RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900616 SEPARATION DATE: 20040915

BOARD DATE: 20110715

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-2 (1371, Combat Engineer) medically separated for chronic left knee pain. In March 2003 the CI sustained combat injuries to his left knee and left flank. He underwent several knee surgeries to remove metallic fragments. In spite of physical therapy and medications, he continued to have left knee pain. The CI was unable to fully perform his required military duties or meet physical fitness standards. After a period of limited duty (LIMDU), he underwent a Medical Evaluation Board (MEB). Chondromalacia patella was addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. The PEB found the left knee condition unfitting, and rated it 10%. Two other conditions (low back pain and saphenous neuroma) were adjudicated as category III (not separately unfitting, and not related to the unfitting knee condition). The CI accepted the findings and was medically separated with a 10% disability rating.

CI’s CONTENTION: “I believe that with all medical conditions that I left the Marine Corps with that I should have been looked after medical retirement through the DoD. I feel that the 10% rating from the DoD is far off and doesn’t truly reflect the 80% rating I currently have through the VA.”

RATING COMPARISON:

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| --- | --- |
| **Navy PEB – dated 20040610** | **VA (4 mo. After Separation) – All Effective 20040916** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chondromalacia Patella | 5299-5003 | 10% | Chondromalacia Patella, Left Knee | 5003 | 10% | 20050107 |
| Left Saphenous Neuroma | Category III | Residuals, Shell Fragment Wounds | 5314 | 10% | 20050107 |
| Low Back Pain  | Category III | Low Back Pain  | 5237 | NSC | 20050107 |
| ↓No Additional MEB/PEB Entries↓ | Posttraumatic Stress Disorder | 9411 | 10% | 20050107 |
| 0% x 1 / Not Service Connected x 11 | 20050107 |
| **Combined: 10%** | **Combined: 30%\*** |

\*Combined VA Rating was later increased, due to a subsequent VA Rating Decision

ANALYSIS SUMMARY:

Left Knee Pain. In March 2003, this Marine sustained shrapnel wounds to his left knee and left flank. He underwent several surgeries to remove shell fragments from his left knee. In spite of PT and anti-inflammatory medications, the CI continued to have persistent pain in his left knee. In April 2004, he underwent an MEB. At that time, the CI complained of left knee pain with marching, running, walking and climbing stairs. On examination, the CI was slightly obese and had no limp. Left knee exam showed no signs of ligamentous instability. The examiner documented left quadriceps atrophy. X-rays showed metallic fragments around the distal third of the femur. The diagnosis was left chondromalacia patella.

Nine months later in January 2005, the CI had a VA compensation and pension (C&P) exam. At that time, his body weight was 314 lb. and body mass index was 41. His left knee pain was localized around the patella. The knee did not swell, turn red, or get stiff. The CI was driving a forklift and had not missed any work because of his knee. The examiner documented that the CI was able to duck walk without difficulty. There was no redness, warmth, effusion, or joint line tenderness. There was a positive patellar compression test, and patellar crepitus was noted. Ligamentous testing and muscle strength were normal.

In the treatment record, two goniometric range of motion (ROM) evaluations were in evidence, which the Board weighed in arriving at its rating recommendation. These two exams are summarized below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –Left Knee | MEB – 5 mo. Pre-Sep | VA C&P – 4 mo. Post-Sep |
| Flexion (140⁰ is normal) | 110⁰ | 120⁰ |
| Extension (0⁰ is normal) | -5⁰ | -5⁰ |
| §4.71a Rating\* | 10%\* | 10%\* |
| Comments | Patellar pain | Patellar pain |

 \*Conceding §4.59 (painful motion)

The PEB and the VA chose slightly different coding options for the left knee chondromalacia condition, but this did not bear on rating. Both assigned a disability rating of 10%. The Board carefully reviewed all evidentiary information available. The chronic left knee condition was essentially non-compensable based on VA Schedule for Rating Disabilities (VASRD) §4.71a ROM criteria (codes 5260-5261). However, IAW VASRD §4.40 and §4.59 a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion. The Board then addressed the issue of joint (ligamentous) instability. Review of the treatment record shows that at both the April 2004 MEB exam and the January 2005 C&P exam there was no objective evidence of knee instability or ligamentous laxity. Following due deliberation, the Board unanimously recommends a disability rating of 10% for the chronic left knee condition. Therefore, all evidence considered there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the left knee condition.

Left Saphenous Neuroma. Both the MEB and VA examiners noted a traumatic neuroma of the left saphenous nerve. The CI had pain at the neuroma site with bending the knee past 90 degrees, or with direct pressure on the neuroma itself. Both examiners documented a positive Tinel’s test. In considering the neuroma condition, the Board determined that the CI’s numbness and pain at the neuroma site would not preclude the performance of required military duties. Therefore the left saphenous neuroma was not unfitting. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for the neuroma condition.

Low Back Pain. The Board then directed its attention to the low back pain. At the April 2004 MEB exam, thoracolumbar forward flexion was 80 degrees. Neurologic examination was normal, with full strength, normal reflexes, and negative straight leg raise (SLR). X-rays showed multiple metallic fragments. At the January 2005 VA C&P examination, the CI reported intermittent back pain with forward flexion, but no radiation. The examiner found no evidence of spasm. ROM was normal. SLR was negative. The Board discussed whether or not the CI’s low back pain could be considered separately unfitting. The original LIMDU was for left knee pain only and did not mention a lower back condition. A thorough review of the treatment record does not reveal any duty limitations that were specifically ascribed to the low back pain. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for the low back pain condition.

Remaining Conditions. Mental condition, shell fragment wounds, hearing loss, shoulder pain, right knee pain, right hip pain, tinea pedis, pilonidal cyst, headache, gastroesophageal reflux disease (GERD), and several other conditions were also noted in the Disability Evaluation System (DES) file. None of these conditions were the basis for LIMDU and none were implicated in the commander’s assessment. 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, nasal problem, hemorrhoids, chest pain and several other conditions were noted in the VA rating decision proximal to separation, 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 unfitting conditions for separation rating.

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. In the matter of the left knee condition (chondromalacia patella) and IAW VASRD §4.71a, §4.40 and §4.59, the Board unanimously recommends a disability rating of 10%. In the matter of the left saphenous neuroma, low back pain, shell fragment wounds, mental condition, hearing loss, shoulder pain, right knee pain, right hip pain, tinea pedis, pilonidal cyst, headache, GERD, or any other conditions eligible for consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chondromalacia Patella of Left Knee | 5299-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090711, 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

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 1 Aug 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 PDBR xxxxxxxx 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)