RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: Marine Corps

CASE NUMBER: PD0900667 SEPARATION DATE: 20050228

BOARD DATE: 20110310

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Lance Corporal (0311/Rifleman) medically separated from the Marine Corps in 2005. The CI struck his knees while responding to a drill/exercise. The medical basis for the separation was bilateral anterior knee pain with symptoms compatible with patellofemoral pain syndrome. He was seen by Orthopedics, and underwent surgeries on both knees. Despite surgery, extensive physical therapy (including knee braces), and three limited duty periods, the CI was unable to return to full duty, and, consequently, was referred to a Medical Evaluation Board (MEB). The MEB found bilateral knee pain as interfering with duty, and forwarded this condition to the Physical Evaluation Board (PEB). The PEB adjudicated bilateral anterior knee pain with symptoms compatible with patellofemoral pain syndrome as unfitting, rated 10% and coded 5099-5003, with probable application of SECNAVIST 1850.4E. The CI was medically separated with a disability rating of 10%.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: The CI states: “Diagnosed major depression 70%; Dermatitis 30%; Right Knee 10%; Left Knee 10%”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20041228** | **VA (2 Mo. Pre-Separation) – All Effective 20050301**  |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Ant. Knee Pain with Sympt. Compatible with PFS | 5099-5003 | 10% | R Knee PFS w/ Meniscal Degen | 5019-5260 | 10% | 20050112 |
| L Knee PFS w/ Meniscal Degen | 5019-5260 | 10%\* | 20050112 |
| ↓No Additional MEB/PEB Entries↓ | Eczematous Dermatitis | 7806 | 0% | 20050112 |
| Primary snoring - NSC |  |  | 20050112 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 20%\*\*** |

\*VA temporarily increased L Knee rating to 100% effective 20060518 to 20060701 (due to surgery); R Knee coding changed to 5260-5010 @10% from 20050301 \*\*Increased 7806 to 30% (20060403); added MDD, 9434 @70% (20080116) [combined 80%]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his Service-incurred conditions have had on his current earning ability and quality of life reflected in his higher VA disability rating. However, the Military Disability Evaluation System (MDES) is responsible for maintaining a fit and vital fighting force. While the MDES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. However, the VA, operating under a different set of laws, is empowered to periodically re-evaluate veterans for the purpose of adjusting the disability rating should the degree of impairment vary over time, as well as considering Service-incurred conditions that were not unfitting for continued service.

Bilateral Knee Conditions: There was one goniometric range of motion (ROM) evaluation in evidence, along with two other non-goniometric knee exams which the Board weighed in arriving at its rating recommendation. All three exams are summarized in the chart below:

|  |  |
| --- | --- |
| R & L Knees | Separation Date: 20050228 |
| ROM | MEB20041018 (-4 mo) | VA C&P20050112 (- 1 mo) | Orthopedics20060425 (+14 mo) |
| Flex 0-140⁰ normal | Full ROM | 0⁰-125⁰ | Full |
| Ext 0⁰ normal | NA | 0⁰ | NA |
| Comments;No sig exam differences between R & L knee exams | Mild tenderness; McMurray, Duck walk tests-paripatellar pain, + Compression and inhibition test; Neg Lachman, pivot shift test; Retro patellar crepitus | McMurray, tests neg, drawer sign neg; Crepitus bilateral; No additional pain, fatigue, weakness, lack of endurance, incoordination | Subluxation; TTP; Crepitus; No laxity; Knee flex/ext pain free; bilat mild effusion; pain with squatting (unable) |
| §4.71a Rating | 10% each | 10% each | 10% each |

The knee imaging indicated negative X-rays with an MRI indicating degenerative changes and mild effusions. All exams indicated crepitus and tenderness of each knee. Testing indicated painful motion with activities of duck-walk or squatting. All exams were adjudged to meet the intent of §4.59 (painful motion) and §4.40 (functional loss) for each knee. There were multiple VA treatment notes for the CI’s knee conditions. The CI was noted to have a mild antalgic gait and instability in bilateral knees nine months post-separation (9 November 2005), and was issued a brace. The CI underwent left knee surgery in May 2006 and right knee surgery in September 2006. All subsequent VA exams and ratings continued to meet the 10% criteria rating for each knee. All examinations were adjudged with consideration of IAW VASRD §4.40 criteria for each knee. The Board adjudged the increased knee pain and instability to post-separation worsening, and noted the post-surgical VA ratings for each knee remained at the 10% level. The Board applied a separate rating for each knee (unbundled the bilaterally unfitting condition), since compensable ratings for each knee condition was achieved IAW VASRD §4.59 and §4.71a. This is consistent as well with the VA rating decision from their pre-separation examination. Alternative coding of 5099-5260, as initially applied by the VA, or their later 5260-5010 coding were considered in lieu of the PEB coding of 5099-5003, but neither coding option was predominate. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 5099-5003 at 10% for the right knee condition and 5099-5003 at 10% for the left knee condition.

Other Conditions (Eczematous Dermatitis, Depression). The eczematous dermatitis was mentioned in the Disability Evaluation System (DES) package as a skin condition. There was no limited duty or Commander’s comment or any other indication of interference with duty from this condition. No link to fitness is in evidence for any skin condition. The VA exam indicated topical medication treatment with no functional impairment, with a rating of 0% at the time of separation. The VA exam in 2009 and VA 30% rating (effective April 2006) were considered post-separation worsening. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of any skin condition as an unfitting condition for separation rating. The depression condition was not mentioned in the DES package. 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. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for 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. In the matter of the bilateral anterior knee pain with symptoms compatible with patellofemoral pain syndrome condition, the Board unanimously recommends that each joint be separately adjudicated as follows: an unfitting right anterior knee pain with symptoms compatible with patellofemoral pain syndrome condition, coded 5009-500 and rated 10%, and an unfitting left anterior knee pain with symptoms compatible with patellofemoral pain syndrome condition coded 5009-5003 and rated 10%; both IAW VASRD §4.71a. In the matter of the skin 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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Anterior Knee Pain with Symptoms Compatible with Patellofemoral Pain Syndrome | 5099-5003 | 10% |
| Left Anterior Knee Pain with Symptoms Compatible with Patellofemoral Pain Syndrome | 5099-5003 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091027, 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 XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 28 Mar 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (reference (b)).

2. The subject member’s official records are to be corrected to reflect the following disposition:

 a. Separation from the naval service due to physical disability rated at 20 percent (increased from 10 percent) effective 28 February 2005.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)