RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1100498 SEPARATION DATE: 20020430

BOARD DATE: 20120316

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (0612 / Field Wireman) medically separated for a right knee condition. The CI suffered a right patellar dislocation in November 2000. After that injury, his right knee continued to give him problems. He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. The CI underwent a Medical Evaluation Board (MEB). Right patellofemoral syndrome (PFS) was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB found the right knee condition unfitting, and rated it 10%. The CI made no appeals, and was separated with a 10% disability rating.

CI CONTENTION: In item 3 of DD Form 294, the CI elaborates no specific contentions regarding rating or coding, and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Navy PEB – dated 20020313** | **VA (1 week Post-Separation) – All Effective 200200501** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Knee Condition | 5299-5003 | 10% | Right Knee Condition | 5019-5259 | 10%\* | 20020403 |
| ↓No Additional MEB/PEB Entries↓ | Tinnitus | 6260 | 10% | 20020402 |
|  | Right Hip Strain | 5299-5255 | 10% | 20020403 |
|  | 0% x 2 / Not Service Connected x 1 |  |
| **Combined: 10%** | **Combined: 30%** |

\* The VA Rating for the Right Knee was later increased to 20%, based on a subsequent VA Rating Decision dated 20060208.

ANALYSIS SUMMARY:

Right Knee Condition. In November 2000, this Marine suffered a right patellar dislocation, which was reduced in the emergency room. He was treated with crutches, bracing and physical therapy (PT). In March 2001 he experienced locking sensations in his right knee. Magnetic resonance imaging (MRI) was normal. On 11 September 2001, the CI had arthroscopy of the right knee with a lateral retinacular release. Surgical findings included grade III chondromalacia patella. The patellar subluxation was significantly improved after the arthroscopic surgery. However, he continued to have problems with his right knee, and an MEB was initiated. At the January 2002 MEB evaluation, three months prior to separation, the CI reported knee pain, worse with heavy lifting, sitting or squatting. He was unable to run and had pain with stair climbing. On examination, there was patellar crepitus with positive grind test and tenderness across the patellar tendon. The patella was hyper-mobile with positive patellar tilt. There was no effusion. Range-of-motion (ROM) was normal. The MEB examiner described the right knee condition as PFS with history of patellar dislocation and subluxation. As noted above, the Navy PEB found him unfit for military service and he was medically separated with 10% disability.

At the April 2002 VA Compensation and Pension (C&P) examination, four weeks prior to separation, the CI reported that he was no longer playing recreational sports or running due to his knee pain. On examination, there was normal posture but a mildly abnormal gait. The patella was more lax than normal, with crepitus. There was no warmth or effusion, but there was some medial tenderness. There was no ligamentous laxity. ROM testing showed 130 degrees of flexion, limited by pain. X-rays of the right knee were normal. Two goniometric ROM evaluations were used by the Board in arriving at its rating recommendation.

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| Goniometric ROM –Right Knee | MEB – 3 mos. Pre-Sep(20020131) | VA C&P – 1 mo. Pre-Sep(20020403) |
| Flexion (140⁰ is normal) | 140⁰ | 130⁰ |
| Extension (0⁰ is normal) | 0⁰ | 0⁰ |
| Comment | Full range of motion | Motion limited by pain |
| §4.71a Rating | 10%\* | 10%\* |

\*10% based on §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all evidentiary information available, and directed its attention to its coding and rating recommendations based on the evidence just described. The PEB and the VA chose different coding options for the right knee condition. The right knee limitation of motion was essentially non-compensable based on the Veterans’ Administration Schedule for Rating Disabilities (VASRD) §4.71a knee and leg ROM codes (5260 and 5261). However, IAW VASRD §4.40, §4.45, and §4.59; a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. The CI did have pain with motion, as reported in his history and during the C&P exam, and therefore qualifies for a 10% rating. His right knee pain is appropriately coded 5099-5014, since chondromalacia is analogous to osteomalacia. The Board then directed its attention to the issue of patellar subluxation. Review of the service treatment record (STR) shows that there was sufficient evidence of laxity and hyper-mobility of the patella. The CI was wearing a brace on the right knee to prevent the patella from subluxing. The Board determined that the patellar subluxation in and of itself, made him unfit to be an active duty Marine. Therefore, being unfitting, the patellar subluxation does justify a separate rating. After due deliberation, and mindful of VASRD §4.3 (Reasonable doubt) and §4.14 (avoidance of pyramiding), the Board unanimously recommends a rating of 10% for the recurrent right patellar subluxation. It is appropriately coded 5257 (knee, other impairment of) and IAW VASRD §4.71a, meets criteria for the 10% rating level (slight impairment).

Remaining Conditions. Other conditions were noted in the Disability Evaluation System (DES) file. These conditions were not clinically significant during the MEB/PEB period. None were the basis for limited duty, or implicated in the non-medical assessment. They were all reviewed by the action officer and considered by the Board. It was determined that none of them could be argued as unfitting and subject to separation rating. Additionally; tinnitus, hip strain and other 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 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 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 painful right knee chondromalacia, the Board unanimously recommends a rating of 10%, coded 5099-5014 IAW VASRD §4.40, §4.45, §4.59, and §4.71a. In the matter of the recurrent right patellar subluxation, the Board unanimously recommends a rating of 10%, coded 5257 IAW VASRD §4.71a.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chondromalacia, Right Knee | 5099-5014 | 10% |
| Recurrent Patellar Subluxation, Right Knee | 5257 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110627, 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 19 Mar 12

 (c) PDBR ltr dtd 15 Mar 12

 (d) PDBR ltr dtd 22 Mar 12

 (e) PDBR ltr dtd 22 Mar 12

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

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

 a. Placement on the Temporary Disability Retired List with a 70 percent disability rating for the period 31 August 2005 through 27 February 2006 followed by placement on the Permanent Disability Retired List with a final rating of 50 percent effective 28 February 2006.

 b. Placement on the Temporary Disability Retired List with 60 percent disability rating for the period 5 August 2008 through 4 February 2009 followed by assignment to the Permanent Disability Retired List with a 40 percent disability rating effective 5 February 2009.

 c. Disability separation with entitlement to disability severance pay with a rating of 20 percent (increased from 10 percent) effective 30 April 2002.

 d. Disability separation with entitlement to disability severance pay with a rating of 10 percent (increased from zero percent) effective 18 January 2002.

3. Please ensure all necessary actions are taken to implement these decisions, including the recoupment of disability severance pay, if warranted, and notification to the subject members once those actions are completed.

 Assistant General Counsel

 (Manpower & Reserve Affairs)