RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100389 SEPARATION DATE: 20070601

BOARD DATE: 20120404

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt/E-5 (6322, Avionics Technician), medically separated for multiple operations on the left knee with anteromedial knee pain, subjective instability and mechanical symptoms and for multiple operations on the right knee with continued mechanical symptoms and subjective instability and pain. The CI did have a right knee anterior cruciate ligament (ACL) reconstruction prior to his entry into the Marine Corps. He reinjured his knees while on active duty and had a series of subsequent operations on each knee. He 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 (LIMDU) and underwent a Medical Evaluation Board (MEB). Pain in joint involving lower leg, and other joint derangement, not elsewhere classified, lower leg, were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the following conditions as unfitting: multiple operations on the left knee with anteromedial knee pain, subjective instability and mechanical symptoms; and multiple operations on the right knee with continued mechanical symptoms and subjective instability and pain, rating both 10% each, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “The rating should be changed due to me not only having 6 knee surgeries, but also due to the constant chronic pain both of my knees still cause me today which only continues to increase. Both knees also continuously give out from under me ever since the injuries occurred dispite all the knee surgeries. I also have osteoarthritis and degenerative changes in both my knees. I was no longer able to perform my duties in the military and outside of work I can no longer run around with my sons or play any sports. I have been informed by the VA doctors that although I require bilateral knee replacements I am still required to wait due to my age and the maximum life limit of artificial knee replacements. In conclusion I believe that both my hip sprain and my lumbar strain should be considered in my unfitting condition because both occurred due to my knee injuries while in the Marine Corps.” He additionally lists all of his VA conditions and ratings. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

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| **Service PEB – Dated 20070416** | | | **VA (1 Mo. Pre Separation) – All Effective 20070602** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Multiple Operations, Left Knee with Anteromedial Knee Pain, Subjective Instability and Mechanical Symptoms | 5299-5003 | 10% | Degenerative Changes, Left Knee, S/P ACL Reconstruction and Meniscus Repair with Residual Disfiguring and Nondisfiguring Scars | 5010 | 10% | 20070502 |
| Multiple Operations, Right Knee with Continued Mechanical Symptoms and Subjective Instability and Pain | 5299-5003 | 10% | Degenerative Changes, Right Knee, S/P ACL Reconstruction and Meniscus Repair with Scars | 5010 | 10% | 20070502 |
| Left Knee Medial Femoral Condyle Osteochondrial Lesion | Category II | | No VA Entry | | | |
| Left Knee Medical Tibial Plateau Osteochondral Lesion | Category II | |
| Left Knee Medial Meniscectomy | Category II | |
| S/P Bilateral Two-Stage ACL Revision Reconstruction with Allograft Tissue | Category II | |
| History of Bilateral ACL Insufficiency S/P Reconstruction in the Past | Category II | |
| ↓No Additional MEB/PEB Entries↓ | | | Residual Tender Scar, S/P Right Knee Anterior and Cruciate Ligament Reconstruction and Meniscus Repair | 7804 | 10% | 20070502 |
| Lumbar Strain | 5237 | 10% | 20070502 |
| Left Hip Sprain | 5252 | 10% | 20070502 |
| Tinnitus | 6260 | 10% | 20070503 |
| Bilateral Onychomycosis with Tender L Big Toenail | 7813 | 0% | 20070502 |
| Not Service Connected x 3 | | | 20070502 |
| **Combined: 20%** | | | **Combined: 50%\*** | | | |

\*Includes Bilateral factor of 3.4%.

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 Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal 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 further 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 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 DVA, 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.

Multiply-operated left knee with anteromedial knee pain, subjective instability and mechanical symptoms condition. The CI had four surgical procedures on the left knee including a partial medial meniscectomy and ACL reconstruction in June 2003, removal of implants in the left knee and bone graft of the tibial tunnel in May 2006, revision ACL reconstruction with allograft in August 2006, and arthroscopy with debridement of plica in February 2007, approximately a month prior to the narrative summary (NARSUM) examination. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Goniometric ROM –  Left Knee | MEB ~ 3Mo. Pre-Sep  (20070306) | VA C&P ~ 1 Mo. Pre-Sep  (20070502) |
| Flexion (140⁰ normal) | 115⁰ (pain at 115⁰) | 105⁰ (pain at 105⁰) |
| Extension (0⁰ normal) | 0⁰ | 0⁰ (pain at 0⁰) |
| Comment | Significant medial, anterior, and peripatellar tenderness; pain in the extreme of flexion; negative Lachman, anterior drawer, pivot shift; pain with McMurray but no palpable click or catch; positive complaint of locking, clicking, and popping; mild effusion, left greater than right; sensation intact and motor 5/5 | Normal gait; nontender; no swelling; no instability; negative McMurray; normal motor, sensory and reflex exams; limited and painful motion repetitive use lead to ROM limited by pain but no additional limitation of ROM |
| §4.71a Rating\* | 10% | 10% |

The NARSUM performed on 6 March 2007, 3 months prior to separation and approximately a month after surgery, noted complaints of continued medial sided pain, locking, clicking, and popping. The examination noted mild effusion with medial and anterior tenderness of the left knee. Knee motion was limited with pain at flexion of 115 degrees. There was no varus or valgus instability and the Lachman’s, anterior drawer, and pivot shift tests were all negative. Sensory and motor functions were normal. The VA Compensation and Pension (C&P) examination on 2 May 2007, a month prior to separation, noted a history of knee pain, weakness, stiffness, swelling, giving way and locking. The pain was constant and increased by physical activity. The CI denied incapacitating episodes. Examination showed pain-limited motion, as noted above, with no swelling, inflammation or instability and a normal neurological exam. X-ray of the left knee demonstrated evidence of prior ACL reconstruction with early osteoarthritis.

The PEB and VA chose slightly different approaches to rate the left knee condition. The PEB adjudicated the multiply-operated left knee with anteromedial knee pain, subjective instability and mechanical symptoms condition as unfitting, rated 10%, code 5299-5003 for degenerative arthritis. The initial VA Rating Decision (VARD) service-connected the degenerative changes, left knee, S/P ACL reconstruction and meniscus repair with residual disfiguring and non-disfiguring scars condition, coded 5010, for arthritis due to trauma, substantiated by X-ray findings, with a 10% rating. Diagnostic code 5010 is rated as arthritis, degenerative with criteria under code 5003. Under code 5003, 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. The Board found that the ROM findings were non-compensable and that there was no evidence to support additional rating for instability, ankylosis, malunion or nonunion. No coding approach offers an advantage to the CI. The Board considered both the military evaluation 3 months prior to separation and the VA C&P evaluation a month prior to separation. The VA C&P examination a month prior to separation was comprehensive and most proximal to separation, and is therefore given higher probative value. The multiply-operated left knee with anteromedial knee pain, subjective instability and mechanical symptoms condition, analogously coded 5299-5003, per VASRD direction, would warrant a 10% rating as given by the PEB and the VA. With non-compensable ROM documented in both the NARSUM and VA C&P examinations, §4.59 (painful motion) could be utilized which would also give a 10% rating as the minimal compensable rating for the knee. By precedent the Board does not change the coding applied by the PEB unless there is a rating advantage to the CI. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends no recharacterization of the PEB adjudication for the left knee condition.

Multiple-operated right knee with continued mechanical symptoms and subjective instability and pain condition. The CI had four surgical procedures on the right knee including two prior to entry on active duty in 1992, a partial lateral meniscectomy and ACL reconstruction with patellar tendon graft and two screws in July 1990 and removal of the two screws in July 1991. On active duty he reinjured the right knee and had arthroscopy with meniscal repair and bone graft in October 2005 and revision ACL reconstruction with implants in February 2006. There were two goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Goniometric ROM –  R Knee | MEB ~ 3 Mo. Pre-Sep  (20070306) | VA C&P ~1 Mo. Pre-Sep  (20070502) |
| Flexion (140⁰ normal) | 120⁰ | 95⁰ (pain at 95⁰) |
| Extension (0⁰ normal) | 0⁰ | 0⁰ (pain at 0⁰) |
| Comment | Medial, anterior, and peripatellar tenderness; pain in the medial side and infrapatellar region; stable to varus and valgus stress; negative Lachman’s PCL, McMurray, and pivot shift; no complaint of locking or giving out; mild effusion, left greater than right; sensation intact and motor 5/5 | No instability; no tenderness or swelling; normal gait; Negative McMurray; normal motor, sensory and reflex exams; limited and painful motion; repetitive use lead to ROM limited by pain and lack of endurance but no additional limitation of ROM |
| §4.71a Rating\* | 10% | 10% |

The NARSUM examination on 6 March 2007, 3 months prior to separation, noted mild effusion with medial and anterior tenderness in the right knee. Knee motion was limited with pain at full flexion of 120 degrees. There was no varus or valgus instability and the Lachman’s, McMurray’s, posterior cruciate ligament, anterior drawer, and pivot shift tests were all negative. Sensory and motor function were normal. The VA C&P examination on 2 May 2007, a month prior to separation, noted a history of knee pain, weakness, stiffness, swelling, giving way and locking. The pain was constant and increased by physical activity. He denied incapacitating episodes. Examination showed limited motion, as noted above, with no swelling, inflammation or instability. X-ray of the right knee demonstrated evidence of prior ACL reconstruction with early osteoarthritis.

The PEB and VA chose slightly different approaches to rate the right knee condition. The PEB adjudicated the multiple operations, right knee with continued mechanical symptoms and subjective instability and pain condition as unfitting, rated 10%, code 5299-5003 for degenerative arthritis. The initial VARD service-connected the degenerative changes, right knee, S/P ACL reconstruction and meniscus repair with scars condition, coded 5010, for arthritis due to trauma, substantiated by X-ray findings, with a 10% rating. Diagnostic code 5010 is rated as arthritis, degenerative with criteria under code 5003. Under code 5003, 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. The Board found the ROM findings were non-compensable and that there was no evidence to support additional rating for instability, ankylosis, malunion or nonunion. No coding approach offers an advantage to the CI. The Board considered both the military evaluation 3 months prior to separation and the VA C&P evaluation a month prior to separation. The VA C&P examination a month prior to separation was comprehensive and most proximal to separation and is therefore given higher probative value. The multiple operations, right knee with continued mechanical symptoms and subjective instability and pain condition, analogously coded 5299-5003, per VASRD direction, would warrant a 10% rating as given by the PEB and the VA. With non-compensable ROM documented in both the NARSUM and VA C&P examinations, §4.59 (painful motion) could be utilized which would also give a 10% rating as the minimal compensable rating for the knee. By precedent the Board does not change the coding applied by the PEB unless there is a rating advantage to the CI. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends no recharacterization of the PEB adjudication for the right knee condition.

Other PEB Conditions. Left knee medial femoral condyle osteochondral lesion, left knee medial tibial plateau osteochondral lesion, left knee medial meniscectomy, healthy active duty Marine S/P bilateral two-stage anterior cruciateligament revision reconstruction withallograft tissue and history of bilateral anterior cruciate ligament insufficiency S/P reconstruction in the past were all adjudicated by the PEB as related category II conditions. The Board unanimously agrees that all of the conditions are related and included in the discussion above and therefore do not warrant consideration as separately unfitting conditions. All related symptoms and functional impairments are subsumed under the ratings for each knee as noted above.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for hip sprain and lumbar strain. These conditions were service-connected by the VA as left hip sprain and lumbar strain with 10% assigned for each condition. However, neither condition was noted in the NARSUM or found elsewhere 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. The only other condition identified in the DES file was multiple well-healed surgical scars. This condition was not significantly clinically or occupationally active during the MEB period, did not carry any attached duty limitations, and was not implicated in the non-medical assessment (NMA). This 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. Additionally, tinnitus, bilateral onychomycosis, bilateral hearing loss, right hand fourth and fifth digit, and right ankle conditions were noted in the VARD 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. In the matter of the multiply-operated left knee with anteromedial knee pain, subjective instability and mechanical symptoms condition, the Board unanimously recommends rating of 10% coded 5299-5003 IAW VASRD §4.71a. In the matter of the multiple operations, right knee with continued mechanical symptoms and subjective instability and pain condition, the Board unanimously recommends rating of 10% coded 5299-5003 IAW VASRD §4.71a. In the matter of the multiple well-healed surgical scars; the Board unanimously agrees that it cannot recommend a finding 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:

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Multiply-Operated Left Knee with Anteromedial Knee Pain, Subjective Instability and Mechanical Symptoms | | 5299-5003 | 10% |
| Multiply-Operated Right Knee with Continued Mechanical Symptoms and Subjective Instability and Pain | | 5299-5003 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110427, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

President

Physical Disability Board of Review

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 ltr dtd 23 Apr 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 individual’s 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)