RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000663 SEPARATION DATE: 20070831

BOARD DATE: 20110726

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sergeant / E5 (1833, Assault Amphibian Crew Member) medically separated from the Marine Corps in 2007. The medical basis for the separation was post-traumatic patellofemoral pain syndrome of the right knee incurred as a result of an injury while deployed. The CI did not respond adequately to perform within his military occupational specialty or participate in a physical fitness test and underwent a Medical Evaluation Board (MEB). The right knee condition was addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) on the NAVMED 6100/1 (as “pain in joint involving lower leg”). The PEB adjudicated the post-traumatic patellofemoral pain syndrome as unfitting, rated 10% with application of the SECNAVINST 1850.4E. The CI made no appeals, and was then medically separated with a 10% disability rating.

CI CONTENTION: “PEB failed to provide a compensable evaluation for residual scar of right knee and failed to consider the arthritis of the knee. Additionally, the PEB didn’t consider the other unfitting conditions of tinnitus, hearing loss and posttraumatic stress disorder (PTSD) for which VA has rewarded service connection and granted a combined evaluation of 60 percent.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20070426** | | | **VA (2 Mo. After Separation) – All Effective 20070901** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Patellofemoral Pain Syndrome Right Knee | 5099-5003 | 10% | S/P Right Knee Surgery with Arthritis | 5260-5010 | 10% | 20070614 |
| ↓No Additional MEB Entries↓ | | | \*PTSD and Cognitive Disorder NOS | 9411 | 50% | 20080714 |
| Tinnitus | 6260 | 10% | 20070614 |
| Residual Scar Right Knee | 7804 | 10% | 20080918 |
| 0% x 1 / NSC x 1 | | | 20070614 |
| **Combined: 10%** | | | **Combined: 60%** | | | |

\*Service connected rating for PTSD 50% effective 20070901 granted by VARD 20081106 based on STR and C&P exam 20080714

Service connected rating 10% for residual scar, right knee, effective 20080918, one year after separation

Hearing loss right ear, service connected at 0%

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 and not based on possible future changes. However the Department of Veteran Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to the VA Schedule for Rating Disabilities (VASRD) standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

Patellofemoral Pain Syndrome, Right Knee. The CI experienced a right patellar dislocation while scrambling (pivot and run) for a bunker during a mortar attack (approximately November 2004) while deployed (June 2004 to February 2005). Following that initial injury he experienced persistent patellar instability and buckling without recurrent dislocation, associated with pain and preventing participation in strenuous military activities, including running. He underwent surgery in May 2006 to repair right patellar instability. Intra-operative findings included grade 3 chondromalacia (degenerative loss of cartilage) of the lateral patellar facet, and a medial retinacular tear (causing patellar instability). During intra-operative examination, the patella was not dislocatable (consistent with clinical history) and the knee was stable (intact collateral and cruciate ligaments); there was fraying but no tear of the lateral meniscus. At the time of the MEB orthopedic NARSUM on January 24, 2007, the CI continued to experience residual symptoms due to patellofemoral pain syndrome and chondromalacia patella, particularly pain when running on hard surfaces. Range of motion (ROM) was normal and there was no instability, weakness, or muscle atrophy. Two months prior to separation, the CI underwent VA compensation and pension (C&P) examination. There was report of pain with running, climbing and squatting. The CI’s gait was normal and examination findings were consistent with right knee patellofemoral pain syndrome. There was no evidence of instability or locking. The right knee flexed to 140° but he experienced pain at 120°, along with report of weakness, tenderness and guarding of movement. The PEB and VA chose different coding options for the condition, both of which were appropriate for the CI’s diagnoses, and both of which led to equivalent disability ratings for the right knee. The PEB rated the CI’s knee condition 10% using VASRD code 5099-5003. The VA rated using codes 5260-5010 for leg limitation of flexion - traumatic arthritis, which directs rating using guidance in code 5003. The Board noted the CI underwent right knee surgery one year after separation for chondroplasty of the patellar chondromalacia after which the VA service connected rating remained unchanged (10%).

The CI asserts that compensable ratings should be considered for arthritis of the right knee and scar of right knee. The PEB rated the CI’s right knee condition as patellofemoral pain syndrome while the VA rated the same condition as knee arthritis, each providing a 10% based on the same condition and disability. IAW VASRD §4.14, the evaluation of the same disability under various diagnoses is to be avoided. The VA additionally provided a separate 10% rating for the right knee surgical scar. At the time of the MEB history and physical examination the CI reported a numb sensation at the site of the right knee surgical scar. There was no evidence of that the scar or localized numb sensation interfered with performance of military duties or wearing of military clothing or equipment. The Board does not recommend separation rating for scars unless their presence imposes a direct limitation on fitness for performance of military duties.

The Board agreed that there was not a more favorable coding choice than that applied by the PEB. There is no route to rating higher than 10% for the knee, or criterion for dual coding of the knee. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the knee condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for scar of right knee, arthritis of the right knee, hearing loss, tinnitus, and PTSD. The contended scar and arthritis of the right knee are addressed above. Hearing loss of the right ear was documented in the DES file and service treatment records with a history of hearing loss following a mortar attack / explosion. The CI had moderately severe hearing loss of the right ear with normal hearing in the left ear and good speech recognition on audiology examination. Right ear hearing loss was not occupationally significant during the MEB period, was not the basis for limited duty, and was not implicated in the commander’s assessment. Additionally, tinnitus was noted in the VA rating decision following separation, 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. The CI contends he should have received a disability rating and compensation for PTSD. The MEB history and physical examination in April 2007 documents a complaint of difficulty falling and staying asleep “related to psychosocial stressors,” later attributed to PTSD diagnosed after separation. The CI checked “no” to questions inquiring regarding the presence of nervous trouble of any sort (anxiety or panic attacks), loss of memory, or depression or excessive worry, head injury, memory loss or amnesia, frequent or severe headache, a period of unconsciousness, or concussion. There is otherwise no service treatment record documentation of complaint or treatment for psychological symptoms. During the general medical C&P examination on June 14, 2007, two months before separation, the mental status examination (as part of the general neurologic examination) was normal and read, “The veteran is coherent, and emotional reaction is appropriate. Social and occupational capacity is not restricted.” Nine months after separation, the CI endorsed symptoms of PTSD on screening in the VA clinic, subsequently leading to evaluation and service connected rating for PTSD with cognitive disorder not otherwise specified. A May 14, 2008 VA mental health clinic entry documents CI report of symptoms while in service that worsened following separation. There is no evidence that symptoms of PTSD were clinically or occupationally significant during the MEB period, nor were they the basis for limited duty and none were implicated in the commander’s assessment. Hearing loss and PTSD were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions: Other conditions identified in the DES file were right tympanic membrane scarring, small lipoma left arm, obesity, and stuttering. None of these conditions was clinically or occupationally significant during the MEB period, nor were they the bases for limited duty and none were implicated in the commander’s NMA. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. 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 and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of scar of right knee, hearing loss, and PTSD, or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend a finding 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Patellofemoral Pain Syndrome Right Knee | 5099-5003 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100503, 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) RECOMMENDATION

ICO XXXXX, FORMER USMC

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 25 Aug 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. XXXX’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)