RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1101081 SEPARATION DATE: 20010915

BOARD DATE: 20120523

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt/E-5 (0151, Administrative Clerk) medically separated for right knee pain. The CI has had a long history of problems with the right knee. He was treated, but failed to respond adequately to fully perform his military duties or meet physical fitness standards. He was placed on limited duty (LIMDU), and underwent a Medical Evaluation Board (MEB). The right knee condition 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 found the right knee condition unfitting, and rated it 10%, IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was thus medically separated with a 10% disability rating.

CI’s CONTENTION: “I had 8 years, 6 months of service when the condition resulting in my being found unfit to perform the duties of my grade and rating interrupted my service. I would have remained in service had the condition not resulted in my being found unfit to perform duties. Based on these reasons my separation should be re-characterized to retirement for disability.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Navy PEB – dated 20010813** | **VA (4 mo. After Separation) – All Effective 20010916** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Knee Condition | 5299-5003 | 10% | Right Knee Condition | 5258 | 20% | 20020116 |
| ↓No Additional MEB/PEB Entries↓ | Low Back Pain | 5003-5295 | 10% | 20020116 |
| 0% x 1 / Not Service Connected x 1 | 20020116 |
| **Combined: 10%** | **Combined: 30%** |

ANALYSIS SUMMARY:

Right knee condition. The CI has had a long history of problems with the right knee. In August 2000, he underwent arthroscopic surgery followed by rehabilitation. After surgery and rehabilitation, his knee pain persisted and an MEB was initiated. At his MEB examination, the right knee had full range of motion (ROM) with no effusion or crepitus. Drawer sign and Lachman’s sign were both negative, and there was no joint line tenderness. In January 2002, four months after separation from service, the CI had a VA Compensation and Pension (C&P) exam. Examination of the right knee showed slight crepitus and slight tenderness to palpation, but no effusion. Knee ROM was 0 to 120 degrees, and was limited by pain. Anterior and posterior drawer tests were negative. Lachman’s and McMurray’s tests were negative.

The Board carefully reviewed all evidentiary information available. The right knee ROM documented in the record failed to reach compensable levels for the VASRD codes specific to leg flexion and extension (5260 and 5261). Thus there was no compensable ROM impairment for the right knee. However; IAW VASRD §4.40, §4.45 and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. The Board noted that there was no ligamentous laxity or joint instability which would be required for a rating under code 5257. Likewise, the CI’s symptoms did not warrant an evaluation under code 5258. Thus, there was no path to a rating higher than 10%. After due deliberation, considering all of the evidence, and mindful of VASRD §4.3 (Reasonable doubt), the Board unanimously recommends a rating of 10% for the right knee condition, IAW VASRD §4.40, §4.45, §4.59, and §4.71a.

Remaining Conditions. There were no other MEB/PEB conditions. 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 right knee condition, the Board unanimously recommends no change in the PEB adjudication. The Board unanimously agrees that there were no other unfitting conditions at separation.

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** |
| Right Knee Pain, Status Post Arthroscopic Surgery | 5299-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111109, 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 29 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 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 8410 former USMC

 - XXX XX 8169 former USMC

 - former USN, XXX-XX-2352

 - XXX XX 2393 former USMC

 - former USN, XXX-XX-9489

 Assistant General Counsel

 (Manpower & Reserve Affairs)