RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD1100726 SEPARATION DATE: 20050801

BOARD DATE: 20110517

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty ET1/E-6 (14NO/4752, Electronic Technician), medically separated for persistent patellofemoral syndrome. The CI reported a 5-6 year history of bilateral knee pain without any specific injury at the onset. 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). Persistent patellofemoral syndrome was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. 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 persistent patellofemoral syndrome condition as unfitting, rated 10%; with application of SECNAVINST 1850.4E. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “MEB and PEB only looked at Patellofemoral Syndrome for 1 knee. They should have also looked at the same problem in the other knee, asthma, and a major depressive disorder. I have been rated by the VA for all these conditions, effective date of discharge.” He additionally lists all of his VA conditions and ratings as per the rating chart below. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The separate conditions of right and left knee patellofemoral syndrome as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below in addition to a review of the ratings for the unfitting conditions. The other requested conditions, asthma and major depressive disorder, 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 20050615** | | | **VA (13 Mo. After Separation) – All Effective Date 20050802** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Persistent Patellofemoral Syndrome | 5099-5003 | 10% | Iliotibial Band Syndrome, Patellofemoral Pain Syndrome, Arthritis, Status Post Lateral Release Right Knee | 5257 | 10% | 20060922 |
| Iliotibial Band Syndrome, Patellofemoral Pain Syndrome, Arthritis, Status Post Lateral Release Left Knee | 5257 | 10% | 20060922 |
| ↓No Additional MEB/PEB Entries↓ | | | Asthma | 6602 | 10% | 20060922 |
| Major Depressive Disorder | 9434 | 30%\* | 20060915 |
| 0% x 5/Not Service-Connected x 4 | | | |
| **Combined: 10%** | | | **Combined: 50%** | | | |

\* Initially rated at 0% but increased to 30% effective 20050802 after de novo review by Decision Review Officer. This decision was made 20080204.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests 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 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. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Persistent Patellofemoral Syndrome. 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.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Goniometric ROM –  L/R Knee | MEB ~ 4 Months Prior to Separation  (20050406) | | VA C&P ~ 13 Months After Separation  (20060922) | | |
|  | Right | Left | Right | | Left |
| Flexion (140⁰ normal) | 135⁰ | Not measured | 130⁰ | | 140° |
| Extension (0⁰ normal) | 0° | Not measured | 0⁰ | | 0° |
| Comment | Normal gait.  **Bilateral knees**: Q angle less than 10 degrees; positive J-sign;; heel-to-buttock showed 8"; nontender along joint lines; stable to varus and valgus testing; stable Lachman’s and posterior drawer.; intact to motor and sensory testing and normal pulse.  **Right knee**: No effusion; hamstrings showed popliteal angles of 30 degrees; patella with greater than 1 quadrant of patellar glide and tilt greater than neutral; tender along the lateral facet; crepitus with patellofemoral motion.  **Left Knee**: Patella with approximately 1 quadrant of patellar glide and tilt less than neutral. | | Pain at terminal degrees for both knees. Normal gait.  **Bilateral knees**: no swelling, deformity, warmth, or significant tenderness; medial and lateral collateral ligaments stable; anterior and posterior cruciate ligaments stable; McMurray test negative; following repetitive activity there was no additional limitation in range of motion or joint function due to pain, weakness, fatigability, or lack of endurance; motor strength 5/5 in all extremities; sensation intact; reflexes symmetric bilaterally.  X-rays of both knees normal. | | |
| §4.71a Rating\* | 10% | 10% (painful motion) | 10% | 10% (painful motion) | |

The CI had a long history of bilateral knee pain without any specific inciting injury. He was first seen for right knee pain in April 2000 for knee pain that had been present for 6 months while deployed. Excess mobility of the patella and mild tenderness to the lateral proximal area of the right knee was noted on examination. After failure to respond to conservative treatment he was referred to orthopedics in October 2000 with possible lateral joint line tenderness. A positive patellar grind test, crepitance, and lateral patellar entrapment tests were noted in the right knee and the CI was referred to physical therapy. These findings persisted and decreased flexion was first noted in March 2001. He continued to have intermittent visits for right knee pain. An MRI was obtained in February 2003, but it was normal and another referral to orthopedics was made. In March 2003 he was seen for bilateral knee pain, right greater than left. In May 2003 he had full ROM of the right knee with patellar glide of one quadrant, neutral tilt, and tenderness along the lateral retinaculum and lateral facet. A CT scan in September 2003 demonstrated abnormal patellar tracking with a tight lateral patellofemoral ligament. Reduction was noted at 40 degrees. Examination at this time noted tight lateral band of the patellofemoral ligament and patellofemoral compression reproduced the CI’s symptoms. In October 2003 a LIMDU Board was completed and the CI was placed on 8 months of LIMDU.

The CI underwent right knee surgery in December 2003 with arthroscopic lateral release, synovitis debridement, and anterior cruciate shrinkage. Examination under anesthesia was negative for any instability. No meniscal pathology was noted with the arthroscope but osteoarthritic changes were noted at the superior pole of the patella. Synovitis in the anterior portion of the patellofemoral joint was noted and debrided. The tight lateral patellofemoral ligament was incised and translation of the patella was noted to be improved. The CI appeared to be doing well after surgery despite a fall on his knee with some increased swelling. However, he continued to have pain after surgery and felt a grinding sensation. By April 2004 the patellofemoral tracking was slightly abnormal and this progressively worsened. The CI was referred to Yale university sports medicine clinic. A rheumatologic disorder was pursued but later and conservative therapy was continued. In August 2004 his LIMDU for bilateral knee pain was extended. In October 2004 patellofemoral grinding with a catch was present, J sign was negative and he had bursitis at the right IT band. He was seen again in December 2005 for bilateral pain, right greater than left with pain more lateral on the right and anterior on the left. The right knee had an effusion and flexion as limited to 135 degrees. He also had a positive J sign and greater than one quadrant patellar glide on the right with tilt greater than neutral. On the left knee he had patellar glide of approximately one quadrant and tilt less than neutral. A trial of three Synvisc injections in both knees was started in March 2005. He did respond initially but by May 2005 the CI felt his symptoms were the same as before the injections. He was referred for an MEB again.

The MEB narrative summary (NARSUM) examination completed in April 2005 noted a long history of bilateral patellofemoral syndrome that had not resolved with bilateral physical therapy, bilateral Synvisc injections, limited duty for bilateral knees, and right knee surgical lateral release and synovitis debridement. Further surgery was not recommended at that time but the NARSUM noted it might be necessary in the future. The CI continued to have pain and occasional swelling that is exacerbated by stair climbing, prolonged standing or sitting, prolonged position of his knee for any extended period of time, squatting and bending, and any type of impact activities. His condition continued to require significant activity restrictions and the case was referred to the PEB. This examination documents pain limited motion of the right knee. Left knee ROM was not measured but painful motion is documented in the history portion of the NARSUM.

An original VA Compensation and Pension (C&P) examination was scheduled for 24 April 2006, but CI did not show for this examination and all conditions were rated at 0%. The CI claimed he wasn’t notified of his examination dates and had a new C&P examination done on 22 September 2006. Based on this examination and a review of service treatment record (STR), the VA rated each knee at 10%. The right knee was rated 10% for painful/limited motion and the left knee was rated 10% for painful motion. The VA used VASRD code 5257 which is for instability. However, no exams, either service or VA, documented any instability and this appears to be an error.

The PEB rated bilateral patellofemoral syndrome under the single analogous 5003 (degenerative arthritis) code. The PEB findings document states a rating is applied for persistent patellofemoral syndrome and does not specify if this included both the right and left knees or just the right knee. Both the MEB NARSUM and JDETS notes clearly refer to a bilateral knee condition, as does the MEB history and physical performed on 10 May 2005. While the initial MEB/LIMDU board in February 2004 only considered the right knee, the subsequent MEB/LIMDU board of 25 August 2004 clearly referred to a bilateral knee condition. Therefore, it appears that the PEB considered a bilateral knee condition to be unfitting and rated it analogous to the 5003 code.

However, each unfitting knee condition should be rated separately IAW the VASRD. VASRD §4.71a specifies for 5003 that “satisfactory evidence of painful motion” constitutes limitation of motion and specifies application of a 10% rating “for each such major joint or group of minor joints affected by limitation of motion.” The right knee has pain limited flexion documented on both the MEB NARSUM and VA C&P examinations. While the limitation of the ROM does not reach the minimal compensable level of 60 degrees, a rating of 10% is warranted IAW VASRD §4.59 Painful motion. This paragraph states the intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability and to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint. The left knee has painful motion documented in the VA C&P examination and throughout the STR. The MEB NARSUM does not include ROM measurements for the left knee but does mention pain in both the right and left knees, with the right knee symptoms worse than the left. The VA C&P examination did measure the ROM of the left knee and it was normal. However it documented painful motion. Therefore the left knee should also be rated at 10% IAW with §4.59. 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 right knee condition and 10% for the left knee condition.

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 knee patellofemoral syndrome condition, the Board unanimously recommends a permanent disability rating of 10%, coded 5099-5003 IAW VASRD §4.71a and §4.59. In the matter of the left knee patellofemoral syndrome condition, the Board unanimously recommends a permanent disability rating of 10%, coded 5099-5003 IAW VASRD §4.71a and §4.59.

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** | |
| Right Knee Patellofemoral Syndrome | 5099-5003 | | 10% | |
| Left Knee Patellofemoral Syndrome | 5099-5003 | | 10% | |
| **COMBINED** | | **20%** | |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110821, 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)