RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000716 SEPARATION DATE: 20031231

BOARD DATE: 20111122

SUMMARY OF CASE: This covered individual (CI) was an active duty Cpl/ (6092, Tire and Wheel Mechanic) medically separated from the Marine Corps for osteochondral defect, left knee. The CI was first seen for left knee pain, and, after failing conservative treatments, he underwent surgical treatment. While in recovery, he developed right knee pain, and was referred to a Medical Evaluation Board (MEB). The MEB forwarded osteochondral defect left knee surgically treated and osteochondral defect right knee. Additional conditions supported in the Disability Evaluation System (DES) file are discussed below, but were not forwarded for PEB adjudication. The recommendation of the MEB physician at the time was to extend the CI’s limited duty for eight more months. Eight months later and after receiving surgical repair of his right knee, the Informal PEB (IPEB) adjudicated the case and found the CI fit. The CI made an appeal because he was not able to perform within his military occupational specialty or participate in a physical fitness test. The PEB Reconsideration modified the initial IPEB adjudication of the osteochondral defect, left knee, surgically treated, unfit rated at 10% with application of the SECNAVINST 1850.4E. The osteochondral defect, right knee surgically treated was classified as a related Category II condition (not separately unfitting, but contributing to the left knee condition). The CI made no further appeals, and was then medically separated with a 10% disability rating.

CI CONTENTION: “My issues at the time of separation were pain in my knees from bilateral osteochondral defects in both right and left knees. Still having residual symptoms. I wear two hard braces (unloader braces by Don Joy) to relieve some of the pain. Since being released I had another left knee surgery in Jan of 05, and they are wanting to do another surgery on my right knee. There were other conditions at time of separation that I was not consider(ed) for which I am now receiving a rating for through VA.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB (recon) – Dated 20031106** | **VA (3 & 11 Mos Post-Sep)**  |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Left Knee, Surgically … | 5299-5003 | 10% | Lt Knee PFS, S/P … | 5260 | 0% | 20040407 | 20040101 |
| 5260-5258 | 20% | 20041105 | 20040507 |
| Right Knee, Surgically … | Cat II | Rt Knee PFS S/P … | 5260 | 0% | 20040407 | 20040101 |
| 5010-5260 | 10% | 20041105 | 20040622 |
| ↓No Additional MEB/PEB Entries↓ | Lumbosacral Strain | 5237 | 10%\* | 20040407 | 20040101 |
| Migraine Headaches | 8100 | 10% | 20040407 | 20040101 |
| 0% x 3/Not Service Connected x 5 | 20040101 |
| **Combined: 10%** | **Combined: 20%** | 20040101 |
|  **Combined: 40%\*** | 20040507 |

\* Back (5237) increased to 20%; added depression (9434) at 30% & right hand (5228-8515) at 10%; all effective 20050131; left knee 100% temporary rating effective 20050105 (combined 100%)

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 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 Veteran Affairs (VA), operating under a different set of laws (Title 38, United States Code). The VA 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.

Left and Right Knees Osteochondral Defect, Surgically Treated. The reconsideration PEB rated the left knee as unfitting (5299-5003 at 10%) with the right knee as a Category II condition. The limited duty, MEB NAVMED 6100/1, and the non-medical assessment all noted disability from both knees. All exams proximate to separation indicated left and right knee pain conditions with the left knee worse than the right knee. Both the left and right knees had undergone surgical repair and had residuals. Duty limitations included standing and running requirements that each knee condition would have adversely impacted and the Board determined that there was a preponderance of evidence supporting the right knee as additionally unfitting for rating at separation.

There were three goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM –L/R Knee | MEB ~ 4.5mos Pre-Sep | VA C&P ~ 4 Mo. After-Sep | VA C&P ~ 11 Mo. After-Sep |
| L | R | L | R | L | R |
| Flexion (140⁰ normal) | 135⁰ | 135⁰ | 120⁰ | 130⁰ | 100⁰ | 110⁰ |
| Extension (0⁰ normal) | +5⁰ | +5⁰ | 0⁰ | 0⁰ | 5⁰ | 0⁰ |
| Comment | Nl gait, no atrophy, pain left knee, no effusions | No atrophy, pain left/right, no effusions; “DeLuca is 10% to speed, endurance, coordination and strength” | Abnl gait, No atrophy, pain left/right, no effusions; calf L 36.5 cm vs. R 38 cm: 2.5 cm mobile hard body that slips under lt patella; ? L. ACL |
| §4.71a Rating\* | 10% | 10% | 10% (VA 0%) | 10% (VA 0%) | 20% | 10% |

 \*Conceding §4.59 (painful motion)

The MEB exam noted an insidious onset of left and right knee pain and noted these conditions to be service aggravated due to several injuries. The CI complained of bilateral knee pain, left greater than right. There was no documentation of the CI complaining of locking, catching or recurrent swelling. He reported using unloader braces for activities. The physical exam demonstrated a normal gait and a natural alignment of both knees. Neither knee had effusions. The left knee demonstrated tenderness along the medial femoral condyle. The ligament and meniscal tests were normal on both knees. His strength was normal. Radiographs of the left knee showed a metal screw in place, with no signs of collapse. There was evidence of healing of the osteochondral fragment to the main portion of his femoral condyle. The right knee radiograph showed the area of the osteochondral autograft transplant with incorporation of a bone plug. Both left and right knee conditions were implicated in the non-medical assessment and noted as failing retention standards. The narrative for the limited duty discussed both knees as interfering with duty, but the abbreviated limited duty specified only the left knee. Treatment notes indicated left knee buckle after stepping out of a truck on 7 September 2003 and an emergency room visit approximately three weeks pre-separation (4 December 2003) for right knee pain, requiring narcotic pain medication for right knee arthroscopic surgery the day prior.

The VA compensation and pension (C&P) exam four months post-separation noted the CI having pain and swelling of his left knee and pain of his right knee. Claimed limitations were unable to fully extend his knees, to run, and to stand greater than 20 minutes. There were no complaints documented of locking or give way. The bilateral knee exam demonstrated normal muscle tone, without atrophy, normal knee alignment, no effusions, and normal ligament and meniscal tests. The VA exam 11 months post-separation was for a reevaluation of the CI’s 0% for his left and right knee conditions. There had been no new interval treatment of either knee since the prior VA exam. The CI claimed he wore his knee braces 95% of the time on the left knee and 70% of the time on the right knee. The CI noted worsening pain of his knees, especially his left. He had a sensation that something was in his left knee and he was unable to fully extend it. He could not walk more than two blocks, without resting. He fell daily, stating his left knee gives way. He suffered with right knee pain and swelling. He did not note locking, catching or giving way. This exam demonstrated the CI favoring his left leg while walking. Bilaterally, neither knee demonstrated effusions, nor abnormal ligament or meniscal tests. The left knee was noted to be painful to palpation of the entire patella. The left calf demonstrated atrophy. The physical exam demonstrated a question of left instability (“ACL ??”) and a “2.5 cm mobile hard body that slips under lt patella.” There was abnormal shoe wear right greater than left. The examiner documented locking, popping and giving way, but did not specify which knee.

The PEB coded the left knee (with right knee Category II) as 5299-5003 rated 10%. The VA initially coded each knee 0%, analogous to 5260, but was not mindful of the VA Schedule for Rating Disabilities (VARSD) §4.59 painful motion provision. In an exam 11 months later, the VA chose code 5258 for the left knee and 5010 for the right knee, both analogous to code 5260, and increased the rating to 20% and 10%, respectively. The Board recognizes that this exam reflects the natural progression and worsening of this disease. The Board agreed this exam had lowered probative value and did not reflect the CI’s disability picture proximate to separation.

The Board agreed that there was non-compensable ROM impairment of each knee under the knee-specific diagnostic codes when evaluating the MEB and VA exams four months pre- and post-separation, respectively. There was adequate documentation of painful motion for each joint. This triggers application of either the criteria of disability code 5003 or §4.59 (painful motion) to achieve the minimal compensable rating under the applicable limited motion code (5260 in this case – leg, limitation of flexion).

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the left knee condition, coded 5010-5260. The Board also agreed that the preponderance of the evidence with regard to the functional impairment of the right knee favors its recommendation as an additionally unfitting condition for separation rating. It is appropriately coded 5010-5260 and meets the VASRD §4.71a criteria for a 10% rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for lumbosacral strain and migraine headaches. The CI was seen for both these conditions infrequently while in service. All 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. The VA rated the CI for depression, right hand and left wrist conditions greater than 12 months post-separation and they were 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 Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

Remaining Conditions. Other conditions identified in the DES file were hearing loss, sleeping disturbances, carpal tunnel syndrome and ankle pain. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period, none were the basis for limited duty and none were implicated in the non-medical assessment. 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. No other conditions were service connected with a compensable rating by the VA within 12 months of separation or contended by the CI. 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. As discussed above, PEB reliance on SECNAVINST 1850.4E for rating the left knee and finding the right knee category II was likely operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the left knee condition, the Board unanimously recommends no change from the PEB rating adjudication as 10%, but coded 5010-5260. In the matter of the right knee condition, the Board unanimously recommends a finding of unfit coded 5010-5260 and rated 10% IAW VASRD §4.71a. In the matter of the lumbosacral strain and migraine headache or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Osteochondral Defect, Left Knee, Surgically Treated | 5010-5260 | 10% |
| Osteochondral Defect, Right Knee, Surgically Treated | 5010-5260 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100525, 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

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 1 Dec 11 ICO xxxxxxxxxxx

 (c) PDBR ltr dtd 6 Dec 11 ICO xxxxxxxxxxx

 (d) PDBR ltr dtd 6 Dec 11 ICO xxxxxxxxxxx

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

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

 a. XXX XX 4635: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 31 Dec 2003.

 b. XXX XX 0896: Separation from the Naval Sservice due to physical disability rated at 20 percent (increased from 10 percent) effective 15 April 2006.

 c. XXX XX 5197: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 15 September 2004.

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

 Assistant General Counsel

 (Manpower & Reserve Affairs)