RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000017 SEPARATION DATE: 20070531

BOARD DATE: 20120509

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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 Cpl/E-4 (0311/Rifleman), medically separated for left patellofemoral arthritis*.* He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Left patellofemoral arthritis was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. One other condition, as identified in the rating chart below, was forwarded on the MEB submission. The PEB adjudicated the left patellofemoral arthritis condition as unfitting, rated 10%; additionally left open patella fracture condition was considered category II, a related condition that is not separately unfitting; with application of SECNAVINST 1850.4E respectively. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Injury has since affected personal and professional life on a continual basis. Suffer from chronic pain in which the only treatment the VA will provide at this time is drug therapy (narcotic painkillers). Currently continueing [sic] to appeal VA rating concerning left knee.”

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SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20070404** | | | **VA (2 Mo. After Separation) – All Effective Date 20070601** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Patellofemoral Arthritis | 5099-5003 | 10% | Left Knee Degenerative Changes and Status Post Debridement Surgery (claimed as L knee condition) | 5010 | \*10% | 20070808 |
| Left Open Patella Fracture | Cat II | |
| ↓No Additional MEB/PEB Entries↓ | | | Bursitis Left Hip (claimed as left hip condition) | 5019 | 10% | 20070808 |
| 0% x 5/Not Service-Connected x 1 | | | 20070808 |
| **Combined: 10%** | | | **Combined: 20%\*\*** | | | |

\*Initially 0%, increased to 10% effective 20070601 after notice of disagreement.

\*\*Combined rating increased to 30% effective 20081030, to 50% effective 20090205, and to 60% effective 20090205. Rating for 5010 left knee never increased but 10% for 5257 instability, left knee was added effective 20090205.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current earning ability and quality of life. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. While the 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 (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Left Knee Condition. There was one goniometric range-of-motion (ROM) evaluation and one evaluation without such measurements in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| --- | --- | --- |
| Goniometric ROM –  Left Knee | MEB  ~ 2 Months Pre-Separation  (20070314) | VA C&P  ~ 2 Months After-Separation  (20070808) |
| Flexion (140⁰ normal) | “Well beyond 90°” | 130⁰ |
| Extension (0⁰ normal) | Full active and passive | Full |
| Comment  Arthroscopy 20070130 | Negative McMurray’s; positive patellar grind test; no anterior, posterior, or lateral instability at full extension or at 30°; no effusion; strength 5/5  (MEB H&P on 20070326 noted diffuse swelling) | No erythema, edema, effusion; negative Apley’s; negative Lachman and drawer test; negative McMurray’s; normal sensory and motor; normal gait; positive osteoarthritis on X-ray |
| §4.71a Rating | 10% Pain-limited ROM | 10% Pain-limited ROM |

The CI sustained a left open patella fracture in March 2005 and underwent open reduction and internal fixation with irrigation and debridement. The internal hardware was removed a few months later. Although his surgery initially appeared successful, he continued to have pain that was diffuse, intermittent, and worsening with heavy activity. Arthroscopic surgery was completed in January 2007 and while this revealed no meniscal or cartilage injury, it did document grade II to II chondromalacia of the posterior patella and grade I chondromalacia in the trochlear groove. Also, there was a bit of a gap at the site of the previous patella fracture. During the procedure mechanical chondroplasty of the posterior patella was performed, smoothing out the surface. At the time of the narrative summary (NARSUM) examination, performed 2 months prior to separation, he continued to have some residual swelling and while the previous grinding in the patellofemoral joint was dramatically improved, he continued to have intermittent pain. The examiner opined that while the CI had not yet completed his post-surgery rehabilitation, he would never be able to perform the rigorous activities required of his military position. Goniometric measurements were not obtained and the examiner stated knee flexion was well beyond 90 degrees. No instability was noted. The VA Compensation and Pension (C&P) examination completed 2 months after separation documented similar findings. However, goniometric measurements were completed as part of this examination and left knee flexion was limited to 130 degrees.

While the PEB and the VA used different codes for rating, they both rated the left knee condition at 10% and this rating is warranted based on pain-limited motion. While the limitation of flexion of the left knee did not meet the minimal compensable level under 5260, VASRD §4.59 states that the intent of the schedule is to recognize actually painful, unstable, or malaligned joints as entitled to at least the minimum compensable rating for the joint. Additionally 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.” No other ratable criteria are documented on either the NARSUM or the VA C&P examinations. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the left knee condition.

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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. In the matter of the left patellofemoral arthritis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091222, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB ltr dtd 16 May 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR the following individuals’ records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

- XXXXXXXXXXXX XXX XX 4593

- XXXXXXXXXXXX XXX XX 9519

- XXXXXXXXXXXX XXX-XX-2098

- XXXXXXXXXXXX XXX XX 6408

- XXXXXXXXXXXX XXX-XX-6333

Assistant General Counsel

(Manpower & Reserve Affairs