RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100735 SEPARATION DATE: 20030331

BOARD DATE: 20120302

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (0622, Radio Operator) medically separated for right knee pain after anterior cruciate ligament (ACL) reconstruction. The CI injured his right knee in July 2000. He was treated, but did not respond adequately to fully perform his military duties. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Right anterior knee pain 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 pain condition unfitting, and rated it 10% IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was thus medically separated with 10% disability.

CI CONTENTION: “I was rated 20% disability for my right knee, 10% for my left knee because of my right knee, and 30% for depressive disorder secondary to my right knee.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Navy PEB – dated 20030122** | | | **VA (5 mo. After Separation) – All Effective 20030401** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Anterior Knee Pain | 5299-5003 | 10% | Right ACL Injury | 5257 | 10%\* | STR\*\* |
| **Combined: 10%** | | | **Combined: 10%\*** | | | |

\* VA rating for Right Knee was later increased to 20%, based on a subsequent VA Rating Decision (dated 20110317)

\*\*CI did not show for his scheduled examination. Service Treatment Record was used by the VA for rating determination.

ANALYSIS SUMMARY: The Board notes the Department of Veterans’ Affairs (DVA) ratings listed by the CI for his service-connected disabilities. However, the Board must base its recommendations on the condition of the CI at the time of separation from military service. The DVA ratings which it considers in that regard are those rendered most proximate to separation. The Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions. That role and authority is granted by Congress to the DVA. The Board also acknowledges the CI's assertion that service ratings should have been conferred for other conditions documented at the time of separation, and for conditions not diagnosed while in the service (but later determined to be service-connected by the DVA). While the DES considers all of the CI's medical conditions, compensation can only be offered for those 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.

Right Knee Condition. The CI injured his right knee during Marine combat training in July 2000. Magnetic resonance imaging (MRI) confirmed an ACL tear, and also suggested medial and lateral meniscus tears. Surgery was recommended but the CI was reluctant. Later, he consented to surgery and underwent right knee ACL reconstruction. Post-operatively, the CI did well, but he developed anterior knee pain that worsened with activities. After two LIMDU periods, an MEB was initiated. At the July 2002 MEB evaluation, nine months prior to separation, the CI complained of right knee pain with running, kneeling, squatting, or prolonged standing. He denied any instability, swelling or other complaints. Range-of-motion (ROM) testing showed 135o of right knee flexion. There was some patellar tenderness to palpation, but no effusion. Pivot-shift and Lachman’s tests were both negative. X-rays showed well-placed metal screws used in the ACL surgery. The examiner noted that the anterior knee pain “may be a persistent problem.” The CI failed to show for his scheduled VA Compensation and Pension (C&P) examination. The August 2003 VA Rating Decision (VARD) used the CI’s service treatment record (STR) for rating purposes, and assigned an evaluation of 10% “based on evidence showing pain with activity, swelling, and stiffness.” Three subsequent VARDs (April 2007, October 2009 and April 2010) continued the 10% rating for the right knee condition. Then in March 2011, nearly 8 years after separation, the VA issued a decision which raised his right knee rating to 20%.

The Board directed its attention to its rating recommendations based on the evidence just described. The Board noted that the ROM documented at the MEB examination failed to reach compensable levels for the VASRD codes specific to leg extension and flexion (5261 and 5260). Thus there is no compensable ROM impairment for the right knee. However, IAW VASRD §4.40 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 MEB exam documented no mechanical instability or subluxation, which would be required for a higher evaluation under code 5257. Likewise, there was no locking, effusion, or joint line tenderness, as required for a higher evaluation under code 5258. Thus, there is no route to a rating higher than 10%. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change to the PEB adjudication of the right knee condition.

Other Contended Conditions. The CI asserts that compensable ratings should be considered for left knee pain and depressive disorder. Both of these conditions were reviewed by the action officer and considered by the Board. There was insufficient evidence for concluding that either of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that neither of the stated conditions were subject to service disability rating.

Remaining Conditions. Costochondritis and several other conditions were also noted in the DES file. None of these conditions were clinically significant during the MEB/PEB period, none were the basis for LIMDU, and none were implicated in the commander’s non-medical assessment (NMA). These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. No other conditions were service-connected with a compensable rating by the VA within 12 months of separation. 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 right knee condition and IAW VASRD §4.40, §4.59, and §4.71a; the Board unanimously recommends no change in the PEB adjudication. In the matter of the left knee pain, depressive disorder, costochondritis, or any other conditions eligible for consideration, 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, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Anterior Knee Pain, After ACL Reconstruction | 5299-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110904, 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 16 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)