RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100045 SEPARATION DATE: 20070115

BOARD DATE: 20110930

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (3533, Logistic Vehicle System Operator) medically separated for medial femoral condyle chondromalacia to his right knee. The CI’s had a history of chronic bilateral knee pain and enlarging lump on both knees since boot camp in 2003. He was diagnosed with bilateral Osgood-Schlatter’s syndrome, tibial tubercle apophysitis, and patellar tendinitis. He underwent surgical excision of the tibial tubercle ossicles of the left and right knee in 2004. His knee pain persisted and he underwent a second surgery on the right knee (arthroscopic chondroplasty) for chondromalacia in 2006. A subsequent twisting injury to the right knee and locking symptoms prompted a magnetic resonance imaging (MRI) to rule out a meniscal tear; the MRI showed chondral thinning of the medial patellar facet, without tear. A steroid injection offered minimal relief, ruling against synovitis. The CI did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Pain in joint involving lower leg and chondromalacia of patella were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. The PEB adjudicated the right knee chondromalacia condition as unfitting, rated 10% (less 0% deduction for existed prior to service [EPTS]) with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI did not appeal, and was medically separated with a 10% disability rating.

CI CONTENTION: “When I was diagnosed they would only put one disability and had a few and it is been nothing but problems I have had three more knee surgeries and still have at least 2 more for now. The VA has me rated at 100% and I only got 10% from DoD. And I have other claims pending. My right knee alone just got bumped up to 20% and waiting for TBI. Also 50% for PTSD and 20% for left knee and 10% for tinnitus.” He additionally submits an additional statement and lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied. All service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20061201** | | | **VA (5 Mos. After Separation) – All Effective 20070116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chondromalacia R. Knee | 5099-5003 | 10% | Chondromalacia Right Knee | 5257 | 20% | 20070612 |
| Bilat. Osgood-Schlatters | Cat 2 Not Unfitting | | Residuals Left Knee Strain | 5257 | 20% | 20070612 |
| Chronic Bilat Knee Pain | Cat 2 Not Unfitting | |
| ↓No Additional MEB/PEB Entries↓ | | | PTSD | 9411 | 50%\* | 20070602 |
| Tinnitus | 6260 | 10% | 20070612 |
| 0% x 1 / Not Service Connected x 3 | | | 20070612 |
| **Combined: 10%** | | | **Combined: 70%\*** | | | |

\* IU granted effective 20070116; vestibular ocular reflex (VOR) dysfunction added at 10% and post-concussion migraine added at 30%, both effective 20100707; PTSD 9411 increased to 100% effective 20110128; VA rating based on exam most proximate to date of permanent separation;

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 Veteran Affairs (VA), operating under a different set of laws (Title 38, United States Code). The Board evaluates VA evidence proximate 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 for service ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must also comply with the same governance. 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. There were two knee examinations in evidence which the Board weighed in arriving at its rating recommendation. Only one exam included goniometric range of motion (ROM) measurements. Both exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –  R Knee | MEB ~ 3 Mos. Pre-Sep | VA C&P ~ 5 Mos. After-Sep |
| Flexion (140⁰ normal) | Full Active ROM | 85⁰ |
| Extension (0⁰ normal) | Full Active ROM | 0⁰ |
| Comment | Mild effusion; pain [TTP] over med & lat joint lines; no instability; MRI- chondral thinning at medial patellar facet; “popping” on DD2808 | Painful motion (begins at 45 in each direction), no additional loss w/ repet use; antalgic gait; subpatellar tenderness; Osgood-Schlatter’s; no instability; no crepitus; no meniscus abnormality [symptoms: locking, giving way, instability] |
| §4.71a Rating | 10% | 10% (VA 20%) |

The narrative summary (NARSUM) three months pre-separation documented a mild effusion and tenderness to palpation along the medial and lateral joint lines. Symptoms of locking were noted. The remainder of the exam was normal, including absence of instability and full active range of motion. The examiner also stated a recent MRI “which showed only chondral thinning at the medial patellar facet.” The MEB DD Form 2808 exam indicated “popping” and bilateral joint line tenderness.

The VA exam five months post-separation described antalgic gait, slightly reduced (non-compensable) painful ROM, and subpatellar tenderness. The CI endorsed symptoms of giving way, instability, and locking; but the examiner documented the absence of instability or meniscus abnormality. Although plain radiographs of the knee showed no significant abnormality, an MRI at four months post-separation revealed a small effusion and mild/moderate chondromalacia. The VA rated the exam at 20% under 5257 (knee, other impairment of) for “moderate” recurrent subluxation or lateral instability.

Dual coding for instability and ROM impairment using 5257, 5258, and 5259 was considered by the Board. The NARSUM three months pre-separation stated the knee had no evidence of instability, although “popping” on exam was noted, and post-separation patellar instability resulted in surgery to improve patellar tracking. The VA exam five months post-separation also noted an absence of instability, although the CI endorsed symptoms of instability. Coding under 5257, for recurrent subluxation or lateral instability, above the 10%, slight level was therefore not warranted. Knee locking was reported as a complaint in the NARSUM, MEB history, and VA exam. Although a mild effusion was noted in the NARSUM and in an MRI four months post-separation, VA treatment notes indicated a post-separation exacerbation or injury while playing with his daughter. CI stated it “popped twice” and he had quite a bit of pain. No other notes of effusions were found in the record proximate to separation. Coding under 5258, cartilage, semilunar (meniscus) with “frequent episodes of ‘locking,’ pain, and effusion into the joint,” was not appropriate. Given the lack of meniscal findings on exam and on MRI, the use of the 5259 (cartilage, semilunar, removal of, symptomatic) is also not appropriate. The Board considered VASRD §4.14 (avoidance of pyramiding), and determined that, without a minimum compensable limitation under another code (beyond §4.59 or §4.40), there were insufficient symptoms to support dual rating of the right knee.

Thus, there is no route to higher than a 10% rating under any other applicable codes and no criterion for dual coding of the joint impairment. The Board noted that the CI apparently re-injured his knee approximately three months post-separation, and had a third surgery at ten months post-separation. The procedure was a retinaculum release to improve patellar tracking for a complaint of recurrent patellar subluxation. This did not affect the VA rating, and post-separation worsening was not considered applicable to separation rating. Although there is no compensable ROM deficiency proximate to separation, there is sufficient evidence of painful motion (§4.59) and/or pain with use (§4.40) to justify a minimal compensable rating under §4.71a. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the right knee condition.

Other PEB Conditions. The other conditions adjudicated as not unfitting by the PEB were Osgood-Schlatter’s bilaterally and chronic bilateral knee pain (VA 20% for left knee strain). Any impairment from Osgood-Schlatter’s or knee pain of the right knee was considered above. The left knee condition was not a basis for limited duty, and the non-medical assessment did not identify any specific medical conditions. The CI specifically noted his left knee was “not giving him any trouble” during his VA exam, five months post-separation. Although it is possible that impairment from the left knee condition was overshadowed by the right knee condition, that possibility is unduly speculative as the basis for a Board fitness recommendation. The left knee condition was reviewed by the action officer and considered by the Board. There was not sufficient evidence from the record that the condition significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the left knee condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD; VA 50%, later 100%), tinnitus (VA 10%), traumatic brain injury (TBI; VA 30% for post-concussion migraine headaches), and occasional dizziness (VA 10% for vestibular ocular reflex (VOR) dysfunction, effective 42 months post-separation).

The CI noted occasional dizziness on his MEB history form, and the examiner stated this occurred once per month and that there was no loss of consciousness. The VA stated the vestibulo-ocular reflex dysfunction was not related to TBI, despite having a reported onset after an improvised explosive device blast injury in Iraq in 2005, with 11 hours of unconsciousness (not substantiated in service treatment record). The CIs’ occasional dizziness was not the basis for limited duty and was not implicated in the non-medical assessment. The condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to separation rating. Headaches were specifically denied in the MEB history.

Regarding the PTSD condition, although insomnia, nightmares, a “yes” response to “depression or excessive worry,” and a complaint of not being himself were noted on the MEB history form, the examiner attributed “stress related to family problems,” and on exam stated, “no depression noted, well groomed, normal affect.” The examiner included “possible PTSD” in his summary of defects and diagnoses, but there was no pre-separation diagnosis of any mental health disorder. The non-medical assessment expressed, “SNM has multiple family problems compounded with his injuries. [The CI] also does not display a good mental picture… SNM has not displayed the attitude, aptitude, performance or mental stability for further service.” There was insufficient evidence for a diagnosis of PTSD prior to separation, and none of the three conditions, PTSD, tinnitus, nor TBI/post concussion headaches, were 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 PTSD, tinnitus, TBI/post-concussion headaches and any contended conditions not covered above remain eligible for Board for Corrections of Naval Records consideration. 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 history of hemoptysis, occasional dyspnea, and bilateral wrist pain and tingling. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant 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 twelve 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. 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 right knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the Osgood-Schlatter’s bilaterally and chronic bilateral knee pain conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. Regarding 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Knee Chondromalacia | 5009-5003 | 10% |
| **COMBINED** | **10%** |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110115, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

XXXXXXXXXX

President

Physical Disability Board of Review

