RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900653 SEPARATION DATE: 20040630

BOARD DATE: 20110330

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Pvt (Recruit) medically separated from the Marine Corps for anterior cruciate ligament (ACL) deficiency of the right knee. He did not respond adequately to treatment (which included surgery) and was unable to return to training or meet physical fitness standards. The CI underwent a Medical Evaluation Board (MEB). His right knee was found to be medically unacceptable IAW SECNAVINST 1850.4E. He was referred to the Physical Evaluation Board (PEB). The PEB adjudicated the ACL deficient right knee condition as unfitting, and assigned a disability rating of 10%. Four other right knee conditions were found to be Category II (related to the unfitting right knee condition). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI’s CONTENTION: The CI elaborates no specific contentions regarding rating or coding, and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Navy PEB – dated 20040519** | | | | **VA (1 mo. after Separation) – Effective Date 20040701** | | | |
| **Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic ACL Deficiency, Right Knee | 5299-5003 | 10% | 20040519 | Chondromalacia of the Right Knee, with Postoperative ACL Deficiency and S/P Meniscectomies | 5259 | 10% | 20040802 |
| Chondromalacia, Lateral | Category II | | |
| Tear of Medial Meniscus | Category II | | |
| Tear of Lateral Meniscus | Category II | | |
| Chondromalacia, Medial | Category II | | |
| ↓No Additional MEB/PEB Entries↓ | | | | 0% x 1/Not Service Connected x 0 | | | |
| **Combined: 10%** | | | | **Combined: 10%** | | | |

ANALYSIS SUMMARY:

Right Knee Condition. The CI was going down a ladder when another recruit stepped on his heel. He reported a buckling injury to his right knee, stating that he heard and felt a loud pop. The CI was evaluated and X-rays showed an old avulsion fracture from the medial tibial spine. On training day 14 (5 March 2004) his knee was examined by orthopedics and ACL insufficiency was diagnosed. Magnetic resonance imaging (MRI) of the right knee demonstrated a chronic ACL deficiency, osteochondral injuries to the medial and lateral femoral condyles, and bilateral (medial and lateral) meniscal tears. It was felt that he probably had a previous partial ACL tear, which was exacerbated when he suffered the buckling knee injury in the squad bay. Considering the MRI findings, it was difficult to tell whether his knee damage (ACL deficiency, and meniscal tears) was acute or chronic. On 26 March 2004, he underwent right knee arthroscopy, partial medial meniscectomy, partial lateral meniscectomy, partial chondroplasty of the lateral femoral condyle, and partial chondroplasty of the medial femoral condyle. He also had ACL reconstruction, using a double-looped semitendinosus and gracilis graft. It was apparent intraoperatively, that his injuries were chronic in nature, including the meniscal tears, as well as the ACL tear. The acute buckling injury he suffered in the squad bay may have been a pivot shifting of the tibia, secondary to its chronic ACL deficiency.

Given the extent of the damage in his right knee, as well as the likelihood that he would never be able to meet the physical requirements of an active duty Marine, he was referred for MEB/PEB disposition. His five right knee diagnoses were: chronic ACL deficiency, chondromalacia of articular surface medial femoral condyle, chondromalacia of articular surface lateral femoral condyle, complex tear posterior horn medial meniscus, and complete tear (and absence) of the posterior horn lateral meniscus. All five right knee diagnoses were addressed in the MEB exam and forwarded to the PEB as medically unacceptable. The Navy PEB adjudicated the chronic ACL deficient right knee as unfitting and assigned a 10% disability rating. The other four right knee conditions were all found to be Category II (related to the unfitting Category I condition). Although all of the right knee conditions were felt to have existed prior to service (EPTS), the PEB recommended no reduction of the rating percentage.

The CI had a compensation and pension (C&P) exam on 2 August 2004 (one month after separation). At that exam, there was no instability and no pain with range of motion (ROM) testing. Scars from previous surgery were noted to be well-healed. He was using a knee brace and was able to walk one mile, but had difficulty running. The CI had another VA C&P exam two years later. The goniometric ROM from both VA exams is summarized in the table below:

|  |  |  |
| --- | --- | --- |
| Right Knee | Separation Date: 20040630 | |
| Goniometric ROM | VA C&P – 20040802  1 month post-separation | VA C&P – 20060614  24 months post-separation |
| Flexion (140⁰ is normal) | 105⁰ | 120⁰ |
| Extension (0⁰ is normal) | 0⁰ | 0⁰ |
| §4.71a Rating | 0% | 10% |
| Comments | No pain with motion | Pain > 100⁰ |

The Board examined all of the evidentiary information available. The Board notes that the PEB and the VA chose different coding options for the right knee condition, but both arrived at a 10% rating. On both of the VA goniometric ROM examinations described above, there was some limitation of motion, but it was essentially non-compensable IAW the VA Schedule for Rating Disabilities (VASRD) §4.71a based on knee and leg codes, 5260-5261. However, code 5259 at 10% is applicable in this case, since the right knee was symptomatic following removal of meniscal (semilunar) cartilage. Of all the various coding options, it is clear that none offers any particular advantage to the CI, since all of the options lead to a 10% disability rating.

The Board then directed its attention to joint instability. Review of the treatment record shows that the CI was examined on 7 April 2004 (three month prior to separation) and 2 August 2004 (one month post-separation). At both of these exams, there was no evidence of right knee instability. The CI was examined again on 14 June 2006 (two years post-separation). At that 2006 evaluation, the right knee had moderate anterior/posterior instability. After lengthy discussion of these clinical findings, the Board does not find evidence to support an additional disability rating for joint instability. The Board also finds no evidence for the knee scar as unfitting at separation. After careful consideration of all the evidence provided, the Board recommends a 10% disability rating for the right knee condition. It is coded 5299-5003 and meets criteria for the 10% rating. This determination is IAW VASRD §4.3, §4.59, and §4.71a.

Other PEB Conditions. The Board then considered the four additional right knee conditions which were found to be Category II by the PEB. The Board unanimously agrees that these four right knee conditions are not separately unfitting and are all related to the unfitting knee condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for any of these four knee conditions.

Remaining Conditions. Other conditions identified in the Disability Evaluation System file include left thumb graft, left inguinal hernia and inhaler use. None of these conditions were clinically significant during the MEB/PEB period, were the basis for limited duty or were implicated in the non-medical 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.

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 ACL deficient right knee, the Board unanimously recommends a disability rating of 10%, coded 5299-5003 IAW VASRD §4.71a. In the matter of the chondromalacia of medial femoral condyle, chondromalacia of lateral femoral condyle, tear of medial meniscus, tear of lateral meniscus, left thumb graft, left inguinal hernia, inhaler use, 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.

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

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Chronic Right Knee Condition (Surgically Treated) | | 5299-5003 | 10% |
| **COMBINED** | | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091006, 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, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 16 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. XXXXX’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)