RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD201001261 SEPARATION DATE: 20021231

BOARD DATE: 20120228

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl, E-4 (0511, Task Force Planning Specialist), medically separated for patellofemoral syndrome (PFS) bilateral. CI was initially evaluated for bilateral knee pain in April 2001 due to exercise with knee cap tenderness. The CI failed conservative therapy, was unable to fully perform within his Military Occupational Specialty (MOS) and was referred to a Medical Evaluation Board (MEB). The MEB forwarded bilateral PFS and Osgood Schlatter’s disease to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the patellofemoral syndrome bilateral as unfitting, rated 10%, with application the Veterans’ Administration Schedule for Rating Disabilities (VASRD). Osgood Schlatter’s disease, as identified in the rating chart below, was adjudicated a category III, not unfitting condition. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Rating for the condition(s) which rendered the member unfit should be changed because it has not been rated, or has not been rated properly.” “Discharge from active duty was for service related injury to feet with broken bones and chronic knee pain. Current ratings from the Department of Veterans’ Affairs for service-connected disabilities are as follows: Hearing Loss 10%, Cervical Strain 10%, Lumbar Injury 10%, Increased Ankle Arthritis (resulting from surgery performed on Active duty in April 1995) 10%, Hypertension 0%, Arthritis 0%, and all other service-connected injuries on file with the Department of Veterans Affairs are listed at 0% or not rated. Overall combined rating from the Department of Veterans Affairs is 30%.” A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20021009** | | | **VA (1 Mo. Pre Separation) – All Effective Date 20030101** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Patellofemoral Syndrome Bilateral | 5299-5003 | 10% | Residuals, Right Knee Patellar Femoral Syndrome | 5099-5019 | 0% | 20021114 |
| Residuals, Left Knee Patellar Femoral Syndrome | 5099-5019 | 0% | 20021114 |
| Osgood Schlatter's Disease | Cat III - Not Unfitting | | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Residuals, Cervical Spine Strain | 5299-5290 | 10% | 20021114 |
| Residuals, Lumbosacral Strain | 5295 | 10% | 20021114 |
| Tinnitus | 6260 | 10% | 20021108 |
| 0% x 5/Not Service Connected x 4 | | | 20021114 |
| **Combined: 10%** | | | **Combined: 30%** | | | |

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 worsening. However the Department of Veterans' Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions without regard to fitness for military duties 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.

Patellofemoral Syndrome Bilateral. The CI was initially evaluated for non-traumatic-bilateral knee pain in April 2001 manifested by patellar tenderness occurring with exercise and activity. He failed conservative therapy with non-steroidal anti inflammatory (NSAID) medication, Sports Medicine care, MOBEX exercises, iliotibial band strengthening and limited duty. He remained unable to perform within his MOS and was referred to a MEB. There was one goniometric range-of-motion (ROM) evaluation in evidence summarized in the chart below which the Board weighed in arriving at its rating recommendation.

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| --- | --- | --- |
| Goniometric ROM –  Left and Right Knee | MEB ~ 5 Mo. Pre-Sep  (20020712) | VA C&P ~ 1.5 Mo. Pre-Sep  (20021114) |
| Flexion (140⁰ normal) | None recorded | 140⁰ (bilateral) |
| Extension (0⁰ normal) | None recorded | 0⁰ (bilateral) |
| Comment | + compression test with crepitation | + crepitation, no instability |
| §4.71a Rating | 10% by PEB analogous to degenerative arthritis | 0% |

The narrative summary (NARSUM) on 12 July 2002, five months prior to separation, did not address range of motion, noting only positive patellar compression tests and crepitus bilaterally. No knee pain was recorded. The non-medical assessment (NMA) noted that he was unable to perform his duties due to knee pain. The PEB on 9 October 2002, three months prior to separation, found patellofemoral syndrome, bilateral, unfitting, coded 5299-5003 (arthritis, degenerative) with a rating of 10%. The VA Compensation and Pension (C&P) examination on 14 November 2002, six weeks prior to separation, documented full goniometric ROM of both knees with no pain, and no instability including negative McMurray test and drawer sign. There was no joint swelling, redness or evidence of increased warmth. Bilateral crepitus was present. Gait was normal. ROM was not additionally limited by pain, weakness, fatigue, lack of endurance or incoordination. The VA Rating Decision (VARD) on 3 January 2003, three days after separation, service-connected the PFS residuals for each knee, coded 5099-5019 (analogous for bursitis) with a 0% rating assigned. The ratings under code 5019 refer to the rating criteria under code 5003 for degenerative arthritis, which states when the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10% is applied for each such major joint or group of minor joints affected by limitation of motion. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion. The VA rationale noted that the ratings were non-compensable because the C&P examination documented full ROM without pain, no instability and normal x-ray studies for each knee. The Board considered the probative values of the exams and determined that the VA exam had the highest probative value as it was most comprehensive and closest to the date of separation. The PEB and VA chose different approaches, discussed above, to rate the knee condition; however, both approaches refer to the same rating criteria under code 5003. The Board noted that, with no limitation of motion, codes 5260 and 5261 were non-compensable. The Board found no evidence in this case to support additional rating for meniscal issues, post-operative symptoms, instability, ankylosis, or malunion. The Board concluded the evidence does not support a rating higher than that adjudicated by the PEB. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends no change of the PEB adjudication of the patellofemoral syndrome bilateral condition, coded 5099-5003, with a 10% rating.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was Osgood Schlatter's disease, a bony enlargement at the attachment of the patella tendon on the upper tibia. It is a developmental condition that apparently did not significantly contribute to the CI’s unfitting knee pain. This knee related condition was incidentally noted on x-ray with no current clinical findings or treatment. Any contribution from this condition to his knee pain is subsumed under the rating for the unfitting knee condition without EPTS deduction. There was no evidence for concluding that this condition was a separately unfitting condition.

Remaining Conditions. The CI’s application asserts that compensable ratings should be considered for injuries to his feet with broken bones, hearing loss, cervical strain, lumbar injury, increased ankle arthritis status post-surgery, hypertension, and arthritis. Additionally, conditions identified in the DES file were sinusitis, left talar dome fracture and broken left wrist. At the time of the MEB history and physical examination, 21 June 2002, the CI checked “no” to question 12g on DD Form 2807 regarding impaired use of legs, hands or feet. The history of the left ankle fracture in 1995, and left wrist fracture in 1990 were noted without complaint of current problems or impairments. None of these conditions were clinically active during the MEB period or were the bases for limited duty and none were implicated in the 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. Furthermore, cervical spine strain, lumbosacral strain, tinnitus, post operative left ankle condition, fracture fifth toe right foot, pes planus, right ankle condition, hypertension, and intestinal condition were noted in the VA rating decision proximal to separation, but were not documented in the DES file. As noted, at the time of the MEB history and physical examination, 21 June 2002, the CI checked “no” to question 12g on DD Form 2807 regarding impaired use of legs, hands or feet and “no” to question 12c regarding recurrent back pain or any back pain. The CI also checked “no” to all questions regarding intestinal complaints. CI’s audiogram at the time of the separation examination was normal. Although the CI’s blood pressure was elevated (152/100) at the time of the MEB history and physical examination, earlier service treatment records show normal blood pressures. Other examinations in July 2002 and October 2002 documented borderline elevated blood pressure (135/88, 139/83). Following separation, the CI was diagnosed and treated for high blood pressure. On 8 October 2002 (after the MEB), CI also sought care for neck pain of several months duration attributed to sleeping in a hotel bed with pillows that were too soft, without history of trauma or injury. The examination was unremarkable with full range of motion and normal neurological examination. None of these conditions were clinically or occupationally significant during the MEB period, were the basis for limited duty, or implicated in the NMA. There was no indication from the record that any of these conditions interfered with satisfactory performance of duty requirements. 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. Although the CI lists injuries to feet and broken bones, hearing loss, cervical strain, lumbar injury, increased ankle arthritis status post-surgery, hypertension, and arthritis on his application, even if their presence in the DES file were conceded, there was no evidence for concluding that any of them interfered with duty performance to a degree that could be argued as unfitting. 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the patellofemoral syndrome bilateral condition the Board unanimously recommends no recharacterization of the CI’s disability and separation determination. In the matter of the Osgood Schlatter’s disease or any other conditions eligible for Board consideration, the Board unanimously agrees that there were no other conditions which could be recommended as additionally unfitting for 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 Syndrome Bilateral Knees | 5299-5003 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101101, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB letter dtd 6 Mar 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR the following individuals’ records not be corrected to reflect a change in either 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)