RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100999 SEPARATION DATE: 20040229

BOARD DATE: 20120926

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Reserve 1Lt/O-2 (0180/Adjutant), medically separated for bilateral osteochondrosis (gout). The CI had a several year history of intermittent joint swelling and pain diagnosed as gout. 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 and underwent a Medical Evaluation Board (MEB). Bilateral osteochondrosis 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 adjudicated the bilateral osteochondrosis condition as unfitting, rated 20% with application of SECNAVINST 1850.4E and Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “The service did not take into effect the severity of my condition. The arthritis as well as the other issues have increased. The arthritis has continuously (associated with gout) increased and now affects about 80% of my joints (knees, shoulders, ankles, hands, etc). This has caused me to have additional knee surgeries. Additionally, the eczema has continued to spread to all the lower extremities, and no effective solution found.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 remaining conditions rated by the VA at separation 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.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20031028** | | | **VA (3 Mos. After Separation) – All Effective Date 20040301** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Osteochondrosis | 5017-5003 | 20% | Gout | 5017 | 20% | 20031205 |
| ↓No Additional MEB/PEB Entries↓ | | | Eczema, … | 7806 | 30% | 20031205 |
| Tinnitus | 6260 | 10% | 20031125 |
| 0% x 2/Not Service Connected x 2 | | | 20031205 |
| **Combined: 20%** | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a 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 his 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.

Bilateral Osteochondrosis (Gout): The service treatment records (STR) record a history of episodic joint pain and swelling. The CI first sought care in April 2000 for recurring pain and swelling of the right great toe. In September 2002 the CI presented for care for a 6 to 12-month history of right knee pain and sporadic left elbow and hand pain. The right knee pain was initially diagnosed as patellofemoral syndrome, and then as a suspected meniscal tear based on MRI. He had arthroscopic surgery performed on 9 January 2003 in which gout crystals were found in the joint space and he was referred to rheumatology. The rheumatology evaluation, performed on 25 March 2003, recorded a history of 3 to 4 attacks per year of great toe swelling and pain since 1997 that resolved with medication treatment. The rheumatologist recorded report that medication resulted in resolution of symptoms however there was some constant achiness of the great toes. The CI denied presence of any constitutional symptoms. Examination of the joints demonstrated full range-of-motion (ROM) without swelling, warmth or tenderness except for some tenderness of the great toe joints which did not have any swelling, warmth or redness. The diagnosis of gout was confirmed and a plan for medication treatment was advised. The MEB narrative summary (NARSUM), performed on 28 August 2003, noted that the medication treatment recommended by the rheumatologist was being implemented at the time of the MEB NARSUM. He was unable to run and had knee pain when he performend field training. The NARSUM noted the history of gout involving the left elbow, both fee, both ankles, and both knees. On examination there was tenderness of the left elbow olecranon process with mild skin induration. The right knee showed no swelling, effusion, crepitus, instability, or meniscus signs. The feet and remainder of the examination was normal. Laboratory testing was normal and showed no evidence of anemia. The final NARSUM diagnosis was bilateral osteochondrosis referring to gout. The CI had a VA Compensation and Penson (C&P) examination, performed on 5 December 2003, 3 months prior to separation. The CI reported recurrent episodes of gout despite treatment with medications. The examiner noted a tophus lesion on the left elbow and slightly swollen,slightly red great toe joint that was tender. The remainder of the joint examination was normal with full ROM of the hands, wrists, elbows, knees, ankles and spine. There was no swelling or tenderness and Joint motion was not limited by pain, weakness, fatigue or lack of endurance or incoordination. There was no instability of the knees and no meniscus signs. X-rays of affected joints were normal. Laboratory testing showed an elevated uric acid but was otherwise unremarkable normal. The Board directs attention to its rating recommendation based on the above evidence for the knees. The PEB adjudicated a 20% rating analogously under the VASRD code for degenerative arthritis (5017-5003), while the VA rated the condition 20% using the appropriate VASRD code for gout ( 5017-5002). In accordance with the VASRD, gout (5017) is rated using the rating critieria for rheumatoid arthritis (5002). The CI’s gout condition did not meet the criteria for the 100% rating nor the 60% rating as there was no total incapacitation or severe impairment of health or severely incapacitating episodes 4 or more times a year. The 40% rating requires three or more incapacitating episodes per year while the 20% rating requires at least one or two exacerbations per year. There was a history of three to four exacerbations of the gout per year prior to starting on the medcation treatment recommended by the rheumatologist. The descriptions in the STR do not indicate that these were incapacitating and responded to treatment. At the time of the MEB NARSUM, he had just been started on appropriate treatment. At the time of the VA examination, his uric acid was still above the target level and he did have a slightly swollen, slightly red, and tender, right great toe joint that was consistent with gout. The affected knee and elbow joints had full ROM and normal strength. There was no radiographic evidence of joint damage. There was no evidence of history of incapacitating episodes that would rise to the level of the 40% rating and there was no evidence of chronic residuals warranting separate rating. The Board concluded that the preponderance of evidence most nearly approximated the 20% rating IAW the VASRD 5002. The Board notes that this provides no benefit to the member and therefore recommends no change to the PEB adjudication. 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 bilateral osteochondrosis 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. In the matter of the bilateral osteochondrosis 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bilateral Osteochondrosis | 5017-5003 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111020, 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 15 Oct 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:

- XXX XX former USMC

- XXX XX former USMC

- former USN, XXX-XX

- former USN, XXX-XX

Assistant General Counsel

(Manpower & Reserve Affairs)