RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100868 SEPARATION DATE: 20040630

BOARD DATE: 20120409

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty E3/LCpl, 0341, Mortarman, medically separated for left knee pain. Onset of pain began subsequent to a fall from the deck of the USS Peleliu. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Left lateral 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. 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 SECNAVINST 1850.4E, DoDI 1332.39 and the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: ‘They only looked at my knee and not any other medical problems when they did my PEB proceeding. They should have also looked at my back which I have degenerative disc disease or my Tinnitus or the scar from the mole/cancer they removed from my left shoulder. They didn’t look at my chest pain that I had multi times or the pain I live in daily from Lt knee pain. The VA never even noted my chest pain that I had and still have at times.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20040324** | | | **VA (2 Mo. Pre Separation) – All Effective 20040701** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Lateral Knee Pain | 5099-5003 | 10% | Left Knee ACL and Meniscal Tear | 5260 | 20% | 20040408 |
| Mole Removed | Not Unfitting | | Scar Left Shoulder | 7804 | 10% | 20040408 |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20040406 |
| 0% x 2\*/Not Service Connected x 3 | | | 20040408 |
| **Combined: 10%** | | | **Combined: 40%** | | | |

\*Back increased from 0% to 10% effective 20040923

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 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 injured his left knee in early May 2003 when he slipped on a wet deck during a run. He was noted to have a tender abrasion and a slight decrease in range-of-motion (ROM), but otherwise the exam was fairly unremarkable. He was returned to duty, but noted persistent lateral left knee pain. X-rays on 20 June 2003 were normal. He was referred to sports medicine where it was noted that he had also had a hyperextension injury 3 to 4 years earlier, prior to service. Examination noted positive meniscus and patellofemoral signs as well as tenderness about the lateral knee. An MRI in September 2003, 4 months after the injury, was significant only for a joint effusion (“trace” per orthopedic surgeon review) without evidence of ligamentous (cruciate and collateral ligaments), or meniscal injury. Orthopedic surgery determined there was no surgical indication at that time. There were two goniometric ROM examinations prior to separation in evidence.

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| --- | --- | --- |
| Goniometric ROM –  L Knee | MEB ~ 7 Mo. Pre-Sep  (20031203) | VA C&P ~ 3 Mo. Pre-Sep  (20040408) |
| Flexion (140⁰ normal) | 130⁰ | 90⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ |
| Comment | Flexion equal to uninjured R knee, therefore considered normal.  No instability.  Normal gait. | Painful Motion  Drawer Sign Positive  Deluca positive |
| §4.71a Rating | 10% | 10% |

Prior to the MEB examination, left knee range of motion was documented as normal during clinic encounters 20 June 2003, 23 July 2003, 8 August 2003, and 8 September 2003. The orthopedic surgery MEB narrative summary (NARSUM) was 3 December 2003, just under 7 months prior to separation. No effusion was noted, varus and valgus stress were stable, the patella was normal with a negative apprehension test, and McMurrays negative for meniscus problem. The examiner noted “the only significant finding is that he does have some tenderness to palpation at the lateral epicondyle of the femur. This is the area that he reports pain.” At a clinic encounter 6 January 2004, the ROM was recorded as normal. The PEB rated the knee at 10% and coded it 5099-5003, analogous to degenerative arthritis. The VA Compensation and Pension (C&P) exam was just under 3 months prior to separation. The examiner recorded CI report that his knee gave out and that he “had too much damage” for surgery. However, primary service records did not indicate there was “too much damage” for surgery, rather, there was no evidence of pathology on MRI or examination that warranted surgery. The CI was using a cane and stated that he required bed rest for his knee twice a month for 1 to 2 days each time. He was noted to have an antalgic gait and to have difficulty getting on and off the examination table. No history of an intervening injury between the MEB and C&P exams was documented. Limited and painful motion was noted on exam. A drawer’s was positive, but there was no edema, effusion, or weakness noted. Tests for meniscus pathology were negative (McMurray). The CI endorsed pain, fatigue, lack of endurance, and incoordination with pain being the major factor. Flexion was limited to 90 degrees. No muscle atrophy was noted. X-rays were normal. The examiner determined that the CI had both anterior cruciate ligament (ACL) and medial meniscus tears (MMT).

The VA coded the knee as 5260, limitation of flexion, and rated it at 20% which corresponds to a limitation of 30 degrees. The actual flexion of 90 degrees would rate at 0% for limitation of motion. The rater cited anterior cruciate tear and lateral meniscus tear along with the presence of positive DeLuca criteria in assigning a 20% rating. Three months after separation, a MRI of the knee on 6 October 2004 did not demonstrate tear of the cruciate ligament or medial meniscus. A civilian orthopedic examination 20 October 2004, concluded there was no evidence of ligamentous instability, or meniscus signs suggesting meniscus tear. Arthroscopic surgery 5 November 2004, 4 months after separation, disclosed a large plica (developmental condition) which was decompressed, and synovitis which was debrided (findings that were not evident on MRI in September 2003 or 6 October 2004). Arthroscopic examination confirmed cartilage surfaces were normal, and the menisci and cruciate ligaments were intact and examination under anesthesia confirmed absence of instability. Post-operative physical therapy examination on 14 December 2004 recorded a normal ROM (extension 0 degrees, flexion 135 degrees). Due to the significant differences between the ratings adjudicated by the PEB and VA, the Board carefully considered the whole record in order to develop a consistent picture of the CI’s left knee condition. The Board noted that the ROM on the VA exam showed considerable reduction in flexion without an intervening injury and a relatively unremarkable exam other than a positive Drawer’s test. However, on prior and subsequent exams, including those by an orthopedic surgeon, the anterior Drawer and posterior Drawer and Lachman’s were normal indicating ligamentous stability of the ACL and posterior cruciate ligament (PCL). In addition, MRI prior to separation and after separation was essentially normal and a diagnostic and therapeutic arthroscopy in November 2004, 4 months after separation, was significant only for synovitis and plica extending from the lateral compartment into the suprapatellar region. The plica was decompressed and the synovium excised. The Board notes that redundant plica is a congenital condition. The Board notes that the consistent finding was painful motion. Other than at the VA C&P examination, ROM was normal both pre-separation and at a post-operative physical therapy examination. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the left knee condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for degenerative disc disease (DDD), tinnitus, scar from the removal a nevus on the left shoulder, and chest pain. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were sinusitis and acne. 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 were implicated in the non-medical assessment. 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 noted in the VA proximal to 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 left knee condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the DDD, tinnitus, scar from the removal of a nevus on the left shoulder, chest pain, sinusitis and acne or any other condition 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, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Lateral Knee Pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110924, 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 23 Apr 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 individual’s 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)