgery | 5259 | 10% |
| Chronic Left Knee Pain, status post arthroscopic surgery | 5299-5259 | 10% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091007, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 23 Mar 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (reference (b)).

2. The subject member’s official records are to be corrected to reflect the following disposition:

a. Separation from the naval service due to physical disability rated at 20 percent (increased from 10 percent) effective 28 February 2007.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)