RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1100136 SEPARATION DATE: 20041115

BOARD DATE: 20111021

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SN/E-3 (DG-9720, Communication and Intelligence Specialist) medically separated for left knee medial meniscal tear. In May 2004, the CI developed diffuse left knee pain after doing physical training. The CI continued with left knee pain and was placed on light duty for three weeks. The CI was later seen by orthopedics and was diagnosed with a left knee medial meniscal tear and stress fracture. Despite light duty, non-steroidal anti-inflammatory drugs, orthopedics and sports medicine evaluations, the CI was unable to perform within his military occupational specialty or meet physical fitness standards and was referred to a Medical Evaluation Board (MEB). The MEB forwarded tear of meniscus of knee, current, plical syndrome and anterior knee pain to the Physical Evaluation Board (PEB) on NAVMED 6100/1. The PEB adjudicated the left knee medial meniscal tear suspected clinically and confirmed on MRI [magnetic resonance imaging] examination as unfitting with disability code 5299-5259 rated 0% with application of the SECNAVINST 1850.4E and DoDI 1332.39. The PEB adjudicated the medial plical syndrome with anterior knee pain as Category II (conditions that contribute to the unfitting conditions). The CI made no appeals and was medically separated with a 0% disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 200410** | | | **VA (1 Mo. After Separation) – All Effective Date 20041116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Knee Medial Meniscal Tear….. | 5299-5259 | 0% | Left Knee Medial Meniscal Tear | 5258 | 20% | 20041222 |
| Medial Plical Syndrome with Anterior Knee Pain | CAT II | |
| **Combined: 0%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY:

Left Knee Condition. There was one goniometric range of motion (ROM) evaluation in evidence which the Board weighed with two non-goniometric exams in arriving at its rating recommendation. All of these exams are summarized in the following chart.

|  |  |  |  |
| --- | --- | --- | --- |
| ROM - Left Knee | Ortho~ 5 Mo. Pre-Sep | MEB ~ 3 Mo. Pre-Sep | VA C&P ~ 1 Mo. After-Sep |
| Flexion (140⁰ normal) | No gonio | No gonio | 140⁰ w/ pain at 130⁰\* |
| Extension (0⁰ normal) | No gonio | No gonio | 0⁰ |
| Comments | Diffuse tenderness distal femur and proximal tibia popping w passive flexion w McMurray’s testing; very notable popping medial joint line more in varus than valgus but present in both; tiny effusion present; excursion lessened | +McMurray’s (meniscal tear); mild to mod tenderness over medial plica band; quad tone slightly decreased; left medial and anterior pain | + Mc Murray Test; significant pain on palpation posterior aspect; weakened movements, excessive fatigue ability, incoordination; DeLuca factor of 35% due to diminishment of excursion, strength, speed, coordination, endurance *{~90⁰}* |
| §4.71a Rating | 10%-20% | 10%-20% (MEB 0%) | 10%-20% (VA 20%) |

An MRI done in 2004 indicated a left knee complex posterior horn medial meniscal tear and no evidence of stress fracture. Although arthroscopy was recommended, the CI declined (reasonable). The orthopedic examination five months prior to separation specified diffuse tenderness, pain, popping and an effusion. The MEB examination three months prior to separation indicated pain was exacerbated with crouching and deep knee bends. The examiner noted that there were symptoms of a positive McMurray’s sign which was indicative of a meniscal tear, decreased quadriceps tone, and pain and tenderness. There was no history of true locking, or true instability. The diagnoses were left knee medial meniscus tear and medial plica syndrome with anterior knee pain. There were three notes indicating small effusions in the service record (excluding the initial injury) over the three months prior to separation; however, it was unclear if this was unresolved effusion or recurrent effusion.

At the VA compensation and pension (C&P) examination one month post-separation, the knee exam demonstrated a positive McMurray test; worsening with significant pain and description of give away. The examiner stated, “Due to the weakened movements, excessive fatigability, and incoordination as a result of the injury he does have a DeLuca Factor of 35% due to diminishment of excursion, strength, speed, coordination and endurance.”

The VA and the PEB chose different coding options that significantly impacted the rating. The PEB coded the left knee medial meniscal tear as 5299 analogous to 5259 (cartilage, semi lunar, removal of, symptomatic) at 0% (unknown if a service-specific rule or VA Schedule for Rating Disabilities [VASRD] §4.31 “A no-percent rating” was applied). The VA coded the condition as 5258 (cartilage, semi lunar, dislocated, with frequent episodes of locking, pain, and effusion into the joint) at 20%.

The MEB exam three months prior to separation did not include all of the criteria of 5258; although it demonstrated pain, tenderness, effusion, and meniscal tear, there was no true locking or true instability, and it was not clear if the effusion was recurrent. The VA exam indicated a meniscal tear, significant pain, and a history of give away with a Deluca factor of 35% due to diminished excursion, strength, speed, coordination and endurance. The probative value of the VA exam is strengthened on the principle that it was closer to the time of separation and more accurately reflects the CI’s knee condition at the time of separation. The Board deliberated over changing the coding to better reflect the application of §4.59 (painful motion) with the left knee, as well as the provisions of VASRD §4.21 (application of rating schedule). 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 medial meniscal tear condition coded 5299-5259.

Left Knee Medial Plical Syndrome with Anterior Knee Pain. The PEB found the left knee plical syndrome as a Category II (conditions that contribute to the unfitting conditions). The narrative summary examiner documented that the CI had mild to moderate tenderness over his medial plical band with slightly decreased quadriceps strength. There is no further discussion of this condition in ether the sports medicine evaluations or in the VA C&P exam post-separation. All contributions from this condition were considered in rating the CI’s primary unfitting coding above. After a review of all of the findings, the Board therefore has no reasonable basis for recommending the left knee plical syndrome as an unfitting condition for independent separation rating.

Remaining Conditions. Other conditions identified in the DES file were hypertension, right knee bursitis and pneumonia. 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 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. In the matter of the left knee medial meniscal tear condition, the Board by a vote of 2:1 for left knee medial meniscal tear recommends a rating of 10%, coded 5299-5259 IAW VASRD §4.71a. The single voter for dissent (who recommended a rating of 20% coded 5299-5258) did not elect to submit a minority opinion. In the matter of the left knee plical syndrome condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the hypertension, right knee bursitis and pneumonia 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** |
| Left Knee Medial Meniscal Tear | 5299-5259 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110322, 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

COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 17 Oct 11 ICO xxxxxxxxxxxxxxxx

(c) PDBR ltr dtd 25 Oct 11 ICO xxxxxxxxxxxxxxxx

(d) PDBR ltr dtd 27 Oct 11 ICO xxxxxxxxxxxxxxxx

(e) PDBR ltr dtd 27 Oct 11 ICO xxxxxxxxxxxxxxxx

(f) PDBR ltr dtd 20 Oct 11 ICO xxxxxxxxxxxxxxxx

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

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

a. XXX XX 1149: Placement on the Permanent Disability Retired List with a 30 percent disability rating (increased from 10 percent) effective 15 January 2006.

b. XXX XX 5703: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 1 December 2002.

c. XXX-XX-5371: Separation from the Naval Service due to physical disability rated at 10 percent (increased from 0 percent) effective 15 November 2004.

d. XXX XX 9959: Placement on the Temporary Disability Retired List at 50 percent from 15 February 2008 through 14 August 2008 with final disability separation on 15 August 2008 with a 10 percent disability rating.

e. XXX XX 6809: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 30 March 2009.

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

Assistant General Counsel

(Manpower & Reserve Affairs)