RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD200900623 SEPARATION DATE: 20070915

BOARD DATE: 20110610

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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 SSgt (7314/UAV Operator) medically separated from the Marine Corps in 2007. The medical basis for the separation was status post (s/p) anterior cruciate ligament (ACL) reconstruction of the left knee. Despite extensive rehabilitation, he was not able to perform within his military occupational specialty (MOS) or participate in a physical fitness test. The first limited duty (LIMDU) period followed lateral release of the knee in December 2005, complicated by a septic left knee and osteoarthritis. He remained symptomatic and a medical evaluation board (MEB) on 30 November 2006 recommended a second six-month LIMDU. In January 2007, he underwent an ACL reconstruction. A second MEB, on 6 July 2007 determined that pain in joint involving lower leg was medically unacceptable IAW SECNAVINST 1850.4E and referred him to a Physical Evaluation Board (PEB). The PEB determined the s/p ACL reconstruction left knee to be a unfitting condition, rated at 10%, and that bilateral knee pain was a related, but not separately unfitting (category II) condition, with application of the SECNAVINST 1850.4E and DoDI 1332.3. The CI made no appeals and was medically separated with a 10% disability rating.

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CI CONTENTION: The CI stated no contentions. The following was extracted from item #14 of DD Form 294: Esophageal web stricture with narrowing, hiatal hernia and gastric diverticulum 30%; S/p left knee ACL tear with reconstruction and asymptomatic surgical scarring 10%; S/p right knee ACL tear with reconstruction and as asymptomatic surgical scarring 10%; Chronic lumbar strain 10%; Tinnitus 10%; Sleep apnea 0%. He additionally lists all of his VA conditions and ratings as per the rating chart below.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20070717** | | | **VA (Same month of Separation) – All Effective Date 20070916** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| S/P ACL Recon L Knee | 5299-5003 | 10% | S/P L Knee ACL Recon | 5019 | 10% | 20070920 |
| Bil Knee Pain, L >R | Category II | | S/P R Knee ACL Recon | 5019 | 10% | 20070920 |
| ↓No Additional MEB Entries↓ | | | Esophageal Web Hiatal Hernia & Gastric Diverticulum | 7203 | 30% | 20070920 |
| Chronic Lumbosacral Strain | 5237 | 10% | 20070920 |
| Tinnitus | 6260 | 10% | 20080221 |
| 0% X 1 / Not Service Connected X 1 | | | 20070920 |
| **Final Combined: 10%** | | | **Total Combined: 60%** | | | |

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ANALYSIS SUMMARY: The CI had a lateral release in December 2005 complicated by osteomyelitis and a septic knee with subsequent debridement. At the December arthroscopy, he was noted to have chondromalacia of the patella and a partial tear of the ACL. In January 2007, he had an arthroscopic ACL reconstruction and multi-compartment synovectomy and debridement. He improved, but could not meet his MOS requirements. At the MEB exam on 7 June 2007 three months prior to separation and five months after arthroscopy, he was noted to have a non-antalgic gait. A trace effusion was noted. Range of motion (ROM) was full. No instability was noted. There was some lateral joint line tenderness along the lateral patellar facets. Patellofemoral compression test was positive when active quadriceps contraction was added. Imaging was significant for post-operative changes, but **neither joint space narrowing nor osteophyte formation was seen. There was no subchondral sclerosis.** The VA compensation and pension (C&P) exam was done on 20 September 2007, five days after separation. The CI noted continued pain which was elicited by physical activity; treatment included narcotic medications. The CI was noted to guard movement bilaterally, but examination was otherwise normal. ROM was noted to be normal. DeLuca criteria were positive for pain, fatigue weakness and lack of endurance. An additional limitation of 20° flexion was present bilaterally. There was no instability and the menisci were normal. Posture and gait were normal with any assistive devices. X-ray was significant for post-operative changes. Both exams were detailed and thorough. As the VA C&P exam is within days of separation and further from the acute effects of the surgery, it is assigned a higher probative value. However, the Board notes that this does not affect the rating determination. There were three goniometric ROM evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

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| --- | --- | --- | --- |
| ROM – Left Knee | PT - ~ 3 Mo. Pre-Sep | MEB - ~ 2 Mo. Pre-Sep | VA C&P - ~ separation |
| Flexion (140⁰ normal) | 126⁰ (L&R) | 135⁰ | 140⁰ |
| Extension (0⁰ normal) | 2-0⁰ (L&R) | Full | Not given |
| Comments | Tenderness over insertion of quad & over lateral fascial around VL | ROM and full ext to 135⁰ of flexion; trace effusion; no instability; + patella femoral compression with quad contraction | Normal bilaterally; DeLuca + for pain, fatigue, weakness, and lack of endurance with 20⁰ additional limitation of flexion bilaterally |
| §4.71a Rating | 10% | 10% | 10% |

The PEB coded the left knee as 5299-5003, analogous to degenerative arthritis and rated it at 10%. The VA coded the left knee as 5019, bursitis rated at 10%. The Board noted that the painful limitation of ROM, noted on some exams, was sufficient for rating IAW §4.59 (painful motion). There was no effusion, abnormality on exam other than tenderness and the gait was normal. All evidence considered, the Board determined that there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the left knee condition.

Other PEB Conditions. The PEB adjudicated the bilateral knee pain, left greater than right, as catgory II, related to the unfitting condition, but not separately unfitting. The left knee pain is discussed above. In 2004, the CI had a right knee lateral retinacular release with chrodroplasty of the patella. He had had a previous arthroscopy in 1993. He was returned to duty ten weeks after surgery. While he was noted to have constant pain, especially with stairs, since the surgery, the right knee pain was not profiled. The VA rated the right knee as s/p ACL repair; however, there was no right ACL repair while in service. The right ACL repair predated service. Both knees were implicated in the commander’s statement; the relative impact of each was not addressed. The CI was not placed on LIMDU for the right knee. At the NARSUM, the ROM of the right knee was noted to be full without effusion. There was no tenderness to palpation and symptoms were present upon patellofemoral compression when active quadriceps contraction was added. The patella tracked normally. Imaging on 20 September 2007 was remarkable for post-surgical changes (retained staple). The VA awarded 10% disability for painful motion IAW §4.59. This was reviewed by the action officer and considered by the Board. There was no indication from the record that the right knee condition significantly interfered with satisfactory performance of MOS requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the right knee condition.

Other Contended Conditions. The CI’s application also asserts that compensable ratings should be considered for esophageal web stricture with narrowing, hiatal hernia (HH), gastric diverticulum, chronic lumbar strain, tinnitus and sleep apnea. All of these conditions were reviewed by the action officer and considered by the Board. Chronic lumbar strain and tinnitus are not documented in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. Sleep apnea was diagnosed after separation and thus had no impact on duty performance. There is no record of duty impairment from the esophageal web, the HH, or the gastric diverticulum in the last seven years of service. There was no evidence for concluding that the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were sinusitis and trouble sleeping from knee pain. Several additional non-acute conditions or medical complaints were also documented. These conditions did not carry attached profiles, and none were implicated in the non-medical assessment. 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. The Board therefore has no reasonable basis for recommending any additional unfitting 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. In the matter of the left knee pain, the Board unanimously recommends no re-characterization of the PEB rating decision. In the matter of the esophageal web stricture with HH and gastric diverticulum, right knee condition, chronic lumbar strain, tinnitus, sleep apnea, insomnia, sinusitis, or any other medical 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 recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| S/P ACL Recon Left Knee | 5299-5003 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091017, 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 XXXXX, FORMER USMC

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 22 Jun 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 Mr. XX’s 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)