RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000025 SEPARATION DATE: 19990331

BOARD DATE: 20111011 TDRL END DATE: 20030101

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve PV2 (Recruit) medically separated for a left anterior cruciate ligament (ACL) reconstruction and medial meniscus tear repair with persistent chronic left knee pain*.* The initial injury occurred during a basic training accident in 1998. He did not respond adequately to treatment and was unable to complete training or to meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Tear, anterior cruciate ligament, left knee (with) complex tear of the posterior horn of the medial meniscus (and) strain, medial meniscus ligament, left knee were forwarded on the NAVMED 6100/1 to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The Informal PEB (IPEB) adjudicated the tear ACL, left knee, strain medial meniscus ligament left knee and complex tear of the posterior horn of the medial meniscus with fragment displaced medially to the notch of the left knee posteriorly as unfitting, rated 30%, with application SECNAVINST 1850.4E and DoDI 1332.39 and recommended placement on the Temporary Disability Retired List (TDRL). The CI made no appeals and was placed on TDRL with a 30% disability rating. At a periodic reevaluation on 16 October 2000, he was retained on TDRL status. The 18 October 2002 IPEB recommended permanent separation for left ACL reconstruction and medial meniscus tear repair with persistent chronic left knee pain with a 10% disability rating. Strain medial meniscus ligament left knee, complex tear of the posterior horn of the medial meniscus with fragment displaced medially to the notch of the left knee posteriorly and tear of the ACL, left knee were category II conditions (condition that contribute to the unfitting condition). The CI appealed the IPEB adjudication, and the Naval Council of Personnel Boards responded on 14 January 2003 that his case was closed in the PEB system and that he could petition the Board for Correction of Naval Records. There is no record that he pursued this option.

CI CONTENTION: “Disability rating seems to be too low for the impairment of the condition and does not seem to be on par with the scale used by the VA.”

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service IPEB – Dated 20021021** | | | | **VA\* – All Effective 19990401** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 19990301** |  | **TDRL** | **Sep.** |
| L ACL…Medial Meniscus Tear… Chronic L Knee Pain | 5257 | 30% | 10% | ACL and Medial Meniscus Tear, L Knee | 5257 | 30%\*\* | 19990603 |
| Strain Medial Meniscus L Knee | | Cat II | |
| Complex Tear Posterior Horn Of The Medial Meniscus…L Knee Posteriorly | | Cat II | |
| Tear ACL L Knee | | Cat II | |
| ↓No Additional MEB/PEB Entries↓ | | | | 0% x 0/Not Service Connected x 0 | | | |
| **Final Combined: 10%** | | | | **Total Combined: 30%** | | | |

\* VA rating based on exam most proximate to date of permanent separation.

\*\*Raised from 20% on additional information on 20001028; 100% after surgery and during recovery

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 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, and to compensate for all service connected conditions, without a tie to fitness.

Left ACL Reconstruction and Medial Meniscus Repair with Chronic Pain. The CI was four weeks into basic training when he twisted his left knee in pugil stick training. Orthopedic exam several weeks later noted a 1+ effusion with a 1+ Lachman test (i.e., positive anterior instability). No medial or lateral instability was noted. Magnetic resonance imaging showed a tear of the ACL and posterior horn of the medial meniscus with a fragment displaced toward the notch. There was also evidence of medial collateral ligament strain. It was determined that he would not be able to finish training in a reasonable period of time and MEB was recommended. Range of motion (ROM) was not documented, although at a previous appointment it was noted to be 30-115 degrees. He was placed on TDRL effective 1 April 1999 with a 30% disability rating. Two months later, the VA compensation and pension (C&P) exam on 3 June 1999 showed that he complained of swelling and used a brace. A slight limp was noted with the left knee brace. Mild muscle atrophy was noted below the knee. ROM of the right knee was noted to be within normal limits with extension from 0-100 degrees and flexion from 0-140 degrees. ROM of the left knee was slightly decreased with extension from 0-170 degrees and flexion from 0-140 degrees (these may represent typos). The drawers test was positive with slightly decreased motor strength. The CI was initially granted 20% disability for dislocation of the semilunar cartilage with pain and effusion on the 1 December 1999 VA rating decision. On review, the VA upheld this decision (3 February 2000 VA rating decision). The CI appealed, and the VA increased the disability rating to 30%. The VA granted 100% disability from 22 November 2000 to 31 January 2001 for recovery from surgery, but there is no record that the CI was reevaluated after the surgery. On 22 November 2000, the CI underwent left knee arthroscopy and had reconstruction of the ACL and a sub-total meniscectomy of the medial meniscus. The portion of the meniscus lodged in the notch was reduced and then debrided. He was next seen on 1 July 2002 when it was noted that he reinjured his knee after being struck by a drunk driver several months previously, not in the line of duty. He had problems with uneven surfaces and with kneeling. On exam, he was noted to have stability to valgus and varus stress with a negative Lachman’s with a definite endpoint. There was mild clicking on McMurray’s, but no lateral or medial joint line tenderness. A chart note of the second orthopedic exam for TDRL purposes, dated 29 July 2002, is illegible, but the report of the exam is included in the narrative summary. It was noted that he had persistent pain and could not run nor stand for prolonged periods of time. Full ROM was noted without effusion. Positive quadriceps inhibition was noted as was tenderness over the patellar facets. Minimal medial joint line tenderness was present without lateral joint line tenderness. The Lachman showed 5mm of laxity compared with 4mm of the unaffected right knee. Both had solid endpoints. There was no evidence of valgus or varus laxity. A civilian orthopedic exam dated 21 November 2002 noted full passive ROM, without effusion or deformity. Lachman and McMurray were negative. An apprehension test was positive and crepitus was present when rising from a squat. The left calf was 1 cm smaller than the right. The CI noted that he had continued popping and occasional giving way. The record reveals a history of occasional locking on the 3 June 1999 VA exam and also of the knee “popping” out of joint prior to surgery. Three goniometric examinations are available for review. Of the two proximate to TDRL entry, the physical therapy exam is more remote and still reflects the acute injury. Thus, the VA exam is thought to have higher probative value. There is only one exam proximate to TDRL exit.

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| --- | --- | --- | --- |
| Goniometric ROM  Knees | PT ~ 4 Mo. Pre-TDRL entry | VA C&P ~ 2 Mo. After-TDRL entry | Ortho 29 Jul 02  5 Mo. Pre-TDRL exit |
| Left | Left | Left |
| Flexion (140⁰ normal) | 115⁰ | 140⁰ | 135⁰ |
| Extension (0⁰ normal) | 30⁰ | 0⁰ | 0⁰ |
| Comments | Two weeks after acute injury; persistent swelling; unable to assess McMurray. This reduces the probative value of this exam. | TTP, effusion; antalgic gait (favor left); + incoord rising from chair; no instability; no pain on motion; Flexion limited by body habitus; |  |
| §4.71a Rating | 40% | 10% | 10% |

The Board first considered the TDRL entry rating. It was noted that both the VA and PEB coded the condition as 5257 (knee, other impairment). The IPEB granted 30% disability. The VA awarded 20% initially, but raised the disability to 30% after review of additional information indicating further disability. The Board considered whether the knee instability rose to the level of moderate or severe and noted that the CI was able to function without a brace, albeit with increased pain. The Board also considered code 5258 (cartilage, semilunar, dislocated, with frequent episodes of “locking,” pain and effusion). The Board noted that while pain and effusions were noted, the locking was occasional. Therefore, the Board determined that the 30% disability rating for TDRL entry was appropriate. The Board next considered the permanent disability rating. It was noted that the exams proximate to TDRL exit documented no effusion and no objective instability although there was a history of occasional popping and giving way. The Board determined that the lack of objective instability with occasional subjective instability was more consistent with a slight disability rather than a moderate disability under code 5257. It was also noted that there was persistent pain after the partial meniscectomy. After due deliberation in consideration of the totality of the evidence, the Board unanimously concluded that there should be additional disability assigned under code 5259 (cartilage, semilunar, removal of, symptomatic) at a 10% rating in addition to the 10% assigned for code 5257 (recurrent subluxation or lateral instability).

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. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a separation rating of 10% for the left knee ACL condition coded 5257 and 10% for the medial meniscus condition coded 5259 for a combined rating of 20%.

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

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left ACL Reconstruction with Instability | 5257 | 10% |
| Symptomatic Removal of the Left Medial Meniscus | 5259 | 10% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100112, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 17 Oct 11 ICO xxxxxxxxxxxxxxxx

(c) PDBR ltr dtd 25 Oct 11 ICO xxxxxxxxxxxxxxxx

(d) PDBR ltr dtd 27 Oct 11 ICO xxxxxxxxxxxxxxxx

(e) PDBR ltr dtd 27 Oct 11 ICO xxxxxxxxxxxxxxxx

(f) PDBR ltr dtd 20 Oct 11 ICO xxxxxxxxxxxxxxxx

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (f).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. XXX XX XXXX: Placement on the Permanent Disability Retired List with a 30 percent disability rating (increased from 10 percent) effective 15 January 2006.

b. XXX XX XXXX: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 1 December 2002.

c. XXX-XX-XXXX: Separation from the Naval Service due to physical disability rated at 10 percent (increased from 0 percent) effective 15 November 2004.

d. XXX XX XXXX: Placement on the Temporary Disability Retired List at 50 percent from 15 February 2008 through 14 August 2008 with final disability separation on 15 August 2008 with a 10 percent disability rating.

e. XXX XX 6809: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 30 March 2009.

3. Please ensure all necessary actions are taken to implement these decisions and the subject members are notified once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)