RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000386 SEPARATION DATE: 20020301

BOARD DATE: 20111115

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl / E4 (1371, Combat Engineer) medically separated from the Marines in 2002. The medical basis for the separation was severe compartmental degenerative disease of the right knee. The CI did not respond adequately to perform within his military occupational specialty (MOS) or participate in a physical fitness test and underwent a Medical Evaluation Board (MEB). Severe compartmental degenerative disease of the right knee and seven millimeter (7mm) free body (right knee) were addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) on the NAVMED 6100/1. The PEB adjudicated the severe compartmental degenerative disease of the right knee condition as unfitting, rated 10%, with application of SECNAVINST 1850.4E and DoDI 1332.39. The CI made no appeals, and was then medically separated with a 10% combined disability rating.

CI CONTENTION: “Had total knee replacement and have herniated disc in lower lumbar spine. Suffer from depression as a result of disability.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20011218** | **VA (1 Mo Post Separation) – All Effective 20020302** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Compartmental Degenerative Disease (R) Knee | 5299 5003 | 10% | (R) Knee Meniscal Tear | 5257 | 20%\* | 20020321 |
| Chondromalacia (R) Knee | 5010 | 10%\* | 20020321 |
| 7 mm Free Body (R knee) | Not adjudicated | No VA entry |
| ↓No Additional MEB/PEB Entries↓ | Lumbar Strain | 5237 | 0%\* | 20020321 |
| NSC X 0 / 0% X 1 |
| **Combined: 10%** | **Combined: 30%\*** |

\* Low back 5237 increased to 10% effective 20040927 (combined 40%); total R. knee replacement 20080229 with coding/rating change that date (temporary 100%, then decreased to 30% on 20090401.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans’ Affairs (VA), operating under a different set of laws (Title 38, United States Code). The Board evaluates VA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board also acknowledges the CI’s contention suggesting that service ratings should have been conferred for other conditions documented at the time of separation. 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. The VA, however, is empowered to compensate service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should the degree of impairment vary over time.

Right Knee Condition. The CI injured the right knee on 13 April 2001 when he twisted the knee in a skiing accident during military training. On 10 July 2001, after unsuccessful conservative treatment, he had a diagnostic arthroscopy with debridement of the lateral meniscus, removal of a loose body and microfracture of the lateral femoral condyle secondary to an osteochondral defect. Postoperatively, he remained symptomatic and was unable to return to a full duty status. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation summarized in the chart below.

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| Goniometric ROM Right Knee | ORTHO ~ 5 Mo. Pre-Sep | VA C&P ~ 1 Mo. Post-Sep |
| Flexion 0-140⁰ normal | 0⁰-130⁰ | -5⁰-125⁰ with pain |
| Extension 0⁰ normal | 0⁰ | -5⁰ |
| Comments: Arthroscopy ~ 7 Mo. Pre-Sep | Lachman with +endpoint; tender lateral joint line; H&P (same day) noted swelling w/ “decreased” flex/ext | Instability noted; “swelling and deformity”; tender joint lines; gait normal |
| §4.71a Rating | 10% + 10% | 10% + 20% |

The narrative summary (NARSUM), five months pre-separation, indicated severe tri-compartment degenerative disease of the right knee (by imaging and arthroscopy), lateral meniscal tear repair, and removal of a loose body and exyophytic mass during arthroscopy. The NARSUM commented on a negative history of knee locking or mechanical symptoms, but did not otherwise address instability or provide a knee ROM. However, the orthopedic evaluation five months pre-separation did note a Lachman (instability test) with a positive endpoint, negative drawer tests and no lateral instability, with the limited ROMs charted above. The MEB history indicated a “Don’t Know” response for trick or lock knee that was not further described. The MEB exam (SF88) indicated right knee swelling, joint line tenderness and “decreased” flexion and extension.

The VA compensation and pension (C&P) examination, one month post-separation, also documented slightly limited ROM (charted above), swelling and deformity, tender medial and lateral joint lines, and instability; but instability was not described in detail. History was of “knee popping” without further details. Radiographs showed osteoarthritis, small effusion, and “at least one intraarticular body in the posterior joint space” (loose body). VA records indicate a total right knee replacement on 29 February 2008.

The PEB found severe compartmental degenerative disease of the right knee unfitting, coded 5299-5003 (arthritis, degenerative) with a rating of 10%. The PEB noted that the condition did exist prior to service, but applied a zero percent reduction. ROM was noncompensable under the appropriate knee ROM VA disability codes; however, code 5003 allows a rating of 10% when there is limited ROM. The PEB did not specifically adjudicate the 7mm free body MEB condition. The VA service connected right knee meniscal tear status post repair/debridement, coded 5257 (knee, other impairment of: recurrent subluxation or lateral instability), with a rating of 20% (moderate). The VA also rated the right knee traumatic arthritis with chondromalacia, coded 5010 (arthritis, due to trauma, substantiated by X-ray findings), with a rating of 10%. The 5010 code refers to the same rating criteria under code 5003 used by the PEB.

The PEB and VA chose different approaches, discussed above, to rate the right knee condition. The Board considered that the MEB’s “7mm free body” (right knee) condition is considered in the overall knee ratings and is not separately ratable. The Board considered multiple coding options for the right knee condition with the VA Schedule for Rating Disabilities (VASRD) provisions allowing multiple coding of the knee and with the provisions of §4.14 (avoidance of pyramiding). The CI’s knee replacement in 2008 was adjudged post-separation worsening and had little probative value to rating at the time of separation. The Board considered the probative values of the exams and the majority determined that the VA exam had the highest probative value, as it was closest to the date of separation.

Using any of the ROM examinations, the limited ROMs with abnormal imaging met the 10% rating criteria under 5003 or other codes (such as 5010) that apply the 5003 criteria for limited motion. Although the PEB code of 5299-5003 is acceptable, the coding of 5010 is predominate, as it indicates the traumatic nature of the CI’s injury. The Board found evidence in this case to support a position that the CI’s functional loss due to meniscal repair, laxity/instability, loose body, and effusions (as rated by the VA under code 5257) was in addition to and independent of the ROM limitations from osteoarthritis. The Board discussed whether the records reflected a slight verses moderate disability level. The CI had a meniscal tear repair and debridement, so codes 5259 or 5258(cartilage, semilunar) were considered; the record demonstrated frequent, or near-constant, knee effusion, without frank locking. However, all non-ROM symptoms under analogous coding for 5257 appeared predominate. Given the entirety of the right knee disability (absent limited ROM) the CI’s disability picture more closely approximates the moderate (20%) rating level analogously to code 5257. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends a separation rating for right knee meniscal tear and instability status post multiple surgical procedures coded 5299-5257 at 20%, in addition to a separation rating for severe compartmental degenerative disease of the right knee coded 5010 at 10%, both IAW VASRD §4.71a.

Other Conditions. The other condition forwarded by the MEB was 7mm free (loose) body in the right knee condition. This condition is one of several specific pathologic findings related to his right knee condition and was included in the discussion and overall knee rating above.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for lower back strain/herniated disc (VA 0%) and depression (VA 30% in 2007). Neither of these conditions was mentioned 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. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere 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. 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 right knee condition the Board, by simple majority, recommends a separation rating of 10% for severe compartmental degenerative disease of the right knee coded 5010, and 20% for right knee meniscal tear and instability status post multiple surgical procedures coded 5299-5257, IAW VASRD §4.71a. The single voter for dissent (who recommended coding of 5010 at 10% and 5259 at 10%) submitted the addended minority opinion. In the matter of the 7mm free body (right knee) or any other medical condition eligible for Board consideration, the Board unanimously agrees that it cannot recommend a separate finding of unfit for additional rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Compartmental Degenerative Disease (R) Knee | 5010 | 10% |
| Right Knee Meniscal Tear & Instability Status Post Multiple Surgical Procedures | 5299-5257 | 20% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091214, w/atchs

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record

 President

 Physical Disability Board of Review

MINORITY OPINION:

I agree with the majority voters, that the limited ROMs of the right knee, along with abnormal imaging met the 10% rating criteria under 5003, and also that the coding of 5010 is more accurate because it indicates the traumatic nature of the CI’s injury.

However, I disagree that the remaining symptomotology (meniscal repair, loose body, and effusions) can be attributed to instability of the knee joint. The right knee was examined five months pre separation by an orthopedic physician, where stability was addressed in detail, and there were no findings to indicate instability. The examiner specified that Valgus and Varus tests were stable, the Lachman’s had a positive end point, and McMurray and Drawer tests were stable. The MEB exam and the VA exam (done one month post-separation) produced similar ROMs and findings, with the notable addition of the VA examiner’s comment, “continued to have right joint pain and instability.” There was no objective evidence in support of the comment, or mention of the type of stability testing or the magnitude of the instability. This is the first mention of instability in the record, and in my opinion there was not enough evidence to add an additional rating or increased the rating based on the VA examiner’s “instability” comment.

A more accurate coding to account for the remaining symptomotology is 5259 (cartilage, semilunar, removal of, symptomatic) because of the meniscus procedure done on 10 July 2001. The CI was symptomatic (with effusion) and would be appropriately rated at 10% (the only rating available). The symptomotology did not rise to the level of 5258 cartilage, semilunar, dislocated, with frequent episodes of locking, pain, and effusion into the joint because there was no evidence of frequent episodes of locking.

RECOMMENDATION: The minority voter 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** |
| Compartmental Degenerative Disease (R) Knee | 5010 | 10% |
| Cartilage, Semilunar, Removal | 5259 | 10% |
| **COMBINED** | **20%** |

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 23 Nov 11

1. I have reviewed the subject case pursuant to reference (a) and partially approve the recommendation of reference (b).

2. The subject member’s official records are to be corrected to reflect the following disposition:

 a. Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective the date of his separation from Naval Service.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)