RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900663 SEPARATION DATE: 20060430

BOARD DATE: 20110203

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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 Lance Corporal (Air Traffic Controller [in Training] MOS 7200) medically separated from the Marine Corps in 2006. The medical basis for the separation was left knee iliotibial band friction (IBF) syndrome. The CI complained of left knee lateral-sided pain while running or prolonged standing, without a history of trauma. The CI was placed on Limited Duty (LIMDU) twice with restrictions of no climbing, running, marching, drilling or stair climbing. Despite extensive physical therapy including iontophoresis, corticosteroid injections, orthotics, non-steroidal anti-inflammatory (NSAID) medications, stretching and icing modalities, the CI was unable to return to full duty and was referred to a Medical Evaluation Board (MEB). The MEB forwarded “left knee IBF syndrome” to the Informal Physical Evaluation Board (IPEB). The IPEB adjudicated “left knee IBF syndrome” as unfitting rated 10% and coded analogously to arthritis (5299-5003); with possible application of SECNAVINST 1850.4E which was in effect at the time. The CI did not appeal and was then medically separated at 10% disability.

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CI CONTENTION: The CI states not all of his left knee disabilities were considered, that his leg “randomly ‘gives way’, that the condition worsened, and that compensation and residuals from this injury led to lower back, right leg, bilateral ankles, and mental health conditions. He additionally contends issues with the VA care and post-separation knee surgery. “Veteran's main concern is the treatment for disabilities.”

As a matter of policy, all service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

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RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20060306** | **VA (2.5 Mo. Post-Separation) – All Effective 20060501** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Knee IBF Syndrome | 5299-5003 | 10% | Left Knee, IFB Syndrome | 5261 | 10% | 20060711 |
| ↓No Additional MEB/PEB Entries↓ | Thoracolumbar a/w L. Knee | 5237 | 20% | 20060711 |
| Depression w/Insomnia a/w L. Knee | 9434 | 10% | 20060711 |
| Pilonidal Cyst Removal | 7804 | 10% | 20060711 |
| Tinnitus | 6260 | 10% | 20060712 |
| 0% X 1 / Not Service Connected X 2 |
| **TOTAL Combined: 10%** | **TOTAL Combined: 50%**   |

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ANALYSIS SUMMARY: The Board acknowledges the CI’s contentions regarding concerns over VA treatment and medical care. However, the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding any VA improprieties in his VA treatment or VA medical coverage. Those issues should be directed to the VA. The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him and the potential linkage of his knee condition to his contended lower back, right leg, bilateral ankles, and mental health conditions which merit consideration for a higher separation rating. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity (worsening) or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration.

Left Knee Condition. The CI had three ranges of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendations, summarized in the chart below.

|  |  |
| --- | --- |
| **Left Knee** | **Separation Date: 20060530** |
| ROM | MEB - 20060104 | C&P - 20060711 | PT - 20060718 |
| Flexion 0-140⁰ normal | Full ROM | 0⁰-100⁰ | wnl |
| Extension 0⁰ normal |  | 10⁰ | wnl |
| Comments | No effusion; No instability; No patella femoral crepitus, apprehension or grind | Increased pain and fatigue ROM; Neg McMurray’s test; No evidence of instability; Discomfort with full extension and flexion | Left hamstring pain  |
| §4.71a Rating | 0% | 10% | 10% |

There was no evidence of instability of the left knee on exam. The CI had no pre-separation knee surgery. Imaging on the left knee was abnormal with MRI evidence of medial meniscal degenerative changes. The knee was tender and most exams demonstrated painful motion. Only the VA ROMs were to the level of rating the knee at 10% or higher on limited motion absent application of §4.59 (painful motion). The MEB exam did not specify painful motion, but did demonstrate abnormal imaging. The PEB unfitting determination for the left knee iliotibial band friction syndrome was coded analogously to arthritis (5299-5003) at 10%. The VA rated the iliotibial band fraction syndrome, left knee as 5261 (leg, limitation of extension of) at 10% (limited to 10 degrees). The CI noted “the pain in his leg and the fact his leg tends to give-way without warning, causing him to fall” at a VA exam 3 months post separation. There was no pre-separation evidence of significant locking and only occasional give-way of the knee. All objective testing indicated no instability of the knee. Any increased pain and disability noted at the remote VA exams in 2008 are considered to be post-separation worsening of the knee condition, and not ratable at separation. The PEB and the VA chose different coding options, but this did not bear on rating. The knee could not reasonably be rated higher than 10% using any exam proximate to separation or any alternate coding schema. After due deliberation, there is not reasonable doubt in the CI’s favor, therefore to justify a Board recommendation for other than the 10% rating assigned by the PEB for left knee iliotibial band friction syndrome condition.

Pilonidal Cyst: The pilonidal cyst condition was rated by the VA at 10% within 12 months of separation. It was noted on the MEB exam in the Disability Evaluation System (DES) package. The pilonidal cyst was surgically repaired while the CI was on active duty. There was no documentation that this condition interfered with the CI’s duties. The Non-Medical Assessment (NMA) statement did not identify any conditions other than the left knee condition. The only documented physical limitations were those attributed to the left knee condition. No link to fitness can be drawn for the pilonidal cyst condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of pilonidal cyst as an unfitting condition for separation rating.

Other Conditions: The CI additionally contended for lower back, and depression with insomnia conditions which the VA rated and associated with the CI’s knee condition; tinnitus which the VA rated at 10%; and right leg and bilateral ankles. However, none of these conditions were mentioned in the DES package. The Board does not have the authority under DoDI 60040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The tinnitus, back, and depression with insomnia conditions, and any contended conditions not covered above remain eligible for Board for Corrections of Naval Records (BCNR) consideration. No other conditions were rated by the VA at 10% or higher within 12 months of separation. The Board, therefore, has no eligible 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. As discussed above, the PEB possible reliance on SECNAVINST 1850.4E for rating the knee may have been operant in this case and the condition was adjudicated independently of that regulation by the Board. In the matter of the left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication of 10% coded 5299-5003. In the matter of the pilonidal cyst condition, 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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The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20091117, 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 14 Feb 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.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)