RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD1101029 SEPARATION DATE: 20040806

BOARD DATE: 20120424

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO3/E-4 (1580, Electronic Technician - Radar), medically separated for bilateral knee degenerative joint disease. He injured both knees in separate sporting events and underwent surgery for reconstruction of the anterior cruciate ligament (ACL) of each knee, and additional surgery for debridement of torn menisci in each knee. He did not respond adequately to rehabilitation to fully perform within his rating or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Bilateral knee degenerative joint disease 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) file will be discussed below. The PEB adjudicated the bilateral knee degenerative joint disease as unfitting, rated 10% for each knee, with bilateral factor applied, IAW Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed to Formal PEB (FPEB) which confirmed the bilateral knee adjudication. One additional condition, exogenous obesity, was listed in the FPEB findings as a category IV condition. This condition is not ratable IAW DoD and VA regulations and will not be discussed further. The CI was then medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “I got rated for both knees and nerve damage on one shoulder which was denied by Med Board in the Navy.” He elaborates no specific contentions regarding rating or coding.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20040303** | | | **VA (7 Mo. After Separation) – All Effective 20040807** | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | | **Rating** | **Exam** |
| Bilateral Knee … ACL Reconstruction | 5299-5003(R) | 20% | Right Knee ACL/Meniscectomy | 5299-5262\* | | 10% | 20050302 |
| 5299-5003(L) | Left Knee ACL/Meniscectomy | 5299-5262\* | | 10% | 20050302 |
| Exogenous Obesity | Category IV | | No VA Entry | | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Left Brachial Plexopathy | | 8515 | 10% | 20050302 |
| 0% x 1/Not Service-Connected x 7 | | | | 20050302 |
| **Combined: 20%** | | | **Combined: 30%** | | | | |

\* Code later amended to 5010 with 10% rating continued.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the DES operates. 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. However the Department of Veterans’ Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Bilateral Knee Condition. The CI underwent ACL reconstruction of his right and left knees in 2001 and 2002, respectively, after sports injuries. He then underwent arthroscopic debridement of meniscus tears in the right and left knees in January and April of 2003. Knee pain with walking and running persisted despite rehabilitation and over-the-counter supplements. The CI also noted a subjective sense of instability when descending stairs, but no episodes of recurrent dislocation or subluxation regarding either knee. He denied using crutches, canes or braces. There were three goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| --- | --- | --- | --- | --- | --- | --- |
| Knee ROM | MEB ~ 10 Mo. Pre-Sep | | Ortho ~ 5 Mo. Pre-Sep | | VA C&P ~ 7 Mo. After-Sep | |
| Left | Right | Left | Right | Left | Right |
| Flexion (140⁰ normal) | 115⁰ | 115⁰ | 120⁰ | 120⁰ | 120⁰ | 120⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ | 0⁰ | 0⁰ | 0⁰ | 0⁰ |
| Comment | 8mm Lachman | Stable | 8mm Lachman | Stable | Mildly unstable | Stable |
| §4.71a Rating\* | 10% | 10% | 10% | 10% | 10% | 10% |

\*Conceding §4.59 (painful motion) as below.

The MEB examiner recorded a normal gait. The knees were non-tender and without effusion. The left knee showed an 8mm Lachman with a soft end point, while the right knee showed a 5mm Lachman with a good firm end point. There was no instability with varus and valgus stress. Flexion was mildly limited in both knees. An orthopedic clinic evaluation 5 months later also recorded a normal gait, no tenderness of the knees, 8 mm Lachman on the left with moderate endpoint, and no other signs of instability. ROM in each knee was similar to the MEB measurement. The diagnoses were bilateral tri-compartmental osteoarthritis and bilateral ACL insufficiency. No further surgery was recommended. At the VA Compensation and Pension (C&P) exam 7 months after separation, a normal gait was again observed. There was no joint effusion or evidence of lateral instability of either knee. The left anterior drawer sign was measured at 8mm and the ACL judged to be “only mildly unstable,” while the right anterior drawer sign was measured at 5mm which the examiner judged to be a negative test for ACL instability. ROM measurements were consistent with the pre-separation exams. MRIs performed 6 months prior to separation showed diffuse degenerative changes and disruption of the fibers of the ACL graft in each knee. This was consistent with the direct observations made during arthroscopic surgeries of each knee a year earlier. Although the PEB adjudicated “bilateral knee” as the unfitting condition, the record of proceedings reflects separate codes and ratings for each knee, with application of the bilateral factor in computing the combined rating, which is consistent with VASRD standards. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The VA initially coded each knee analogous to 5262 (tibia and fibula impairment), but later amended the code to 5010 (traumatic arthritis), while the PEB coded the condition analogous to 5003 (degenerative arthritis). Both 5010 and 5003 are rated under the same criteria. The FPEB rationale noted that the bilateral knee condition could legitimately be rated under a single 5003 code (radiographic evidence of degenerative changes, non-compensable loss of ROM and evidence of painful motion), but the “FPEB ruled in favor of member to rate each knee separately.” The Board agrees that each knee merits separate ratings under the provisions of code 5003. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the bilateral knee arthritis condition.

The Board next considered the question of an additional rating for knee instability under diagnostic code 5257. The Board noted the MEB narrative summary (NARSUM) report of subjective instability descending stairs and the physical examination findings of some laxity of the left knee. The Board considered the normal gait and lack of use of a brace. The Board also noted that service treatment records prior to the time of the PEB described pain with use and not instability as the impairment. The majority of the Board concluded that although some laxity was shown on physical examination the preponderance of evidence did not support a conclusion that there was instability that affected normal daily functioning. All Board members agreed there was not instability present in the right knee sufficient to warrant consideration for an additional rating under 5257. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends no change to the ratings assigned by the PEB for the right and left knee conditions.

Contended Left Brachial Plexopathy Condition. The CI’s application asserts that compensable ratings should be considered for a left brachial plexopathy condition. At the VA C&P examination 7 months after separation, the CI described numbness and paresthesias in a median nerve distribution on the left that began when using crutches after knee surgery, but worsened after separation. The examiner found minimal sensory deficits in a median nerve distribution, and no motor deficits of the left arm. This condition was not mentioned in the DES file, did not carry an attached LIMDU, and was not implicated in the non-medical assessment (NMA). The left brachial plexopathy condition was reviewed by the action officer and considered by the Board. It was determined that the contended condition was derived from a VA evaluation performed after separation, diagnosing a condition which was not addressed by the PEB. By policy and precedent the Board has limited its jurisdiction for recommending unadjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core DES file. The core DES file consists of the MEB referral, the PEB adjudication document, the NARSUM (including any addendums or referenced examinations), the MEB physical exam, the NMA, the LIMDU(s), and any written appeals or internal DES correspondence. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Board for Correction of Naval Records (BCNR).

Remaining Conditions. Other conditions identified in the DES file were bronchitis, left foot problem, right ankle pain, sexually transmitted disease, back pain and minor head injury. 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 LIMDUs, and none were implicated in the 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. No other conditions were service-connected with a compensable rating by the VA within 12 months of separation or contended by the CI. 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. As discussed above, PEB reliance on SECNAVINST 1850AE for rating knee instability was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the bilateral knee arthritis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. The Board, by a vote of 2:1, concluded that the preponderance of evidence did not support an additional rating for instability of the left knee. The single voter for dissent (who recommended a rating of 10% coded 5257 IAW VASRD §4.71a) submitted the addended minority opinion. The Board unanimously concluded that the preponderance of evidence did not support an additional rating for instability of the right knee. In the matter of the left brachial plexopathy condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the bronchitis, left foot problem, right ankle pain, sexually transmitted disease, back pain and minor head injury 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, as follows:

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Right Knee Arthritis | | 5299-5003 | 10% |
| Left Knee Arthritis | | 5299-5003 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111108, 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

Minority Opinion.

The minority voter concluded there was sufficient evidence to invoke reasonable doubt in favor of the CI for a separate rating for left knee instability under diagnostic code 5257 in addition to the rating for painful motion under 5003. Although the service treatment records prior to the time of the PEB indicated that the dominant impairment was pain with use, a subjective complaint of instability was recorded. The NARSUM specifically mentioned subjective instability when descending stairs consistent with the ACL pathology and the examination findings in the left knee. The left knee anterior cruciate ligament was found to be attenuated during arthroscopic examination, and on physical examinations, the Lachman test was consistent with a grade II laxity and the end point was noted to be abnormally soft. An orthopedic surgeon characterized the left knee ACL as unstable. The normal gait and lack of bracing indicates that functioning in routine activities was no more than slight. The findings in the right knee do not support a diagnosis of instability, and therefore an additional rating for the right knee based on instability is not warranted.

After considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the minority voter concluded this case justifies a separate 10% rating for instability for the left knee, coded 5257, in addition to the 10% rating for degenerative arthritis of the left knee.

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 2 May 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:

- XXXXXXXXXXXXXX former USMC

- XXXXXXXXXXXXXX former USMC

- XXXXXXXXXXXXXX, former USN,

- XXXXXXXXXXXXXX, former USN,

- XXXXXXXXXXXXXX former USMC

- XXXXXXXXXXXXXX former USN,

XXXXXXXXXXXXXXX

Assistant General Counsel

(Manpower & Reserve Affairs)