RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1200094 SEPARATION DATE: 20040301

BOARD DATE: 20120829

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, PO2/E-5 (CTO2/Network Control Specialist), medically separated for degenerative joint disease (DJD) of the left knee status post anterior cruciate ligament (ACL) repair. The condition began in 1992 as a result of injury. He did not respond adequately to multiple surgical interventions and rehabilitative treatment and was unable to meet the physical requirements of his Rating or satisfy physical fitness standards. He was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). The MEB forwarded DJD left knee status post ACL reconstruction with failed graft to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. Tendinitis left shoulder, hypertension, hypercholesterolemia and right ankle DJD, identified in the rating chart below, were also identified and forwarded by the MEB. The PEB adjudicated the left knee DJD condition as unfitting, rated 20%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). Status post anterior cruciate ligament reconstruction with failed graft per Lachman testing was listed as related Category II: conditions that contribute to the unfitting condition. The remaining conditions were determined to be Category III: conditions that are not separately unfitting and do not contribute to the unfitting condition. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “Degenerative Joint Disease (Left Knee), Hypertension, Lumbar Strain, Tendinitis (right Knee and Left Shoulder), Degenerative Joint Disease (Right Ankle), Hypercholesterolemia and Achilles Tendinitis (Left Ankle).”

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 condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The hypertension, tendinitis left shoulder, DJD right ankle and hypercholesterolemia conditions, as requested for consideration, meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting left knee condition. The lumbar strain, right knee and left ankle conditions 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 PEB – Dated 20031112** | | | **VA (7 Mos. Pre-Separation) – All Effective Date 20040302\*** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Knee Deg. Joint Disease | 5299-5003 | 20% | Left Knee Ligament Repair | 5257 | 20% | 20030723 |
| S/P ACL Repair, Failed Graft | Cat II | |
| Left Shoulder Tendinitis | Cat III | | Left Shoulder Impingement | 5203 | 0% | 20030723 |
| Arthritis Right Ankle | Cat III | | Right Ankle Strain | 5271 | 0% | 20030723 |
| Hypertension | Cat III | | Hypertension | 7101 | 10%\*\* | 20030723 |
| Hypercholesterolemia | Cat III | | NO VA ENTRY | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Sinusitis | 6510 | 10%\*\* | 20030723 |
| Lumbar Strain | 5237 | 10%\*\* | 20030723 |
| 0% X 7 / Not Service-Connected x 1 | | | 20030723 |
| **Combined: 20%** | | | **Combined: 40%\*\*** | | | |

\*Per VA rating decision 20031215, “All Effective Date” was 20040427; VARD 20040610 corrected to 20040302

\*\*VBA Appeal dated 20111005 increased ratings from 0% to 10%, combined 40%; effective 20040302

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation, some of which were evaluated and determined not to be individually unfitting for continued service. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES is responsible for maintaining a fit and vital fighting force. 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 (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 the degree of impairment vary over time. The Board is empowered to evaluate the fairness of fitness determinations, and to make recommendations for rating of conditions which it concludes would have independently prevented the performance of required duties (at the time of separation). The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard.

Left Knee Condition. The ACL injury, which occurred when jumping from a flight deck in 1992, was repaired in 1994. Subsequent arthroscopies for recurring cartilage damage were performed in 1997 and 2002. A LIMDU narrative summary (NARSUM) performed on 10 September 2002, 2 months after the last arthroscopy, assessed the ACL as being partially re-torn. There were two 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.

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| Left Knee ROM | MEB ~7 Mo. Pre-Sep | VA C&P ~7 Mo. Pre-Sep |
| Flexion (140⁰ Normal) | 120⁰ | 90⁰ |
| Extension (0⁰ Normal) | 0⁰ | -10⁰ |
| Comment | 2 to 3+ Lachman | + Limp; no lateral instability tenderness or effusion |
| §4.71a Rating | 10% or 20% | 10% |

The MEB physical exam performed 8 months prior to separation, documented use of a knee brace for support. The orthopedic NARSUM examiner, 7 months prior to separation, reported that ongoing “pain, swelling, locking and occasional feelings of instability” prevented performance of full duty. Physical examination revealed a positive Lachman test (a sign of ACL laxity or damage). The diagnosis included “failed graft per Lachman testing.” X-rays showed degenerative changes. The non-medical assessment (NMA) completed 6 months prior to separation, reported that the CI was unable to travel up or down ladderwells, perform any physical labor or participate in the fitness program. At the VA Compensation and Pension (C&P) exam performed 7 months prior to separation, the CI reported his primary problem was difficulty exercising due to his knee. Examination revealed a gait that favored the left knee. The assessment was that the condition limited ambulation and prolonged standing. A physical therapy note dated 2 months prior to separation, reported a normal gait.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 20% rating under an analogous 5003 code (degenerative arthritis), while the VA assigned a 20% rating under 5257 (knee, other impairment of: “moderate” recurrent subluxation or lateral instability). The ROM values reported by the VA examiner, 2 days after the NARSUM examination, are significantly worse than those reported by the NARSUM. There is no record of recurrent injury or other development in explanation of the more marked impairment reflected by the VA measurements. The Board noted that the normal gait documented 2 months prior to separation, was not compatible with 90 degrees of flexion or 10 degrees of limited extension. The Board considered that the limitation of motion documented on the NARSUM exam was not compensable, and did not support the PEB’s 20% rating under the 5003 code. Board members agreed that the symptoms of pain and instability were most appropriately rated under the 5257 code, and that the “moderate” descriptor accurately depicted the medical evidence. The Board also considered rating under 5262 (tibia and fibula, impairment of) and agreed that a 30% rating (“marked knee disability”) was not supported via this pathway. After due deliberation in consideration of the totality of the evidence, the Board concluded that there is no VASRD basis for recommending a higher rating than the 20% conferred by the PEB in this case. The Board does recommend a code change to 5257 to maintain compliance with the DoDI 6040.44 requirement for strict adherence to the VASRD.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were left shoulder tendinitis, DJD right ankle, hypertension and hypercholesterolemia. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. None of these conditions carried an attached LIMDU, none were implicated in the NMA and none were judged to fail retention standards. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended conditions; and, therefore, no additional disability ratings can be recommended.

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 left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB rating of 20%, but a change in VASRD code to 5257. In the matter of the contended left shoulder tendinitis, DJD right ankle, hypertension and hypercholesterolemia conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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 rating and separation determination, with a change in VASRD code as discussed.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Knee Degenerative Joint Disease Status Post ACL Ligament Reconstruction | 5257 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120125, 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 19 Sep 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 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:

- XXXX former USMC

- XXXX former USMC

- XXXX former USMC

- XXXX former USN

Assistant General Counsel

(Manpower & Reserve Affairs)