RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1000228 SEPARATION DATE: 20041108

BOARD DATE: 20110706

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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 HM2/E-5 (8506, Laboratory Technician) medically separated for anterior cruciate ligament (ACL) deficiency of the right knee. The CI injured his right knee twice. He was treated, but did not respond adequately to fully perform his required military duties or meet physical fitness standards. As a result, he underwent a Medical Evaluation Board (MEB). Three right knee deficiencies (ACL deficiency, posterolateral corner (PLC) deficiency, and lateral collateral ligament (LCL) deficiency) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. The PEB found the ACL deficiency unfitting, and assigned a disability rating of 20%. The other two right knee conditions (LCL and PLC deficiency) were determined to be category II (related to the unfitting ACL condition). The CI made no appeals and was medically separated with 20% disability, IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD) and applicable Navy and DoD regulations.

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CI CONTENTION: “When rating my right knee injury, no rating was given to the damage and replacement/reconstruction surgery need to repair/replace the LCL, PLC injury, and meniscus tear. I only received a rating for my right knee ACL rupture/tear and replacement/repair.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Navy IPEB – dated 20040819** | | | **VA (~2 mos Pre-Separation) – All Effective 20041109** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| ACL Deficiency, Right Knee | 5259 | 20% | Status Post Surgery, Rt. Knee | 5259 | 10% | 20040920 |
| LCL Deficiency, Right Knee | (Category II) | | LCL Instability, Right Knee | 5257 | 10% | 20040920 |
| PLC Deficiency, Right Knee | (Category II) | | (No VA Entry for PLC Deficiency) | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Left Shoulder Condition | 5203 | 10% | 20040920 |
| Patellofemoral Syndrome, Left Knee | 5260-5024 | 10% | 20040920 |
| Right Shoulder Condition | 5203 | 10% | 20040920 |
| Right Wrist Condition | 5215 | 10% | 20040920 |
| Temporomandibular Joint (TMJ) Condition | 9999-9905 | 10% | 20040920 |
| 0% x 2 | | | 20040920 |
| **TOTAL Combined: 20%** | | | **TOTAL Combined: 60%** | | | |

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ANALYSIS SUMMARY:

Right Knee Condition. The CI injured his right knee in 1998 while running on a treadmill, resulting in a twisting injury which was diagnosed as right knee strain. He re-injured the right knee in November 2003 when a heavy locker fell and pinned his knee, twisting it to the side. He was treated with medication and placed on limited duty (LIMDU) status. In February 2004, he underwent reconstructive surgery on his right knee. Following surgery, he was placed on a second period of LIMDU. In spite of treatment his right knee problems persisted, and it was felt that he would not be able to fully perform his military duties, or participate fully in the physical fitness program. The CI underwent a Medical Evaluation Board (MEB) in April 2004. Three right knee deficiencies were found to be medically unacceptable. They were: ACL deficiency status post allograft reconstruction, PLC deficiency status post allograft reconstruction, and LCL deficiency status post allograft reconstruction. As noted above, the Navy PEB found the ACL deficiency unfitting, and rated it as 20% disabling. The other two right knee deficiencies were determined to be category II (related to the unfitting ACL deficiency of right knee).

The CI was examined in the orthopedic clinic at Camp LeJeune on 16 August 2004. Five weeks later on 20 September 2004 he underwent a VA compensation and pension (C&P) exam. At that September exam, he was noted to have an antalgic gait. X-rays were normal. Right knee range of motion (ROM) from both exams is summarized below.

|  |  |  |
| --- | --- | --- |
| Right Knee | Separation Date: 20041108 | |
| Goniometric ROM | Ortho exam – 20040816  (12 weeks Pre-Separation) | VA C&P exam – 20040920  (7 weeks Pre-Separation) |
| Flexion (140⁰ is normal) | 125⁰ | 110⁰ (pain at 90⁰) |
| Extension (0⁰ is normal) | 0⁰ | 0⁰ (pain at 0⁰) |
| §4.71a Rating | 0% | 10% |
| Comments | No mention of painful motion | 10% based on painful motion |

The Board carefully reviewed all evidentiary information available. The right knee condition was essentially non-compensable based on VASRD §4.71a ROM criteria (codes 5260-5261). However, IAW VASRD §4.40 and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion. Furthermore, code 5259 applies in this case, since he is symptomatic after partial removal of his right lateral meniscus (semilunar cartilage). However, he cannot receive 10% for painful motion plus 10% for post-operative pain because that would constitute pyramiding. Following due deliberation, the Board unanimously recommends a disability rating of 10% for chronic right knee pain.

The Board then directed its attention to the issue of ligamentous instability. Review of the treatment record shows that at both the August orthopedic exam and the September C&P exam, the CI complained of instability. Furthermore, both examiners demonstrated objective evidence of slight LCL instability. The Board unanimously recommends a rating of 10% for slight lateral instability of the right knee.

Other Contended Conditions. In block 3 of DD Form 294 (dated 17 March 2010), the CI contends that compensable ratings should be considered for the LCL, the PLC, and the meniscus tear. It should be noted that the right knee is adjudicated as a joint. The Board cannot break the joint down into separate components such as ligaments, cartilages, and other anatomic structures. Furthermore, LCL and PLC deficiency were found by the PEB to be category II (related to the unfitting ACL deficiency). The Board unanimously agrees that these other deficiencies are related to the unfitting ACL deficiency, and are properly adjudicated as part of the chronic right knee pain condition. They are not separately unfitting conditions.

Remaining Conditions. Left shoulder pain, right shoulder pain, temporomandibular joint (TMJ) syndrome, right wrist fracture, and several other conditions were also listed in the Disability Evaluation System (DES) file. They were all evaluated by the action officer and considered by the Board. There is no clearly documented evidence that any of these other conditions significantly interfered with the performance of required military duties, to a degree that could be argued as unfitting. They were not noted in the commander’s statement. The Board determined therefore that none of these conditions were subject to service disability rating. Some additional conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. The Board does not have the authority to render fitness or rating recommendations for any conditions not considered by the DES.

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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 chronic right knee condition (IAW VASRD §4.71a), the Board unanimously agrees that the right knee clearly warrants a permanent disability rating of 20% at separation. In the matter of the left shoulder, right shoulder, TMJ syndrome, wrist fracture, or any other conditions eligible for 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.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Right Knee Condition (Pain, and Slight Lateral Instability) | 5259 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100317, 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 XXX, FORMER USN

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 26 Jul 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. XXX’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)