RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: mARINE cORPS

CASE NUMBER: PD0900574 SEPARATION DATE: 20060815

BOARD DATE: 20110427

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

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT (3043, Operations Planning Clerk) medically separated from the Marine Corps in 2006. The medical basis for the separation was left knee patellofemoral chondromalacia. The CI began experiencing left knee pain while running and when going up and down stairs. A magnetic resonance imaging (MRI) showed minimal meniscal abnormality. The CI underwent physical therapy (PT) but continued to have medial joint line pain as well as patellofemoral pain. The CI then had an arthroscopy and was found to have grade II-III chondromalacia of the patella. The CI had more PT and full motion, but continued to have significant pain under the kneecap and used a crutch or cane to get around. The CI was placed on light duty and then a four-week limited duty (LIMDU). Despite extensive PT that included non steroidal anti-inflammatory medications, the CI was unable to return to full duty and was referred to a Medical Evaluation Board (MEB). The MEB forwarded “chondromalacia of patella and pain in joint lower leg” to the Physical Evaluation Board (PEB). The PEB adjudicated “left knee patellofemoral chondromalacia” as unfitting rated 10% with likely application of SECNAVINST 1850.4E and/or DoDI 1332.39. The PEB adjudicated the left knee plica and left anterior & lateral compartment fasciotomies as a category II (conditions that contribute to the unfitting condition). The CI did not appeal, and was medically separated with a combined disability rating of 10%.

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

CI CONTENTION: “On May 31, 2006 I was given a disability rating of 10%. I would like to request reconsideration with the rating decision. I still have constant pain in my left leg and wrist. I am a 28 year old husband and father of one, and these injuries interfere with my daily interactions with my family. These injuries also sideline my career with the Marine Corps. As a result of my injuries, I am not able to do the things that are necessary to be an active member of the Marine Corps. In addition, I am still plagued with hypertension that needs regular monitoring that I take medication for to regulate. These injuries have changed my life, at 28 years old; I struggle to keep up with my 2 year old son. I cannot have my leg bent or straight for long periods of time. I am unable to this day to sustain any type of running program due to the pain that is still present in my leg. My conditions have gotten worse since my rating decision in 2006. I have a complete copy of my military medical records if need to be forwarded.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

\*Left Knee, Patellar Tendonitis s/p Arthroscopy (5260) at 10% added effective 20080130

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060525** | | | **VA (3 Mo. After Separation) – All Effective Date 20060816** | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | | **Exam** |
| Left Knee Patellofemoral Chondromalacia | 5099-5003 | 10% | No VA Entry\* | | | | |
| Left Knee Plica | Category II | |
| Left Anterior & Lateral Compartment Fasciotomies | Category II | |
| ↓No Additional MEB/PEB Entries↓ | | | Arterial Hypertension | 7101 | | 0% | 20061117 |
| L Knee Arth. Scar, … | 7899-7806 | | 0% | 20061117 |
| Skin Rash in Back | 5299-5215 | | 0% | 20061117 |
| Right Wrist Condition | 5299-5215 | | 0% | 20061117 |
| **Combined: 10%** | | | **Combined: 0%** | | | | |

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

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 quality of life. However, the military services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. The VA, however, can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations compared to the VA Schedule for Rating Disabilities (VASRD) standards, as well as the fairness of PEB fitness adjudications. The Board’s threshold for countering Disability Evaluation System (DES) fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard.

The Board also makes incidental note that the PEB worksheet and LIMDU records referenced, but not in evidence could not be located after requests. Further attempts would likely be futile and would introduce further undue delay in processing the case. The missing evidence will be mentioned where it is relevant. It is not suspected that any of the missing evidence would significantly alter the Board’s recommendations.

Left Knee Patellofemoral Chondromalacia. The CI had three range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. All exams are summarized in the following chart.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Left Knee | Surgery: 20060111 Separation Date: 20060815 | | | |
| Goniometric ROM | PT ̃4 mos pre sep (20060404) | MEB ̃4 mos pre sep  (20060412) | VA C&P ̃3 mos post sep  (20061101) | VA C&P ̃20 mos post sep  (20080422) |
| Flexion (0-140⁰) | 0⁰-108⁰ | No Goniometrics done | 140⁰ | 0⁰-45⁰ with pain at 40⁰ |
| Extension (0⁰) | **-**2⁰ | - | 0⁰ | 0⁰ |
| Comments | 5/10 pain on flexion and anterior pulling, slight patellar tendon tenderness; decreased ROM; uses crutch/cane | Full ROM but pain and patella sx; Crepitus, pain, compression | No abnormal movement Negative laxity, negative DeLuca. | Joint function limited by pain on repetitive use; c/o locking, pain; Abnormal gait-limping; Stability wnl; no laxity |
| §4.71a Rating | 10% | 10% (MEB 10%) | 0% (VA 10%) | 10% (VA 10%) |

There was no evidence of instability of the left knee on exam. The CI had left leg anterior and lateral compartment fasciotomies on 28 July 2003. An MRI done in 2005 showed some signal in the medial meniscus, but there was no significant intra-articular involvement; however, the CI continued to have medial joint line pain as well as patellofemoral pain, despite extensive PT. He underwent a left knee meniscus repair and cartilage debridement on 11 January 2006. The MEB exam on 12 April 2006, three months post-surgery, specified painful motion on flexion and anterior pulling, tenderness, and the use of a crutch/cane for assisted walking. There was no laxity noted. At the VA compensation and pension (C&P) exam three months post-separation, the knee exam was essentially normal with full and painless range of motion (ROM). The CI was significantly more symptomatic at the C&P exam on 22 April 2008, twenty months post-separation (complaints of stiffness, giving way and locking; constant throbbing pain radiating from the knee down to ankle); however, objective testing indicated no instability of the knee.

The PEB unfitting determination for the left knee patellofemoral chondromalacia was coded analogously to arthritis (5099-5003) at 10%. The VA rated the patellar tendonitis left knee status post arthroscopy as 5261 (leg, limitation of extension of) initially rated this condition at 0%, and then this condition was increased to 10%, effective 30 January 2008. The left knee was tender and demonstrated painful motion on the preponderance of exams. No exam indicates limited ROM to a compensable level without application of §4.59 (painful motion). VASRD §4.71a specifies for 5003 that “satisfactory evidence of painful motion” constitutes limitation of motion and specifies application of a 10% rating “for each such major joint or group of minor joints affected by limitation of motion.” The PEB and the VA chose different coding options but this did not bear on the rating. The knee condition could not be reasonably rated higher than 10% using any exam proximate to separation or any alternate coding schema. The Board considered additional rating under 5259 (cartilage, semilunar, removal of, symptomatic), but would have had to resort to pyramiding for any additional rating. After due deliberation, there is not reasonable doubt in the CI’s favor to justify a Board recommendation for other than the 10% rating assigned by the PEB for left knee patellofemoral chondromalacia.

Left Knee Plica. The PEB found the left knee plica as a category II condition. The narrative summary examiner documented that the CI had the plica debrided during the left knee cartilage debridement in 2006. There is no further discussion of this condition in either the PT exams or in the VA C&P exam post-separation. Any contribution of painful motion to the knee from this condition was considered in the CI’s primary unfitting coding above. After a review of all of the findings, the Board therefore has no reasonable basis for recommending the left knee plica as an unfitting condition for separation rating.

Left Anterior Compartment Fasciotomies. The PEB found the left anterior compartment fasciotomies as a category II condition (conditions that contribute to the unfitting condition). The CI had the anterior-lateral fasciotomies in 28 July 2003. He underwent PT as part of his treatment for the left knee chondromalacia. There is not a separate evaluation of this condition and no indication of disability or interference in performance of duties attributable to this condition. After a review of all of the findings, the Board therefore has no reasonable basis for recommending the left anterior compartment fasciotomies as an unfitting condition for separation rating.

Remaining Conditions. The CI contends for his wrist and hypertension which were identified in the DES file. Neither of these conditions were significantly clinically active during the MEB period, neither was occupationally significant, the basis for limited duty, or implicated in the non-medical assessment. These conditions were reviewed by the action officer and considered by the Board. It was determined that neither could be argued as unfitting and subject to separation rating. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. 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 left knee patellofemoral chondromalacia condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of left knee plica, left anterior compartment fasciotomies, wrist, hypertension 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Knee Patellofemoral Chondromalacia | 5099-5003 | 10% |
| **COMBINED** | **10%** |

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090921, 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 XXXX, FORMER USMC

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 11 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 Physical Disability Board of Review Mr. XXXX’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)