RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD1100504 SEPARATION DATE: 20041210

BOARD DATE: 20120523

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty EN2/E-5 (4296/Shipboard Elevator Hydraulic/Mechanical System Mechanic), medically separated for severe anterior patellofemoral pain. He did not respond adequately to 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). Severe anterior patellofemoral pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the bilateral knee condition as unfitting, rated 10% with likely application of the SECNAVINST 1850.4E. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I was found unfit for one bilateral knee pain and separated at 10 percent for this condition. I was not rated on other service connection disabilities that the VA found. On all other service connection disabilities i met retention standards. All service connections listed in #14 were not found unfitting and (i met retention standards). I also suffered from having patellar osteoarthritis in both knees but but many occasions of going to medical, i was provided with only motrin and nothing documented in my medical record. The patellar osteoarthritis was not documented until i went through a PEB board but this was not combine with the knee condition. Please re-evaluate my conditions listed in #14 and determine whether my other conditions should have been considered separately unfitting and factored in your overall rating. The PDBR could not consider the matter of claimed tinnitus if that condition was not documented in your original PEB proceedings. Alternatively, you could ask a BCMR/BCNR to change your record to show you were found unfit for all conditions. My military records will show in MRI that patellar osteoarthritis was found but PEB board did not combine this with the bilateral knee pain. I was rated on one knee condition at 10%. Both knees R and L have laxity was not rated on both conditions. Was not rated on patellar osteoarthritis left and right knee. Was not rated on R and L residuals shin splints. Was not rated on resifual scar right eyebrow or residual scar left lower leg. The conditions have worsen since my my discharge from the Navy. These service connections were not combine with the one knee condition; therefor I was not rewared the 30% retirement.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The laxity left knee, and laxity right knee conditions requested for consideration and the unfitting left and right knee patellofemoral pain related to patellar osteoarthritis meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested conditions residuals, shin splints right lower and left lower extremity, and residual scars are not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20041013** | | | **VA ( ~1 Mo. Pre- Separation) – All Effective Date 20041211** | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | | **Rating** | **Exam** |
| Severe Anterior Patellofemoral Pain | 5299-5003 | 10% | Laxity Lt Knee | 5257 | | 10% | 20041115 |
| Laxity Rt Knee | 5257 | | 10% | 20041115 |
| Patellar Osteoarthritis Lt Knee | 5014-5260 | | 10% | 20041115 |
| Patellar Osteoarthritis Rt Knee | 5014-5260 | | 10% | 20041115 |
| ↓No Additional MEB/PEB Entries↓ | | | Residuals Shin Splints, Left | 5262-5024 | | 10% | 20041115 |
| Residuals Shin Splints, Right | 5024-5262 | | 10% | 20041115 |
| Residual Scar, Rt Eyebrow | | 7800 | 10% | 20041115 |
| 0% x 1/Not Service-Connected x 0 | | | | 20041115 |
| **Combined: 10%** | | | **Combined: 60%** | | | | |

\*Ratings for laxity decreased to 0% effective 20090301 based on C&P examination 20080522

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 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 nor for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA), but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Severe Anterior Patellofemoral Pain Condition. Service treatment records (STR) document patellofemoral pain syndrome associated with patellofemoral osteoarthritis. There was no history of injury to the ligaments that would cause instability, no history of patellar subluxation or dislocation, and no clinical history or examination findings to suggest a torn or dislocated meniscus. The PEB combined the left and right knee conditions as a single unfitting condition, coded analogously to 5003 and rated 10%. The Board notes that although “bundling,” the combining of conditions under a single code, is permissible under the VASRD 5003 rating requirements, the approach does not take into account the VASRD §4.7 directive to choose the higher of two valid ratings. The Board therefore will apply separate codes and ratings for each joint in its recommendation, since compensable ratings for each knee condition are achieved IAW VASRD §4.71a. 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; as summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Knee ROM | MEB ~4 Mo. Pre-Sep  (20040818) | | VA C&P ~1 Mo. Pre-Sep  (20041115) | |
| Left | Right | Left | Right |
| Flexion (140⁰ Normal) | 135⁰ | 135⁰ | 100⁰ | 100⁰ |
| Extension (0⁰ Normal) | 0⁰ | 0⁰ | 0⁰ | 0⁰ |
| Comment | Hyperextends by 5⁰.  Stable Lachman with 4-6mm and firm endpoint.  No varus / valgus laxity.  Mobile patella. | Hyperextends by 5⁰.  Stable Lachman with 4-6mm and firm endpoint.  No varus / valgus laxity.  Mobile patella. | Lachman 5-8mm.  Anterior drawer negative.  No varus / valgus laxity.  McMurray negative.  Patellar laxity 0.5cm with crepitation.  . | Lachman 2-3mm.  Anterior drawer negative.  No varus / valgus laxity.  McMurray negative.  Patellar laxity 0.5cm without crepitation. |
| §4.71a Rating\* | 10% | 10% | 10% | 10% |

\*Non-compensable ROM but 10% with application of §4.59 / §4.40.

\*See discussion regarding additional rating for Instability.

ROM measurements on both the MEB and VA exams were in the 0% range for each knee, although evidence supporting the minimum compensable ratings with application of §4.59 (painful motion) or §4.40 (functional loss) can be readily drawn from the records. This is consistent with the VA rating decision assigning 10% for patellar osteoarthritis of each knee coded analogously to limitation of flexion, but applied §4.59 to yield a compensable rating. The VA awarded additional ratings for right and left knee instability based on the VA Compensation and Pension (C&P) examination performed 15 November 2004, a month before separation. At that examination, the CI reported give way symptoms typical for patellofemoral pain and patellofemoral joint osteoarthritis. On examination, there was patellar mobility of 0.5cm that the examiner termed laxity, but which is within the normal range of patellar mobility. The Lachman test, an assessment of the anterior cruciate ligament, was 5 to 8mm on the left and 2 to 4mm on the right. Based on the C&P examination, the VA granted a 10% rating for each knee for patellar osteoarthritis and another 10% for each knee for laxity based on the Lachman test and “patellar laxity.”

Subsequent VA examinations were negative for findings of knee instability and the instability ratings were decreased to zero. A magnetic resonance image (MRI) of both knees in October 2009 demonstrated bilateral chondromalacia patella with intact cruciate ligaments, collateral ligaments and menisci. The MEB narrative summary (NARSUM) examination on 18 August 2004 documented Lachman test results of 4-6mm with firm endpoint in both knees consistent with intact and stable anterior cruciate ligament without instability (the 4-6mm of movement is consistent with mild developmental laxity present in both knees). Multiple previous examinations documented absence of instability of the knee, including an initial primary care evaluation on 16 December 2002, a physical therapy evaluation on 8 October 2003, and orthopedic evaluations on 6 October 2003, 1 April 2004, and 12 July 2004. There was no evidence in the STR of injury to the cruciate ligaments or collateral ligaments which was confirmed by a post separation MRI demonstrating intact ligaments. The MEB NARSUM examination also noted the patella was mobile, and to “translate one to two quadrants in each direction.” The patella normally can be manually displaced between 25% and 50% of its width and there was no history of patellar subluxation or dislocation.

The Board concluded that there was no evidence of recurrent subluxation or instability that warranted an additional rating under code 5257. There were no clinical history or examination findings of a dislocated meniscus to warrant consideration under code 5258 for dislocated meniscus with frequent episodes of locking. The MRI after separation indicated the menisci were intact and normal. The VA also awarded separate ratings for right and left shin pain. Shin pain was not forwarded by MEB to PEB as an unfitting condition and STRs were silent with regard to complaint of shin pain during the 2 years prior to separation (including the MEB NARSUM and MEB history and physical examination). As noted previously, this condition is outside the scope of the Board since it represents a separate condition from the patellofemoral knee condition. All evidence considered, the Board recommends that each knee be separately adjudicated as unfitting, coded 5299-5260 and rated 10% each IAW VASRD §4.71a.

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 right and left knee condition (anterior patellofemoral pain), the Board unanimously recommends a separate disability rating of 10% for each knee, coded 5299-5260 IAW VASRD §4.71a. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Severe Anterior Patellofemoral Pain, Right Knee | | 5299-5260 | 10% |
| Severe Anterior Patellofemoral Pain, Left Knee | | 5299-5260 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110713, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 31 May 12 ICO

(c) PDBR ltr dtd 24 May 12 ICO

(d) PDBR ltr dtd 31 May 12 ICO

1. Pursuant to reference (a) I approve the recommendations of the PDBR set forth in references (b) through (d).

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

a. former USN: Disability separation with entitlement to disability severance pay with a rating of 20 percent (increased from 10 percent) effective 10 December 2004.

b. former USN: Disability separation with entitlement to disability severance pay with a rating of 20 percent (increased from 10 percent) effective 1 August 2005.

c. former USN: Placement on the Permanent Disability Retired List with 40 percent disability rating (increased from 20 percent) effective 19 April 2003.

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 member once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)