RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD1100078 SEPARATION DATE: 20020430

BOARD DATE: 20111012

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty HM2/E-5 (HM-8404, Field Medical Service Technician) medically separated for residuals of a left knee injury. He did not respond adequately to appropriate subsequent treatment and was unable to perform within his rating or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) in early 2000, but was found fit for duty. In October 2001 a second MEB forwarded arthrofibrosis and severe patellofemoral arthrosis of the left knee to the PEB as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the severe patellofemoral arthrosis condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD), and adjudicated the left knee arthrofibrosis condition Category II (conditions that contribute to the unfitting conditions). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “The rating given by the Navy of 10 percent was followed up with a VA Rating of 40 percent for injury and 10 percent for Scar and also 10 percent for Right Knee Strain, for the same injury. With and [sic] date of May 1, 2002, one day after discharge from active duty.”

RATING COMPARISON:

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| **Service IPEB – Dated 20020208** | **VA (2 Mo. Pre Separation) – All Effective 20020501** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Severe Left Knee Arthrosis | 5299-5003 | 10% | Left Knee Arthrosis  | 5010-5261 | 40% | 20020227 |
| Left Knee Arthrofibrosis | Category II |
| ↓No Additional MEB/PEB Entries↓ | Left Knee Scars  | 7804 | 10% | 20020227 |
| Heart Murmur  | 7000 | 30% | 20020227 |
| Right Knee Strain | 5260 | 10% | 20020227 |
| GERD | 7399-7346 | 10% | 20020227 |
| Residuals Cholecystectomy | 7803 | 10% | 20020227 |
| Right Shoulder Strain | 5299-5201 | 10% | 20020227 |
| 0% x 5 / Not Service Connected x 1 | 20020227 |
| **Combined: 10%** | **Combined: 80%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment implied in the CI’s application, i.e., that his unfitting condition may merit consideration for a higher separation rating. The Board notes the current VA ratings listed by the CI for all of his service connected conditions, but must emphasize that its recommendations are premised on the totality of evidence reflecting the severity of the unfitting conditions at the time of separation. The Board further notes that the presence of a diagnosis, in and of itself, is not sufficient to render a condition unfitting and ratable. While the Disability Evaluation System (DES) considers all of the service member’s medical conditions, compensation can only be offered for those that cut short a service member’s career, and then only to the degree present at the time of final disposition. However, the Department of Veterans Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate veterans for the purpose of adjusting the disability rating should the degree of impairment vary over time.

Left Knee Condition. The CI sustained injury to the left knee in 1997 requiring surgical repair of the anterior cruciate ligament with subsequent arthroscopy. Despite extensive physical therapy the knee showed only marginal improvement in symptoms. There were four 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.

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| Left Knee ROM  | Clinic 9 Mo. Pre- SEP | Clinic 8 Mo. Pre- SEP  | MEB 7 Mo. Pre-Sep | VA C&P 2 Mo. Pre-Sep |
| Flexion (140⁰ normal) | 125⁰ | 125⁰ | 120⁰ | 110⁰ w pain |
| Extension (0⁰ normal) | -8⁰ | -6⁰ | 0⁰ | -20⁰ w pain  |
| Comment | Decreased extension with gait  | Extension improved from -8⁰ one month prior | Obvious flexion contracture; slight antalgic gait | Gait normal |
| §4.71 Rating | 10% (5261) | 10% (5261) | 10% (5003) | 30% (5261) |

A series of physical therapy clinic visits over the three months preceding the MEB evaluation documented loss of extension of the left knee improving from 11⁰ to 6⁰ degrees. The CI was noted to be “running on his own” during this period. The MEB examiner found no knee instability, observed an antalgic gait and an “obvious flexion contracture,” but measured extension of the knee as normal. The Board places little probative value on this denotation given the obvious internal inconsistency of a flexion contracture (fixed bending of the knee) and full active extension of the knee. At the VA compensation and pension (C&P) exam performed two months prior to separation, a 20⁰ loss of extension at the knee with a “normal” gait were recorded. No instability of the knee was recorded. DeLuca criteria (pain, fatigue, weakness, lack of endurance, and in coordination at extremes of ROM) were present. Again, the Board gives little probative value to this exam, noting the findings of a normal gait and 20⁰ loss of extension to be clinically incompatible. The PEB and VA chose different coding options for the condition. The PEB coded the condition analogous to 5003 (degenerative arthritis) and the 10% rating is consistent with the evidence presented by the MEB. The VA coded the condition analogous to 5261 (limitation of extension) rated 40% (based although the limitation of extension in the C&P examination correlates with a 30% rating). In reviewing rating differences or significant differences in exam findings, the Board carefully considers the whole record in order to develop a consistent picture of the CI’s knee condition. In debating the probative value of the evidence presented, the Board concluded that the pre-separation physical therapy examinations were the best documented, most internally consistent, and most representative of the totality of evidence relating to the CI’s knee disability. This evidence supported a loss of extension of the left knee of approximately 10⁰. The Board could find no other route to a higher rating using other diagnostic codes. Although the loss of extension code may be considered more accurate, no change in the code used by the PEB is recommended as there is no benefit for the CI. 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.

Other PEB Conditions. Arthrofibrosis of left knee was adjudicated by the PEB as a Category II condition, not separately unfitting and ratable but contributed to the primary unfitting condition. The impairment contributed by the two conditions overlapped to the extent that rating each diagnosis would be based on the same symptoms and functional impairment and is prohibited (IAW VASRD 4.14, avoidance of pyramiding). This condition was reviewed by the action officer and considered by the Board. The action officer notes that the designation of a separate diagnosis of arthrofibrosis has no bearing on the ratable parameters of the knee condition that has already been adjudicated as unfitting. There was no indication from the record that this condition separately interfered additionally with performance of the CI’s rating duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the stated condition.

Other Contended Conditions. The CI’s application implies that compensable ratings should be considered for a left knee scar and right knee strain. Both conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that either of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that neither of the stated conditions was subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were headaches, heart murmur and left shoulder dislocation. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant during the MEB period, none were the basis for limited duty, and none were implicated in the commander’s 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. Additionally, gastroesophageal reflux disease and several other non-acute conditions were noted in the VA rating decision proximal to separation, but 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.

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 severe patellofemoral arthrosis of the left knee and IAW VASRD §4.71, the Board unanimously recommends no change in the PEB rating of 10%. In the matter of the arthrofibrosis left knee condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the left knee scar, right knee strain, headaches and left shoulder dislocation conditions, 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: In the matter of the knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Severe Patellofemoral Arthrosis, Left Knee | 5299-5003 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110127, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

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 President Physical Disability Board of Review

