RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000014 SEPARATION DATE: 20020630

BOARD DATE: 20100609

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty GySgt (6637, Aircraft Electrical Systems Technician) medically separated from the Marine Corps in 2002. The medical basis for the separation was left knee anterior cruciate ligament (ACL) deficiency. The CI did not respond adequately to treatment to perform within his military occupational specialty (MOS) or to participate in a physical fitness test, and underwent a Medical Evaluation Board (MEB). Left knee ACL deficiency was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. Left knee lateral meniscus tear and right knee status post anterior ACL reconstruction were also addressed in the MEB and forwarded to the PEB. The Informal PEB adjudicated the left knee ACL deficiency condition as unfitting, rated 20%, with application of SECNAVINST 1850.4E, DoDI 1332.39 and Veterans Administration Schedule for Rating Disabilities (VASRD), respectively. The PEB categorized the left knee meniscus tear as a not unfitting Category II condition that contributes to the unfitting condition, and the right knee status post anterior cruciate ligament reconstruction as a not separately unfitting Category III condition. The CI made no appeals, and was medically separated with a 20% disability rating.

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

CI’s CONTENTION: “I am requesting a review of separation where my rating was 20 percent and [that] I did not otherwise retire. The review will evaluate whether, under the applicable guidance in effect at the time, the rating awarded was fair and accurate. I am requesting that I am awarded medical retirement based on the VA disability rating of 80 percent by Dept. of Veteran Affairs Board of Appeals. “

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20020514** | | | **VA (3 Mo. After Separation) – All Effective 20020701** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| L ACL Deficiency | 5257 | 20% | L ACL Tear & Lat Meniscus Tear | 5299-5257 | 10% | 20020920 |
| L Lateral Meniscus Tear | Cat II |  |
| R S/P ACL Recon w/Pain | Cat III | R S/P ACL Recon | 5299-5257 | \*0% | 20020920 |
| ↓No Additional MEB Entries↓ | | | Tinnitus | 6260 | 10% | 20020903 |
| 0% x 3/Not Service Connected x 10 | | | |
| **TOTAL Combined: 20%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 20%** | | | |

\*20070711 VARD rated right knee condition at 20% effective 20020701

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his other conditions and for the gravity of his condition and predictable consequences which merit consideration for a higher separation rating. While the Disability Evaluation System (DES) considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member's career, and then only to the degree of severity present at the time of final disposition. However, the Department of Veterans Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate veterans for the purpose of adjusting the disability rating should the degree of impairment vary over time.

Left Knee Condition. The CI injured his left knee playing basketball in July 2001. He was evaluated, underwent a magnetic resonance imaging (MRI) and was diagnosed with an ACL tear and a lateral meniscus tear. The CI was put on limited duty and treated with crutches and a knee brace. Since the CI had already had right knee surgery and was planning to leave the service in June 2002, he declined surgical intervention as recommended by orthopedics. At the time of his MEB on 25 February 2002, four months pre separation, the CI complained of instability of his left knee and inability to run or to do any type of pounding activities. On exam, he had full range of motion (ROM), with a trace effusion, and no tenderness to palpation. He had a positive Lachman, at greater than six millimeters, with a soft end point. He had one plus lateral laxity, one plus medial laxity, and a positive pivot shift. X-rays of the left knee were negative, but an MRI showed a lateral meniscus tear, degenerative in nature, and an ACL tear in the left knee. He was diagnosed with left knee ACL deficiency and lateral meniscus tear. At the VA compensation and pension (C&P) exam on 22 September 2002, three months post-separation, the CI complained of a locking pain and swelling due to joint effusion. He also stated that he heard popping and grinding of the knee. The CI stated that the symptoms were constant and treatment consisted of a knee brace, motrin and light movement. The knee exam revealed full ROM with no swelling. Drawer and McMurray’s tests were within normal limits. The exam did not reveal recurrent subluxation, locking, pain or joint effusion. The left knee x-ray was normal. The CI was rated at 10% for slight subluxation or lateral instability of the knee.

The Board considered the orthopedic MEB evaluation to be more probative, and that the documented left knee instability met the “moderate” criteria for the 20% rating under code 5257 (recurrent subluxation or lateral instability). The Board did not determine that the criteria for a severe rating were met. After careful review of all available evidence, the Board unanimously recommends a rating of 20% for the left knee condition.

Right Knee Condition. The CI first injured his right knee in 1988, and then twisted it again playing basketball in February of 1989. He was diagnosed as having a lateral collateral ligament strain, was treated with conservative therapy, and was put on limited duty. The knee pain persisted and in May 1989 he was referred to orthopedics. Arthroscopic exam of the right knee done in August 1989 and revealed a torn ACL. He underwent ACL reconstruction in October 1989. The CI did well for three years, but then right knee pain returned and gradually increased until the MEB. At the MEB, the CI complained of right knee instability and pain. He reported having right knee pain with walking, standing, getting out of a car, and he had trouble climbing stairs. The reason the CI gave for not surgically correcting his left knee was that he felt that his right knee did not have the strength or stability to tolerate it. Examination of the right knee revealed a well-healed surgical scar, full ROM, and no effusion or tenderness to palpation. He had a positive Lachman (four millimeters with a firm end point). He had no pivot shift and one plus lateral laxity. X-rays of the right knee showed some early osteoarthritic changes, with hardware intact from the previous surgery. During the VA C&P exam there were no complaints noted concerning his right knee. On exam the CI had full ROM without swelling and like the left knee, no pathology was noted. The CI had been returned to full duty after his right knee surgery and was not put on limited duty for the right knee since then. The right knee condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as separately unfitting subject to separation rating.

Remaining Conditions. The CI’s contention includes all conditions that the VA judged to be service connected, implying a request for their addition to the separation rating. Tinnitus, tinea versicolor and stab wound left shoulder, are included in the DES file and are therefore eligible for Board consideration for inclusion in the separation rating. There was no evidence in the service treatment records that the tinnitus affected his hearing and he had a normal audiogram at his C&P exam. The tinea versicolor was controlled with topical medications and had no effect on the CI meeting the requirements of his MOS. There was no evidence in the service treatment records of any left shoulder problems at the time of separation. These conditions were not profiled or noted in the commander’s statement. No link to fitness is in evidence for any of them. Additionally, nasal bone fracture was noted in the VA rating decision, but was not documented in the DES file. 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.

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 left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right knee condition, tinnitus, tinea versicolor, left shoulder stab wound, 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, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Knee ACL Deficiency | 5257 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091231, 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 21 Jun 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 PDBR Ms. XXXX’ records not be corrected to reflect a change in either her 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)