RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1100517 SEPARATION DATE: 20050801

BOARD DATE: 20120223

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Navy DT3/E-4 (Dental Technician), medically separated for grade IV chondral defect of the right (R) knee, status post (S/P) microfracture*.* The CI injured his knee while playing for the all Navy basketball team. He underwent a right knee arthroscopy in 2005, but did not respond adequately to treatment. He was working in his rating, and his commander recommended retention; however, the CI underwent a Medical Evaluation Board (MEB). The MEB forwarded “pain in joint, lower leg and disorder of bone and cartilage, unspecified” to the Physical Evaluation Board (PEB) on NAVMED 6100/1. 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 PEB adjudicated “grade IV chondral defect of the R knee, S/P microfracture” as unfitting, and rated it 10% with likely application of the SECNAVINST 1850.4E and DoDI 1332.39 (E2.A1.5). The PEB additionally adjudicated “right knee pain” condition was rated category II, conditions that contribute to the unfitting condition. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “Issues not fully addressed only one knee and the issues forloss of smell and taste from broken nose and surgery not addressed, broken left had arthritis and constant pain not addressed, back condition crushed disc L4 from car rollover in 2000 en route to duty station great lakes and left knee condition was not addressed. Disability rating of 10% percent was not accurate for right knee condition and also right foot wasn't address. I had numerous surgeries in service right knee twice, broken left hand and broken nose. Right achilles condition has become worse and my right hip also. I was separated from service before all my conditions were treated and received a 10% PEB evaluation and separated which should have been more. The VA has given me a 70 percent evaluation however with all the issues including pain still from the injuries while in service including my left knee injury and right knee injury. The right knee was addressed only and the left knee was not, then I got separated from service.” [sic] The CI additionally states: “The evidence needed can be found in My VA file and the VAMC Providence which I have all my treatment and some private treatment records from local clinics also. I know that all the issues regarding my knees, ankles, back, left hand and broken nose should have all been including in my PEB rating however only my right knee and arthritis of the right knee was addressed; I got a 10% for right knee chondro and 0% for arthritis of the right knee. I do believe that with the disabilities inquired in service my PEB rating should have addressed those disabilities and the life changing events which took away my ability to become a police officer and basketball coach. I gave my all to the Navy 100 percent and when I became expendable I received only 10 percent and no 30 percent or more which would have retired me. That was the right thing to do.”[sic]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20050408** | **VA (2.5 Mo. After Separation) – All Effective Date 20050802** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Grade IV Chondral Defect of the Right Knee, S/P Microfracture | 5099-5003 | 10% | S/P Microfracture Chondroplasty of R Knee | 5260-5010 | 10% | 20051020 |
| Right Knee Pain | Cat II | No VA Entry |  |  |  |
| ↓No Additional MEB/PEB Entries↓ | Achilles Tendonitis, R Foot | 5024 | 10% | 20051018 |
| Achilles Tendonitis, L Foot | 5024 | 10% | 20051018 |
| S/P Septorhinoplasty, w/Post-Traumatic Deviated Septum Repair w/Residuals of Blockage Between 25% & 50% of Both Sides | 6502 | 10% | 20051011&25 |
| Migraine Headaches | 8100 | 10% | 20051020 |
| 0% x 1/Not Service Connected x 2 | 20051031 |
| **Combined: 10%** | **Combined: 40% (with bilateral factor of 2.7%)** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Grade IV Chondral Defect of the R Knee, S/P Micro fracture: There were threegoniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |
| --- |
| Separation Date: 20050801 |
| ROM – R Knee | PT ~ 6 Mo. Pre-Sep(20050201) | MEB ~ 5 Mo. Pre-Sep(20050307) | VA C&P ~ 2.5 Mo. After-Sep (20051020) |
| Flexion (140⁰ normal) | 115⁰ | 130⁰ | 110⁰ with pain |
| Extension (0⁰ normal) | Not measured | full | 0⁰ |
| Comment | Minimal swelling | 12 degree Q angle; pain over the lateral retinaculum(lateral patella area); apprehension with patellar mobility due to lateral patellar pain; significant contracture lateral retinaculum; crepitus with PROM and audible snap |  paresthesias; 3 hyperpigmented scars; crepitus; joint line tenderness; patellar tenderness; refused to squat/duck walk for fear of pain/injury; deep tendon reflexes (DTR’s) absent strength 5/5; 10/10 knee kicks with pain; negative Lachman, anterior/posterior drawer, McMurray’s; stable valgus and varus stress |
| §4.71a Rating | 10%  | 10% | 10%  |

The CI had a well documented history of right knee injury in the service treatment record (STR) dating back to June 2003 when he twisted his right knee and ankle; however there was no mention of knee instability at that time. A knee x-ray done in July 2003 indicated a joint effusion. In November 2003, the CI was evaluated in ambulatory care clinic and complained about problems ascending and descending stairs and difficulty with impact exercises. The examiner was concerned with either a partial anterior collateral ligament (ACL) tear or other pathology. In December 2003, an MRI indicated a small joint effusion and a possible tendinopathy. In July 2004 the CI was seen by orthopedics who noted complaints of an intermittent effusion, locking and giving away symptoms; however physical findings showed a slight decreased ROM (+10-130) with a minimal effusion and no instability. A follow-up MRI indicated a small joint effusion and patellar chondromalacia. An Orthopedic follow-up indicated patellofemoral syndrome. In January 2005 the CI underwent a diagnostic right knee arthroscopy with chondroplasty and microfracture of a grade IV chondral lesion. The CI was seen by physical therapy (PT) four weeks post-surgery and had occasional sharp patellar pain, with limited ROM and minimal swelling. The MEB examination five months prior to separation indicated significant ongoing pain approximately seven out of ten with ten being the worst and physical findings of crepitus with passive motion and an audible snap. The examiner opined that because of the significant knee tightness, that a second knee surgery with a lateral release might be needed in the future. The VA Compensation & Pension (C&P) examination two months after separation documented constant achy pain seven out of ten necessitating the wearing of a knee brace; instability; edema; paresthesias; frequent flares; inability to run, or play basketball and with precipitating factors of prolonged walking, prolonged sitting greater than fifteen minutes. Physical findings were limited ROM, with endpoint pain and a refusal to squat or duck walk for fear of pain and/or injury.

The VA and the PEB chose different coding options for grade IV chondral defect of the R knee, S/P microfracture which did not materially impact the level of disability rating. The PEB coded 5099 analogous to 5003 arthritis, degenerative (hypertrophic or osteoarthritis) and rated 10% and the VA coded 5260 Leg, limitation of flexion of analogous to 5010 arthritis, due to trauma rated 10%. The right knee was tender and demonstrated painful motion on both exams. No exam indicated limited ROM to a compensable level without application of §4.59 (painful motion). VASRD §4.71a specifies for 5003 that “satisfactory evidence of painful motion” constitutes limitations of motion and specifies application of a 10% rating “for each such major joint or group of minor joints affected by limitation of motion”. There was no objective evidence of knee instability proximate to separation and no documentation of patella dislocation. The knee condition could not be reasonably rated higher than 10% using any exam proximate to separation or any alternate coding schema. After due deliberation, the Board determined there is not reasonable doubt in the CI’s favor to justify a recommendation for overturning the 10% rating assigned by the PEB for grade IV chondral defect of the R knee, S/P microfracture.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for broken nose and surgery, broken left hand (status post flexion contracture release of the left fifth digit) with arthritis and constant pain, back condition, left knee condition, right foot condition, right and left achilles condition, and right hip condition. The broken left hand (status post flexion contracture release of the left fifth digit) with arthritis and constant pain was reviewed by the action officer and considered by the Board. There was no evidence for concluding that this condition interfered with duty performance to a degree that could be argued as unfitting. The available record does not contain evidence of any duty limitations related to this condition and it is not mentioned in the nonmedical assessment from the commander. The broken nose and surgery, back, left knee, right foot, right and left achilles, and right hip conditions were not documented in the DES file. The DES file includes any MEB and PEB paperwork as well as the MEB history and physical. No MEB history and physical was available for Board review. 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. Migraine headache was diagnosed and rated by the VA proximal to separation but this condition was 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 grade IV chondral defect of the R knee, S/P micro fracture condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the broken left hand (status post flexion contracture release of the left fifth digit) with arthritis and constant pain condition, the Board unanimously agrees that it cannot recommend any findings 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.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Grade IV Chondral Defect of the Right Knee, S/P Microfracture | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110719, 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 letter dtd 6 Mar 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 individuals’ 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)