RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1100820 SEPARATION DATE: 20020401

BOARD DATE: 20120814

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty 1LT/0-2 (9901/Basic Officer/Undesignated), medically separated for degenerative disc disease (DDD) of the back and right knee anterior cruciate ligament (ACL) insufficiency, status post anterior cruciate ligament repair. The back and post-operative right knee conditions could not be adequately rehabilitated. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was placed on light duty and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the DDD of the back and right knee anterior cruciate ligament insufficiency, status post anterior cruciate ligament (ACL) repair conditions as unfitting, rated 10% and 10% respectively, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a combined 20% disability rating.

CI CONTENTION: “Injuries to back, L4 and L5 discs, and to Right knee ACL. This rating did not include all of the full impact of my back injury, to long term capabilities and ability to function in everyday life, let alone the demands of regular life.”

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. 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 20020107** | | | **VA (1 Mos. Post-Separation) – All Effective Date 20020401** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Degenerative Disc Disease, Back | 5295 | 10% | Degenerative Disc Disease (Back Condition with Sciatica) | 5293 | 10% | 20030318 |
| Right Knee ACL Insufficiency, S/P ACL Repair | 5257 | 10% | Right/knee Condition with S/P ACL Repair | 5260 | 10% | 20030318 |
| Residual Scar, Right Knee | 7804 | 10% | 20030318 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% X 0 / Not Service-Connected x 9 | | |  |
| **Combined: 20%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. 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 nor for conditions determined to be service-connected by the Department of Veteran Affairs (DVA), but not determined to be unfitting by the PEB. However 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’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. The Board notes that the 2002 VASRD standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in September 2003. The 2002 standards for rating based on range-of-motion (ROM) impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. When older cases have goniometric measurements in evidence and when the VASRD 2002 code 5292 (for limitation of motion, lumbar spine) is applicable, the Board reconciles (to the extent possible) its opinion regarding degree of severity for 5292 with the objective thresholds specified in the current §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation.

Back Condition. The CI developed low back pain during gymnastic competitions while at the U.S. Naval Academy in September 1998. A magnetic resonance imaging (MRI) obtained at that time showed only mild sclerosis of joints of the low back. The pain condition improved with medical treatment and modification of her gymnastic routines. The back pain recurred during Basic School after graduation from the Naval Academy in 1999. Despite aggressive treatment, the condition progressed until she was unable to run, carry a pack or perform strenuous physical activity. An MRI obtained in August 2001 revealed a diffuse disc bulge with annular tear (rim of disc) but minimal compression of the spinal nerves. Surgical repair was considered by neurosurgery but not pursued. At the time of the MEB examination, performed approximately 4 months before separation, the CI reported that her back had stabilized but that she could not run more than a mile or two limited by knee swelling. In a letter to the PEB dated 24 September 2001, the CI expressed significant pains in her back and legs with minimal lifting activity. She noted that she has good days where she could do some athletic activities and walk around, but, most often, she must spread simple activities over time or she will be able to accomplish nothing more than going to work followed by bed rest for the next 3 days. There are no physical examination findings relative to the back in the NARSUM examination.

On neurosurgical evaluation performed 6 September 2001, approximately 7 months before separation, CI reported shooting pain in the left lower extremity extending to the foot. She noted loss of control of her legs when bending over to lift. On physical examination motor strength and reflexes of the legs were normal. Tandem, toe and heel gait were normal. Sensation altered over the entire leg worsening distally was recorded. The commander’s non-medical assessment (NMA), dated January 2002, noted the CI was reported to have engaged in wind surfing and kayaking during rehabilitation. At the VA Compensation and Pension (C&P) examination performed approximately 11 months after separation, the CI reported inability to run secondary to knee pain, but could swim and ride a bike. She avoided lifting weight more than 10 pounds due to backache. The CI did office work with no effect on her job. On examination slight tenderness over the SI joint was present. Spasm and deformity were absent. Active flexion was 93 degrees with some limitation in extension and side bending. Gait was normal, and neurological examination was normal including deep tendon reflexes. The Board directs attention to its rating recommendation based on the above evidence. As noted previously, the CI’s back condition was rated in accordance with VASRD guidelines in effect at that time.

The Board must correlate the above clinical data with the 2002 rating schedule (applicable diagnostic codes include: 5292 limitation of lumbar spine motion; 5293 intervertebral disc syndrome; and 5295 lumbosacral strain. There was no ankylosis for rating under code 5289). The PEB and VA each rated the back pain disability at 10% using different codes. The PEB, using the VASRD spine codes operative at the time of separation rated with code 5295, lumbosacral strain. Under this code, 10% required characteristic pain on motion; 20% required muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral in standing position. The Board opined that no higher rating than 10% could be achieved under this code given the CI’s statement that she could run up to 2 miles (limited by knee), the normal tandem, heel and toe gait reported neurosurgical examination in September 2001, the normal gait and posture recorded on the C&P evaluation. The Board discussed rating under code 5292, spine limitation of ROM. A slight limitation of ROM is required for 10% and moderate for 20%. The Board agreed that the history of the CI’s ability to bend with pain and ROM flexion of 93 degrees on C&P exam support a rating no higher than 10%. The Board further considered a rating under code 5293, intervertebral disc syndrome, but the presence of normal reflexes, and absence of defined neuropathy precluded this pathway. The Board was unable to find a pathway to any higher rating than 10%. 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 chronic low back condition.

Right Knee Condition. The CI sustained an injury to her right knee in December 2000. A diagnosis of tear of the ACL was made and surgical repair was performed in January 2001. Postoperatively the CI experienced slow rehabilitation with persistent pain and swelling. Orthopedic evaluation performed 8 months post-operatively suggested possible failure of the prior surgery. An MRI was scheduled but is not in evidence in subsequent medical records. There were four range-of-motion (ROM) evaluations, one of which was goniometric, in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation as summarized in the chart below.

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| --- | --- | --- | --- | --- |
| Goniometric ROM Right Knee  Degrees | PT~11 Mo. Pre-Sep  (20010517) | Ortho~7 Mo. Pre-Sep  (20010906) | MEB~4 Mo. Pre-Sep  (20011009) | C&P ~11 Mo. Post-Sep  (20030318) |
| Flexion (140 Normal) | Full | Full | Full | 136 |
| Extension (0 Normal) | Full | Full | Full | 0 |
| Comments | Strength 4/5  Pain with step down | Lachman 6mm/RT; 0mm/LFT  Gait intact | Lachman 3-4mm; Pain after running 1.5 miles. | No instability.  No tenderness.  Gait normal. |
| §4.71a Rating | 10% | 10% | 10% | 10% |

At the MEB exam, the CI reported being unable to run more than a mile or two without pain or swelling. She noted difficulty going up stairs and her knee occasionally giving out. On physical examination some atrophy of the quadriceps muscle was present. The Lachman exam had 3 to 4 mm of translation with a good end point. ROM was full and no effusion was present. At the C&P examination performed 11 months after separation, the CI noted the knee to feel loose and that a brace was required for athletics, but opted that she had given up sports. The CI reported she rides bicycles and swims. On examination, gait was normal. The right knee had normal ROM, and no evidence of ACL instability. The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the right knee condition under code 5257, knee, lateral instability, slight, 10%. A higher rating of 20% requires moderate instability. The Board unanimously agreed that this rating was not achievable given the preponderance of quantitative evidence demonstrating mild instability on Lachman testing, and the absence of clinical history of recurrent subluxation. The VA rated under code 5260, leg, limitation of flexion 10% citing ROM of 93 degrees due to pain. The Board noted that the ROM of 93 degrees flexion was recorded on the C&P exam for the lumbosacral spine and 136 degrees for the right knee. Under this code a limitation of flexion of 45 degrees is required for a 10% rating. Neither is compensable under this code. The Board was unable to find any pathway for a rating higher than 10%. 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 right 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. 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 DDD, Back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right knee ACL insufficiency condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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** |
| Degenerative Disc Disease, Back | 5295 | 10% |
| Right Knee ACL, Insufficiency, S/P ACL Repair | 5257 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110927, 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 24 Aug 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 that 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:

- former USMC

- former USN

- former USN

- former USN

- former USMC

- former USMC

Assistant General Counsel

(Manpower & Reserve Affairs)