RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1101061 SEPARATION DATE: 20070901

BOARD DATE: 20120817

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, LT/0-3, Designation 1200, Human Resource Officer, medically separated for right knee pain. The CI had a history of progressive right pain knee from intermittent recurrent trauma during her service. A diagnosis of right knee chondromalacia was made and this condition could not be adequately rehabilitated. The CI did not improve adequately with treatment to meet the physical requirements of her rating or satisfy physical fitness standards. She was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). Right knee chondromalacia was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. The MEB forwarded no other conditions for PEB adjudication. The CI was found fit for duty by a PEB in February 2007 and she requested a reconsideration contending a 20% disability rating. The CI’s rebuttal was considered on 27 February 2007 with no change in the findings. The CI then requested a Formal PEB (FPEB), petitioning to be found unfit with a disability rating of 10%. The FPEB convened 26 April 2007 and after reviewing newly provided medical documents, adjudicated the right knee chondromalacia osteoarthritis of the medial compartment as unfitting, rated 10% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI accepted the FPEB findings, waived her right to submit a Petition for Relief (PFR), and was medically separated with a 10% disability.

CI CONTENTION: “I began having knee problems in 2003. I began making regular visits to the doctor for pain, joints locking, etc. Over the course of my medical visits, it was determined that although both knees showed signs of degeneration, the right knee was more severe. After over a year of constant and chronic knee pain, I had my first knee surgery in January 2005. Although I underwent extensive physical therapy and made some progress, I continued to experience pain and decreased mobility. My limited mobility began to affect my ability to participate in physical training and my ability to pass the PT test; and I ultimately was referred to the PEB. The board’s initial finding was that I was fit for duty. I then requested reconsideration because in order to perform my duty required continuous limited duty and steroid injections. The board later concluded my condition rendered me unfit for continued service and awarded a disability rating of 10 percent. Upon notification of their findings and the rating given, I immediately requested reconsideration based on my physical limitations and my belief that my condition would get progressively worse; but to no avail. I was medically discharged from the Navy in September 2007. Within two months of discharge, my condition deteriorated to the point I would undergo a second surgery on my right knee in November 2007. I would later go on to have my third knee surgery (first on left knee) in August 2010. Because of my chronic knee conditions, I've received knee injections before and after my surgeries. I've also been informed that based on my degenerative condition, I will most likely require a knee transplant. Additionally, if I medically retired, I respectfully request to be retired at the rank of LDCR 0-4, as I was selected and on the list for promotion to LDCR in July 2007.”

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 conditions “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:

|  |  |
| --- | --- |
| **Formal PEB – Dated 20070426** | **VA (2 Mos. Pre -Separation) – All Effective Date 20070902** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Knee Chondromalacia Osteoarthritis of the Medial Compartment | 5299-5003 | 10% | Right Knee Patellofemoral Syndrome | 5260 | 10%\* | 20070703 |
| ↓No Additional MEB/PEB Entries↓ | Obstructive Sleep Apnea | 6847 | 50% | 20070703 |
| Status Post Total Abdominal Hysterectomy | 7618 | 30% | 20070703 |
| Herpes Simplex | 7806 | 10% | 20070703 |
| Dysthymic Disorder | 9433 | 10% | 20070703 |
| 0% X 6 others / Not Service-Connected x 7 |
| **Combined: 10%** | **Combined: 70%\*\*** |

\*5260 initially rated at 0% but was changed to 5010-5260 Right Knee Patellofemoral Syndrome with Degenerative Joint Disease and increased to 100% effective 20071108 for surgery and then decreased to 10% effective 20080101.

\*\*Increased to 100% from 20071108 when Right knee 5260 increased to 100%, then 80% from 20080101 when right knee 5260 reduced to 10%. Left knee 5260-5024 added at 10% effective 20091211 but combined rating not affected.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-aggravated condition continues to burden her. It is a fact, however, that the Disability Evaluation System (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 VA 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. The Board also notes that the applicant requests that if medically retired, she be retired at the rank of LDCR 0-4, as she was selected and on the list for promotion to LDCR in July 2007. By law the Board authority is limited to making recommendation on correcting disability determinations. The actual correction of records and consequential entitlement determinations is the responsibility of the applicable secretary and accounting service. The applicant's request will of course remain with the application as it is processed. The Board will review all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Right Knee Chondromalacia Osteoarthritis of the Medial Compartment. 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; as summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM-Right Knee  | MEB ~9 MonthsPre-Separation | Clinic~7 MonthsPre-Separation | VA C&P ~2 MonthsPre-Separation | VA C&P ~6 MonthsPost-Separation |
| Flexion (140⁰ Normal) | Full | 140⁰ | 140⁰ | 140⁰ (130° after repetitive motion) |
| Extension (0⁰ Normal) | Full | 0⁰ | 0⁰ | 0⁰ |
| Comment | Full ROM with mild effusion; medial joint line tenderness; McMurray’s test revealed medial pain; medial patellar facet tenderness; positive inhibition test; duck walk revealed medial pain; no instability | Pain from 40⁰ to 140⁰ with flexion; joint line tenderness; pain with duck walk | No joint effusion, locking or ankylosis; CL, PCL, medial and lateral collateral ligaments, and medial and lateral joint lines were normal; No additional limitation after repetitive motion; gait normal; normal motor, sensory, and reflex exam; no use of ambulatory device; x-rays normal | Additionally limited after repetitive use by pain and lack of endurance; normal gait; ACL, PCL, lateral and medial collateral ligament tests all stable; normal lateral and medial meniscus tests; x-rays show degenerative arthritic changes |
| §4.71a Rating | 10% | 10% | 0% | 10% |

The CI developed chronic right knee pain after multiple traumas, most noticeably, while kickboxing in 2003. An injury to the anterior cruciate ligament (ACL) or meniscus was suspected but an initial magnetic resonance imaging (MRI) performed on 1 August 2003 revealed only an asymptomatic Baker’s cyst requiring no treatment. Despite extensive physical therapy including strengthening exercises, anti-inflammatory medication and knee joint injections the knee did not consistently improve. In January 2005 surgical arthroscopy was performed on the knee revealing right knee chondromalacia of the patella with lateral patellar mal-tracking and chondromalacia of the medial femoral condyle and lateral tibial plateau. Procedures performed were: 1. Abrasion arthroplasty of the medial femoral condyle and microfracture, 2. Chondroplasty of the lateral tibial plateau and lateral patellar facet, and 3. Lateral release. The ACL and posterior cruciate (PCL) ligaments and medial and lateral menisci were intact. Initial response to this procedure was good and the CI was returned to full duty in November 2005.

However, in April 2006 the CI was seen for persistent pain and locking along with swelling with minimal activity. A repeat MRI in June 2006 noted degenerative changes of the medial meniscus without a distinct tear, defects of the cartilage along the medial femoral condyle, and a defect in the lateral patellofemoral retinaculum. The CI also had increased pain and swelling after running in July 2006 and was noted to have flexion limited to 95 degrees with an effusion and tenderness. Her condition did not improve despite maximal outpatient therapy including physical therapy and three Hyalgen injections and no further surgery was indicated. At the MEB narrative summary (NARSUM) evaluation in December 2006, the CI reported persistent pain on the inside of her knee that prevented her from running, climbing and squatting. Physical examination revealed “full” ROM, mild knee effusion, tenderness of the medial joint line but no joint laxity or instability. However, no goniometric measurements were noted. An evaluation performed on 14 February 2007 noted full flexion but pain from 40 degrees to 140 degrees as well as joint line tenderness, a “boggy” joint line, and pain with duck walk. The assessment was moderate to severe chondromalacia patella. An evaluation completed in March 2007 noted full ROM without goniometric measurements and no effusion. However, the CI exhibited grimacing pain with palpation of patellofemoral joint and a positive compression test and she was unable to squat without assistance. This examiner also noted the CI was unable to rise from a chair without assistance after prolonged sitting and had swelling after using elliptical machine. At the VA Compensation and Pension (C&P) examination completed approximately 2 months prior to separation, the CI reported a constant non-radiating aching pain in the right knee that occasionally became sharp with a severity of 7/10 level. The pain was elicited with physical activity and relieved with rest or pain medication. In contrast to the service evaluations, this examiner noted the CI was able to function without impairment with these measures. However, in November 2007, approximately 2 months after separation, the CI underwent a second right knee arthroscopy. An MRI performed on 24 September 2007 documented mild to moderate diffuse cartilaginous thinning in the medial joint compartment with a more focal area of grade 3/4 chondromalacia over the central aspect of the medial femoral condyle with subchondral marrow edema/cyst formation. The MRI also documented focal fissuring in the trochlear articular cartilage and a 6 mm loose body in the medial joint. No ligament or meniscal tears were noted. Arthroscopic surgery was performed in November 2007 to repair the cartilaginous defects. A second VA C&P exam was completed in March 2008, and decreased ROM was noted after repetitive motion. The CI had constant pain rated 8/10 elicited by physical activity and relieved by rest. She could function with medication and she was undergoing physical therapy. This examiner noted the effect of this condition on the CI’s usual occupation is mildly reduced mobility secondary to pain.

The April 2007 FPEB determined the right knee chondromalacia actually interfered significantly with the CI’s ability to carry out the duties of her office, grade, rank, or rating. The FPEB noted the CI’s condition had deteriorated after the reconsideration PEB had made its determination. The orthopedic evaluation performed on 27 March 2007 was noted to support this conclusion and a 10% disability rating. The original VARD rated the right knee patellofemoral syndrome at 0% based on the absence of limitation of motion or painful motion and functional loss. However, after the temporary 100% rating was applied for a second right knee arthroscopy 2 months after separation, a 10% rating was applied effective 1 January 2008, approximately 4 months after separation. The diagnosis was also changed to patellofemoral syndrome with degenerative joint disease.

The Board directs attention to its rating recommendation based on the above evidence. After review of the totality of the record, the Board opines that there is no compensable limitation of ROM of the right knee. However, IAW VASRD §4.10, §4.40, §4.45, and§4.59 a 10% rating is warranted as there is satisfactory evidence of functional loss due to pain and painful motion of the knee joint. In the absence of joint instability, frequent episodes of locking, or painful scars, the Board is unable to find a path to any rating higher than 10% for the knee condition. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concludes that there is insufficient cause to recommend a change in the PEB adjudication for the right knee chondromalacia 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 right knee condition and IAW VASRD §4.10, §4.40, §4.45, §4.59, and §4.71a, the Board unanimously recommends no change in the PEB adjudication.

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 Chondromalacia Osteoarthritis of the Medial Compartment | 5299-5003 | 10% |
| **COMBINED** |  **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111107, 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)