RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxx BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100803 SEPARATION DATE: 20080830

BOARD DATE: 20120626

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (0311 / rifleman), medically separated for a left knee condition. He underwent a Medical Evaluation Board (MEB) in May 2006, November 2006, and August 2007, all ending in the recommendation of being placed on limited duty (LIMDU). In July 2007, he underwent an operative repair for a left meniscus tear. He did not respond adequately to treatment and was unable to fulfill the physical demands within his Military Occupational Specialty (MOS) or meet physical fitness standards and underwent his final MEB. Chondromalacia, tear of lateral cartilage or meniscus of knee, current, unspecified orthopedic aftercare and essential hypertension were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB adjudicated the left knee with limited range-of-motion (ROM) condition as unfitting rated 10%; additionally grade II chondromalacia condition rated category II; and hypertension condition rated category III with application of SECNAVINST 1850.4E and Veterans Administration Schedule for Rating Disabilities (VASRD), respectively. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I was separated before a better determination could be made. I also still have issues with all of my conditions.” He additionally lists PTSD, GERD and left knee 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, 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 grade II chondromalacia and hypertension condition and the unfitting left knee condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested conditions; posttraumatic stress disorder (PTSD) and gastro easophogeal reflux disease (GERD) 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 20080606** | | | **VA (8 Mo. After Separation) – All Effective 20080831** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lateral Meniscus Tear Status Post Lateral Meniscus Repair With Limited Range Of Motion | 5299-5003 | 10% | Left Knee Medial Meniscus Repair | 5299-5260 | 10% | 20050503\* |
| Grade 2 Chondromalacia | CAT II | |
| Hypertension | CAT III | | Hypertension | 7101 | 0% | 20050503\* |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 4/Not Service-Connected x 7 | | |  |
| **Combined: 10%** | | | **Combined: 10%** | | | |

\*STR CI did not show for 20080703 VA Exam

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). 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 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 6044.40; 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.

Left Knee Condition. The CI had an onset of left knee pain during a training hike exercise in 2006. He underwent conservative treatment until 2007 and opted for definitive surgical care. Surgery did not relieve his pre-operative symptoms of pain or swelling and the orthopedic surgeon opined he would benefit from a second knee arthroscopy in the future in order to help improve this patient's function, decrease his pain and increase his ROM and his ability to exercise which would allow him to decrease his weight and possibly assist with his control of his hypertension. However, further surgery was denied by his command and he was thus referred for an MEB. His limitations included; no running, jumping, climbing, squatting, marching, humping, unit physical training, physical training test, sports, martial arts, field duty, rifle range, working parties, standing watch or formations, no deployments and able to participate in rehabilitation activities per physical therapy instruction. His non-medical assessment (NMA) corroborated his limitations in addition documented; he did not meet the height/weight standards, was not working in his rating, was pending a disciplinary administrative action and was missing 2-3 hours per week from duty.

There were two goniometric (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| --- | --- | --- |
| Goniometric ROM –  L Knee | MEB ~ 4 Mo. Pre-Sep  (20080404) | VA C&P ~8 Mo. After-Sep  (20090429)\* |
| Flexion (140⁰ normal) | 95⁰ | 95⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ |
| Comment | Pain with flexion | Pain with flexion |
| §4.71a Rating | 10% | 10% |

\*Note measurement did not change VA RD in 2008

At the MEB exam, the CI reported; 5/10 pain at rest and increased with standing or walking of greater than thirty minutes to 6/10, unable to climb stairs, squat or run without pain, and reported clicking, catching, and mechanical symptoms. The MEB physical exam demonstrated; no effusion, stable ligament testing, negative provocative meniscus testing, and a positive lateral joint line tenderness. X-rays revealed chondromalacia patella and a magnetic resonance imaging (MRI) showed possible grade I chondromalacia patella. Arthroscopic photos revealed lateral meniscus tear and grade II chondromalacia and grade I/II chondral changes of the trochlea. At the VA Compensation and Pension (C&P) exam, 8 months after separation, the CI reported; constant 7/10 lateral parapatellar pain, worse with prolong sitting and standing, daily flares increasing pain to 8/10, intermittent numbness of lateral knee that radiated to the toes, swelling, and denied instability, giving way, use of pain medications or use of assisted devices. The C&P physical exam demonstrated; well healed arthroscopic scars, a suprapatellar effusion, a positive patellofemoral grind, negative provocative ligament or meniscus testing, a normal neuromuscular and vascular exam and did not meet DeLuca criteria. X-ray of the left knee revealed slight narrowing of the medial and lateral compartments. The MRI revealed; the lateral meniscus appeared upper limits to mildly prominent in size, patella was low normal in position without subluxation or dislocation but with fissuring of the dorsal cartilage, a small joint effusion and an indeterminate etiology of arthrofibrosis.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were complete, well documented, and similar in terms of ratable data; and, therefore assigns them equal probative value. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB’s chosen code 5003 (arthritis, degenerative) specifies that, in the presence of degenerative arthritis established by X-ray findings, when “the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10% is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5003. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.” There was noncompensable ROM impairment of the left knee, and the Board agreed that there was adequate documentation of degenerative changes and painful motion of the joint, prior to separation, to merit application of a minimal compensable rating under this code. The Board also considered code 5259 (cartilage, semilunar, removal of, symptomatic) or code 5014 (chondromalacia patella analogizes to 5014) both applicable to the underlying pathology, which likewise results in a 10% rating for the left knee. The Board considered the VA choice of coding the left knee analogous to 5260, loss of motion in flexion. Based on data prior to separation, this coding approach would also yield a minimal compensable 10% rating with application of §4.59 (painful motion). Finally, the Board considered code 5258 (Cartilage, semilunar, dislocated, with frequent episodes of “locking,” pain, and effusion into the joint) criteria based on the symptoms of the left knee giving way and effusions, but there was no objective clinical evidence to support these symptoms. There was no VASRD compliant coding or rating approach that would yield additional or higher than a minimal compensable rating.

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 adjudication for the left knee condition and there was insufficient cause to recommend a change in the PEB fitness determination for the grade II chondromalacia condition.

Contended PEB Conditions. The conditions adjudicated as not unfitting by the PEB were grade II chondromalacia and hypertension. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. Grade II chondromalacia was considered under the left knee condition. The hypertension condition was not profiled; was not implicated in the commander’s statement; and, was not judged to fail retention standards. This condition was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the hypertension condition; and, therefore, no additional disability ratings can be recommended.

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 left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended grade II chondromalacia and hypertension conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lateral Meniscus Tear Status Post Lateral Meniscus Repair With Limited Range Of Motion | 5299-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110917, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

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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 10 Jul 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:

XXX XX, former USMC

XXX XX, former USMC

XXX XX, former USMC

XXX XX, former USMC

XXX XX, former USN

XXX XX, former USN

XXXXXXX

Assistant General Counsel

(Manpower & Reserve Affairs)