RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900648

BOARD DATE: 20110428

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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 LCpl (0331, Machine Gunner) medically separated for left knee patellofemoral syndrome (PFS), and chronic low back pain (lumbago). He did not respond adequately to treatment and was unable to fully perform his required military duties, or meet physical fitness standards. The Medical Evaluation Board (MEB) found his conditions to be medically unacceptable, and referred him to the Physical Evaluation Board (PEB). The Informal PEB (IPEB) adjudicated the left knee PFS as unfitting, and assigned a 10% rating. Lumbago was also found unfitting and rated at 10%. A third condition (intermittent sciatica) was found to be Category II (related to the unfitting lumbago condition). The CI did not accept the PEB findings and requested reconsideration. In May 2007, a PEB Reconsideration was performed, and the IPEB findings were affirmed. The CI was found unfit for continued military service, and was separated at 20% combined disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Navy and DoD regulations.

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CI’s CONTENTION: The CI states, “I feel my current disability rating award does not match up with my disabilities. My disabilities from combat have severely affected my life and ability to provide for my family.”

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RATING COMPARISON:

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| **Navy PEB Reconsideration – 20070516** | **VA (1 mo. After Separation) – All Effective 20070901** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Knee, PFS | 5099-5003 | 10% | Left Knee Status Post Shrapnel Trauma  | 5260-5024 | 10% | 20060308 |
| Chronic Lumbago | 5237 | 10% | Lumbar Degenerative Disc Disease | 5242 | 20% | 20060308 |
| No PEB Entry |  |  | Scar on Left Knee Status Post Shrapnel  | 5314-7804 | 10% | 20060308 |
| No PEB Entry |  |  | Bilateral Tinnitus | 6260 | 10% | 20060309 |
| No PEB Entry |  |  | Posttraumatic Stress Disorder | 9411 | 50% | 20061022 |
| Intermittent Sciatica | Category II | Sciatica  |  | NSC | 20060308 |
| ↓ No Additional Entries ↓ | 0% x 1 / other NSC x 2  |  |  | 20060308 |
| **FINAL Combined: 20%** | **TOTAL Combined: (*Includes Non-PEB Conditions*): 70%**  |

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ANALYSIS SUMMARY:

Left Knee. This Marine was wounded in the left knee in May 2005 when he was hit by shrapnel from an improvised explosive device. X-rays showed no retained shrapnel fragments, but he continued to have left knee pain. The narrative summary (NARSUM) from January 2007 noted that his left knee pain was constant and worse with walking, running, prolonged sitting or using stairs. Examination revealed tenderness to palpation of the patella and patellar tendon, but no joint line tenderness. Range of motion (ROM) showed flexion of 90⁰ and extension of 0⁰. There was no effusion or instability. He continued to do daily strengthening and stretching exercises, and used medication as needed for pain. Physical limitations included no running, no forced marches, no lifting more than 20 pounds, and no physical fitness training or impact activities. The CI had a VA compensation and pension (C&P) examination on 13 October 2006. It showed no evidence of muscle damage, but some decreased sensation of the lateral patella. There was no edema, effusion, weakness, tenderness, crepitus or instability. ROM showed flexion of 90⁰ (with pain at 90⁰) and extension of 0⁰ (with pain at 0⁰). The two ROM evaluations are summarized below:

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| Left Knee | Separation Date: 20070930 |
| Goniometric ROM | VA C&P – 2006101311½ mo. Pre-Sep | MEB – 200701059 mo. Pre-Sep |
| Flexion (140⁰ is normal) | 90⁰ (pain at 90⁰) | 90⁰  |
| Extension (0⁰ is normal) | 0⁰ (pain at 0⁰) | 0⁰ |
| §4.71a Rating | 10% | 10% |
| Comments | 10% based on painful motion | 10% based on painful motion |

The Board carefully reviewed all evidentiary information available. The left knee condition was essentially non-compensable using the VASRD §4.71a knee and leg codes (5256-5263). However, IAW VASRD §4.40 and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to pain. If no other criteria permit a compensable evaluation, a 10% rating may be assigned for painful motion of a major joint. This option was deliberated, and the Board unanimously recommends a disability rating of 10% for the painful left knee condition. It is coded 5099-5003 and as described above meets criteria for a 10% rating.

Low Back Pain. On 10 April 2004 (while he was in Iraq) a rocket propelled grenade landed near the CI. He was thrown against a wall and “jarred” his back. One year later in May 2005 an IED blast wounded his left knee and increased his low back pain. The NARSUM in January 2007 noted that he had constant low back pain, worse with running, prolonged sitting or standing, or any type of impact activities. He had occasional numbness down his left leg, but there were no complaints of bowel, bladder or sexual dysfunction. Treatment had included physical therapy, ice, rest, chiropractic, and steroid shots; all with no significant relief. Examination showed no deformities and no significant tenderness to palpation. ROM results are shown in the table below. His muscle strength and deep tendon reflexes were normal. He had negative straight leg raise (SLR). Heel and toe walk was normal. At his VA C&P examination in October 2006 he reported constant low back pain with radiation to the left leg. He was able to function with medication, but reported difficulty with lifting and carrying. There were no periods of incapacitation. There was no tenderness, weakness, abnormal gait or abnormal spinal contour. His SLR was negative bilaterally, with no clinical evidence of intervertebral disc syndrome.

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| Thoracolumbar Spine | Date of Separation: 20070930 |
| GoniometricROM | VA C&P – 20061013(11½ mo. Pre-Sep) | MEB – 20070105(9 mo. Pre-Sep) |
| Fwd. Flexion ( 90⁰ is Normal) | 50⁰ (pain at 50⁰) | 65⁰ |
| Extension (30⁰ is Normal) | 15⁰ (pain at 15⁰) | 20⁰ |
| Combined ( 240⁰ is normal) | 165⁰ | 175⁰ |

The Board assigned greater probative value to the MEB exam on 5 January 2007, since it occurred closer to the date of separation. That evaluation supported a 10% rating, based on forward flexion of the thoracolumbar spine greater than 60⁰ but not greater than 85⁰. There were no abnormalities of gait or spinal contour. After due deliberation, and consideration of all the evidence, the Board unanimously recommends a disability rating of 10% for the chronic low back pain (lumbago) condition.

Radiculopathy. The Board then addressed the issue of radiculopathy (sciatica). The MEB NARSUM in January 2007 noted that neurologic symptoms were minimal, with occasional numbness in the left leg. Deep tendon reflexes and muscle strength were normal. The PEB adjudicated intermittent sciatica as Category II (related to the unfitting chronic lumbago). All evidence considered, the Board unanimously agrees that there is not sufficient evidence (nor reasonable doubt) in the CI’s favor supporting reversal of the PEB fitness adjudication for the radiculopathy (sciatica) condition.

Mental Disorder. The CI was seen by Mental Health in September 2006 (12 mos. prior to separation). His symptoms included recurrent memories, guilt, nightmares, sleep disturbance, increased startle response, fatigue, hyper-vigilance, irritability, anger, and marital problems. He denied any homicidal or suicidal ideation. Mental status examination demonstrated normal speech, insight, judgment, memory and cognition. He was diagnosed with adjustment disorder. His global assessment of functioning score was 65, indicating mild symptoms. He was referred for individual and group psychotherapy, and prescribed medication targeting the sleep disturbance. There were no duty limitations. Follow-up evaluation on 30 May 2007 (four months before separation) documented successful treatment. Adjustment disorder was fully resolved, and he was returned to his unit with no duty limitations. The Board carefully considered all of the evidence related to the mental condition. There was no evidence of significant social or occupational impairment at the time of separation. The non-medical assessment did not mention any mental health condition. After thorough review of all available evidence, the Board unanimously agrees that it could not find sufficient evidence supporting the mental condition as unfitting at the time of separation from service.

Remaining conditions. Stress fracture of left foot, hypertension, pes planus, skin scar, and other conditions were also documented in the Disability Evaluation System (DES) file. None of these were clinically significant during the MEB/PEB period, and none were implicated in the commander’s statement. 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, tinnitus was noted in the VA rating decision but not 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.

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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 the matter of the left knee condition (patellofemoral pain syndrome) and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the low back pain condition (chronic lumbago) and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the radiculopathy condition (intermittent sciatica) the Board unanimously recommends no change in the PEB adjudication (Category II). In the matter of the mental disorder, stress fracture of left foot, hypertension, pes planus, skin scar, or 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** |
| Patellofemoral Pain Syndrome (Posttraumatic) | 5099-5003 | 10% |
| Chronic Lumbago | 5237 | 10% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091028, 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 26 May 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 xxxxxx 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)