RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900657 BOARD DATE: 20100929

SEPARATION DATE: 20060109

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SUMMARY OF CASE: This covered individual (CI) was a Captain, Adjutant medically separated from the Marine Corps in 2006 after 17 years of service. The medical basis for the separation was Bilateral Patellofemoral Pain Syndrome (PFS) and Asthma. The CI was referred to the Physical Evaluation Board (PEB), determined unfit for continued Naval service, and separated at a 20% combined disability using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

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CI CONTENTION: The CI states: ‘Rating should have been at least 30% - 10% asthma, 10% left knee, and 10% right knee. Both knees were lumped into one 10% rating. Additionally, the back condition and the carpal tunnel in both wrists should be included. 1) Of particular note: The COs letter shows a strong bias against retention that I believe affected the board’s decision and rating. As a Captain with 17 years of service I believe that I should have been able to get a retirement rating. 2) The board results clearly state Bilateral knee problems, but only 10% was granted for both. No valid reason to not assign 10% to each knee. This is either an admin oversight, or bias based on the CO’s comments, but it is a clear shortcoming on the rating’.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB 20051130** | | | **VA (4 Months after Separation)** | | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | | **Code** | **Rating** | **Exam** | **Effective** |
| Patellofemoral Syndrome, Bilaterally | 5299-5003 | 10% | Knee Strain With Patellar Arthritis, Left | | 5003-5260 | 10% | 20060516 | 20060110 |
| Knee Strain With Patellar Arthritis, Right | | 5003-5260 | 10% | 20060516 | 20060110 |
| Asthma | 6602 | 10% | Obstructive Lung Disease | 6699-6602 | | 10% | 20060516 | 20060110 |
|  | Not in DES | | Bilateral Hallux Deformity, Moderate with Osteoarthritis, DIP Joint | | 5010 | 10% | 20060516 | 20060110 |
|  | Not in DES | | Lumbar Instability With Degenerative L5/S1 | | 5003-5242 | 10% | 20060516 | 20060110 |
|  | Not in DES | | Allergic Sinusitis | | 6510 | 0% | 20060516 | 20060110 |
|  | Not in DES | | Carpal Tunnel Syndrome, Left Wrist | | 8516 | 0% | 20060516 | 20060110 |
|  | Not in DES | | Carpal Tunnel Syndrome, Right Wrist | | 8516 | 0% | 20060516 | 20060110 |
| **TOTAL Combined: 20%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **40% from 20060110** | | | | | |

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ANALYSIS SUMMARY:

The CI was found unfit for continued Naval service secondary to bilateral patellofemoral syndrome and asthma. The CI had a long history of bilateral knee pain treated with activity modification, physical therapy, and multiple types of nonsteroidal anti-inflammatory medications. He underwent a right knee arthroscopy and lateral release in 2003. However, none of the treatments alleviated his pain and he was not able to run, lift heavy weights, or perform any activity requiring sudden movements. He also had asthma.

The Commanders Statement noted that while the CI was ‘a quality officer’ his medical condition significantly interfered with satisfactory performance of his required duties. The letter reported the CI missed approximately 15 hours a week. In general the Commander’s letter is used to evaluate fitness, that is, whether the medical condition prevents satisfactory performance of required duties. The PEB previously determined that bilateral PFS and asthma were unfitting and this Board may not change that determination. The Board rates unfitting conditions based on the medical evidence of functional impairment IAW the VASRD.

Lower extremity condition

The Medical Evaluation Board (MEB) Narrative Summary (NARSUM) 20050922 reported the long history of knee pain experienced by the CI. The CI was first diagnosed with PFS in 1995 but complaints of left knee pain date back to 19900720. A magnetic resonance imaging (MRI) of the right knee in October 2003 revealed Chondromalacia with an Anterior Cruciate Ligament Tear and Patellofemoral Arthritis. The CI underwent right knee Arthroscopic surgery on January 15, 2004 with lateral release and medial reefing. A follow up examination dated April 16, 2004, showed continued swelling and mild pain.

X-rays completed on 20050715 showed Osteophytes and Shallow Patella Bilaterally. His NARSUM knee exam bilaterally revealed 0 to 140 degrees active and passive range of motion. He had a stable ligamentous exam bilaterally. His exam was remarkable for positive patellar apprehension and a positive patellofemoral grind with very positive reproducible crepitus deep to the patellae bilaterally. The CI was unable to perform duties such as running, lifting heavy weights, or anything requiring sudden movements. At the time of this evaluation, he was taking Motrin as needed for pain and used a left knee brace that had been given to him by a doctor. He used the brace when he had increased pain.

The VA examination of 20060516 revealed complaints of grinding and crackling noise accompanied by stiffness and swelling but no locking or giving away. Lateral movements of both knees also created pain and there was pain experienced when climbing. The physical examination showed a limited range of motion revealing flexion of 95 degrees (normal is 140 degrees) and normal extension. The examination was negative for instability, effusion, scars or pain during motion.

The VA rated each knee separately with a 10% rating for each under VASRD 5260 for painful motion and patellar arthritis documented on MRI of the right knee and X-rays of both knees. VASRD §4.59 Painful motion states that with any form of arthritis, painful motion is an important factor of disability. The intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint. The minimal compensable rating for the knee is 10%.

The PEB rated bilateral patellofemoral syndrome under 5003 Arthritis, Degenerative. Under this code, X-ray evidence of involvement of two or more major joints or two or more minor joints is rated at 10%. Knees are major joints. If occasional incapacitating episodes are also present, a 20% rating is warranted under code 5003. Prior to 2008 the military service PEBs generally did not recognize pain limited range of motion or painful motion as entitled to at least the minimum compensable rating for the joint.

Respiratory condition

An Addendum to the MEB NARSUM was completed 20051118 to evaluate asthma. The CI described episodes of shortness of breath that started in 1991 while he was in the Persian Gulf War, where he was exposed to smoke and dust. At that time he experienced tightness of the chest, which increased significantly over 2001 and 2002 and thereafter. He was initially diagnosed with asthma based on pulmonary function tests as well as complaints of shortness of breath with running, which improved with Albuterol. He was also given Singulair at that time, but his shortness of breath had increased. At the time of the MEB he had nearly nightly nocturnal awakenings with daily use of his Albuterol. He noted that seasonal changes as well as upper respiratory infections seemed to trigger his symptoms and he described difficulty breathing out. His FEV1/FVC was 73%, improving to 80% post-bronchodilator. Pulmonary related medications at the time of separation included Advair 100/50, Claritin, and Flonase with Proventil only as needed.

At the time of his VA assessment, the Pulmonary Function Test shows the FEV1/FVC pre-bronchodilator percentage is 72% and post-bronchodilator is 60%. The interpretation was mild obstructive lung defect. His lung examination revealed lungs were clear to auscultation and no wheezes were heard. He was diagnosed with Obstructive Lung Disease, Mild. He was assigned an evaluation of 10% disability based on the findings of the pulmonary function test. The test was found to have a paradoxical response, in that the post-bronchodilator result was worse than the pre-bronchodilator and therefore the better value was used in the evaluation determination. At the time of the VA examination he was still taking Advair and Singulair daily and using his Albuterol two to three times a week.

Other conditions Not in the Disability Evaluation System (DES)

Bilateral Hallux Deformity, Moderate with Osteoarthritis DIP Joint; Lumbar Instability With Degenerative L5/S1; Allergic Sinusitis; Carpal Tunnel Syndrome, Left Wrist; and Carpal Tunnel Syndrome, Right Wrist

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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. After careful consideration of all available evidence the Board determined by majority that the CI’s bilateral patellofemoral syndrome and asthma are most appropriately rated at a combined 40% with 10% for each knee and 30% for asthma.

The CI had radiographic evidence of arthritis and painful motion in both knees. Additionally he had pain limited range of motion of his right knee. Although a 10% rating is warranted under VASRD 5003 for bilateral patellofemoral syndrome, a 10% rating for each knee is warranted under VASRD 5260 IAW with VASRD §4.59 Painful motion. This paragraph states that with any form of arthritis, painful motion is an important factor of disability. The intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint. The minimal compensable rating for the knee is 10%.

The CI had asthma that was determined to be unfitting by the Navy PEB and was treated with daily Advair which contains both inhalational bronchodilator and inhalational anti-inflammatory medications. Regardless of pulmonary function test results, a diagnosis of asthma with daily inhalational or oral bronchodilator therapy or inhalational anti-inflammatory medication warrants a 30% rating.

The single voter for dissent (who recommended rating 6602 at 10 %) did not elect to submit a minority opinion.

The other diagnosed conditions rated by the VA (Bilateral Hallux Deformity, Moderate with Osteoarthritis DIP Joint; Lumbar Instability With Degenerative L5/S1; Allergic Sinusitis; Carpal Tunnel Syndrome, Left Wrist; and Carpal Tunnel Syndrome, Right Wrist) were not mentioned in the Disability Evaluation System package and are therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Naval Records (BCNR) to consider adding these conditions as unfitting.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Knee Strain With Patellar Arthritis, Left | | 5003-5260 | 10% |
| Knee Strain With Patellar Arthritis, Right | | 5003-5260 | 10% |
| Asthma | | 6602 | 30% |
| **COMBINED (Incorporating BLF 1.9)** | | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091112, 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 XXXXX, FORMER USMC, XXX XX XXXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 15 Oct 10

1. I have reviewed the subject case pursuant to reference (a). The subject member’s official records are to be corrected to reflect the following disposition:

a. Effective the date of discharge, placement on the Permanent Disability Retired List with a disability rating of 40 percent.

2. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid funds if appropriate, and notification to the subject member once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)