RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1100760 SEPARATION DATE: 20040228

BOARD DATE: 20120308

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LT/0-3 (3105 / Supply Officer), medically separated for status post (s/p) left knee anterior cruciate ligament (ACL) tear with lateral meniscal tear. In October 1997, he injured his knee while playing football at the U.S. Naval Academy and underwent an ACL reconstruction in January 1998. He initially had significant improvement in knee function and was given a waiver for commissioning. However, his knee deteriorated over time leaving him with persistent 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 (LIMDU) and underwent a Medical Evaluation Board (MEB). “Left knee ACL tear and left knee lateral meniscal tear” were 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 left knee condition as unfitting, rated 10%; with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). Additionally s/p ACL reconstruction, left knee, with bone patellar bone autograft and subtotal lateral meniscectomy condition was rated cat II, (contributing to the unfitting condition). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “My naval career was cut short due to my medical discharge. After graduating from the Naval Academy and excelling at my first two duty stations, including becoming Naval Aviation Supply Officer (NASO) certified, I learned that I would no longer be able to continue my service. I feel that the rating should be changed because my injury prohibited me the opportunity [sic] complete the years of service required to retire from naval service.” He additionally lists all of his VA conditions and ratings as per the rating chart below and stated “I have received a determination letter from the VA but it contains some errors that I intend to address during the appeal process. The letter indicated that I was medically separated due to Primary sclerosing cholangitis and not my knee condition. I was rated at 10% for Primary sclerosing cholangitis but the knee condition was not properly considered due to the mix up.” A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

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| **Service IPEB – Dated 20030320** | **VA (4 Yrs. After Separation) – All Effective 20081024** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| S/P Left Knee ACL Tear with Lateral Meniscal Tear | 5299-5003 | 10% | Traumatic Derangement Left Knee with Torn ACL S/P ACL Repair and Menisectomy | 5299-5024 | 0% | 20090305 |
| S/P ACL Reconstruction, Left Knee, with Bone… | Category II |
| ↓No Additional MEB/PEB Entries↓ | Sclerosing Cholangitis with Biliary Stent Placement… | 7316 | 10% | 20090305 |
| Recurrent Subluxation Right Shoulder | 5203 | 0% | 20090305 |
| 0% x 2 / Not Service Connected x 1 | 20090305 |
| **Combined: 10%** | **Combined: 10%** |

\* VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, that the rating should be changed because his injury prohibited him the opportunity to complete the years of service required to retire from naval service. The Board utilizes VA 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. It is noted for the record that the Board recognizes the significant interval (four years) between the date of separation and the Department of Veterans’ Affairs (DVA) evaluation. DoDI 6040.44, under which the Board operates, specifies a 12-month interval for special consideration to DVA findings. This does not mean that the DVA information was disregarded, as it was a valuable source for clinical information and opinions relevant to the Board’s evaluation. In matters germane to the severity and disability at the time of separation; however, the information in the service record was assigned proportionately more probative value as a basis for the Board’s rating recommendations.

S/P Left Knee ACL Tear with Lateral Meniscal Tear Condition. There was no goniometric range-of-motion (ROM) evaluation in evidence proximate to separation. The narrative summary (NARSUM) exam, 15 months prior to separation indicated full ROM of the left knee, no effusion, and stability medially and laterally with a stress test. The drawer test and Lachman test were both negative with a firm endpoint. There was no distal neurovascular deficit. Radiographs showed reconstruction tunnels in the proximal tibia and distal femur with a retained screw in the proximal tibia for fixation of the ACL graft. There were no loose bodies in the joint and there are no significant osteoarthritic changes noted. The MEB DD Form 2807 and DD Form 2808, four months prior to separation, indicated pain in both knees with lower extremity exam documented as normal. The VA C&P exam, four years after separation, indicated a history of problems with recurrent pain in the lateral aspect of the left knee with “locks and clicks at times” and “frequent episodes of swelling.” The right knee was indicated as normal. The left knee ROM was 0-135° (normal 0-140°), which was the same as the unaffected knee. The knee was stable with no lateral or medial movement and no drawer sign, and no McMurray's sign. The VA rated this exam at 0% coding analogous to 5024 (tenosynovitis). The service record documented sufficient evidence of painful motion to apply the tenants of §4.59, painful motion for a minimal compensable rating for the left knee. The Board considered the entire record and adjudged there was insufficient evidence for alternate rating under code 5258 as there was no in-service evidence of frequent episodes of “locking,” pain, and effusion into the joint. Coding analogous to 5259 for symptomatic removal of the semilunar cartilage (meniscus) was supportable, but offered no benefit over the PEB's 10% coding of 5299-5003, analogous to arthritis, degenerative. Coding under 5010 (arthritis, due to trauma) uses the same criteria as 5003 and was not predominate. There were insufficient symptoms to dual code the knee without violating VASRD §4.14 (avoidance of pyramiding). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB’s 10% adjudication for the left knee condition.

Other PEB Condition. The other condition forwarded by the MEB and adjudicated as category II by the PEB was s/p ACL reconstruction, left knee, with bone patellar bone autograft and subtotal lateral menisectomy. This condition was not separable for the remaining pathology of the left knee and was considered and discussed in the CI’s primary unfitting condition discussed above. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB category II adjudication as there was no additionally ratable condition not considered in the above 10% left knee rating.

Other Contended Condition. The CI’s application asserts that compensable ratings should be considered for primary sclerosing cholangitis. The VA rated this condition based on initial diagnosis in February 2004 and after separation hospitalization in November 2006. Records indicated report of hospital admission in December 2003. However, 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.

Remaining Conditions. Other conditions identified in the DES file were bilateral dislocated shoulders; arthritis of the right knee; reconstructive jaw surgery in 1998; back stiffness; plantar warts bilateral; hypercholesterolemia and allergic reaction (rash and itching) from Anaprox and Percocet. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period, none carried attached duty limitations, and none was implicated in the 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.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the S/P left knee ACL tear with lateral meniscal tear condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of S/P ACL reconstruction of the left knee, the Board unanimously agrees that it cannot recommend a separate finding of unfit for additional rating at separation, as it was included in the S/P left knee ACL tear with lateral meniscal tear condition for rating. In the matter of the shoulder conditions or any other medical conditions eligible for Board 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.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| S/P Left Knee ACL Tear with Lateral Meniscal Tear | 5299-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110916, 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)