RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1200113 SEPARATION DATE: 20011121

BOARD DATE: 20120726

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sailor (AK2/E-5, Aviation Storekeeper), medically separated for a bilateral knee condition. He did not respond adequately to conservative or operative treatment and was unable to fulfill the physical demands within his Rating. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Chondromalacia of bilateral knees, s/p bilateral osteochondral autograft transfers and mild degenerative joint disease of bilateral knees was forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. The PEB adjudicated the chondromalacia of bilateral knees, s/p bilateral osteochondral autograft transfers as unfitting, rated 10%. Additionally, mild degenerative disease of bilateral knees was rated Category II (contributing to unfitting condition) with application of the SECNAVINST 1850.4E. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “The Navy failed to provide me with a medical board for my condition. The VA rendered me disable and provided me a 30% disability rating at the end of my enlistment. The rating was provided to me prior to my being discharged completely from active duty. A disability severance payment was provided no other benefits was provided although I clearly eligible for medical treatment.” [sic] The CI continues with: “The Department of the Navy refuse to provide me with a medical review board when my conditions clearly appeared to justify a review. In 2001, I underwent bilateral knee operations. Both knees were severely damaged and degenerate joint disease affected both legs. My knees developed holes within them about the size of a golf ball. Surgery was done to take cartilage from the outside of the knee and place in the inside of the knee with cartilage. I continue to suffer from chronic knee pain and my walking is limited to short distances. I have developed arthritis in both knees and at any moment my knees will buckle and give way. The Navy again, only discharged me pending a VA disability rating.” [sic] He mentions no additionally contended conditions.

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 condition mild degenerative joint disease of bilateral knees as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below, in addition to a review of the ratings for the unfitting condition. 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:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20010731** | | | **VA (1 Mo. Pre Separation) – All Effective Date 20011122** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chondromalacia of Bilateral Knees, S/P Bilateral Osteochondral Autograft Transfers | 5299-5003 | 10% | Osteoarthropathy w/Patellar Chondromalacia, R Knee | 5003-5014 | 10% | 20010105 |
| Osteoarthropathy w/Patellar Chondromalacia, L Knee | 5003-5014 | 10% | 20010105 |
| Mild Degenerative Joint Disease of Bilateral Knees | Related to Diagnosis 1 | |
| ↓No Additional MEB/PEB Entries↓ | | | Bilateral Plantar Fasciitis w/Pes Planus | 5276 | 10% | 20010105 |
| 0% x 3/Not Service-Connected x 1 | | | 20011015 |
| **Combined: 10%** | | | **Combined: 30%\*** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that the Navy refused to provide a medical review board for his condition and was waiting for a Department of Veterans’ Affairs (DVA) rating decision. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted service improprieties in the disposition of a case. 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. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board further acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. 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 has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the DVA, operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance.

Bilateral Knee Condition. The PEB’s rating bundled the left and right knee condition under the single analogous 5003 (degenerative arthritis) code. The Board, IAW DoDI 6040.44, must apply only VASRD guidance to its recommendation and therefore apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. Since §4.71a criteria are met for separate joint ratings in this case, the Board is pursuing separate rating and fitness evaluations as follows.

The CI had an insidious onset of chronic bilateral knee pain for 4-5 years leading up to 1999 when he sought treatment. X-rays demonstrated osteochondritis dissecans of the right knee and an orthopedic consultation diagnosed osteochondral defect and offered him definitive care with surgery which occurred in January 2000. His post-operative course was uneventful and by 3 months, he had near normal range-of-motion (ROM), was full weight bearing and in the gym doing physical training. He had similar complaints of his left knee and after a magnetic resonance imaging (MRI) demonstrated a large osteochondral defect. The CI elected to surgically have it repaired, which occurred in September 2000. Despite the surgical interventions, he continued to have persistent pain and swelling with changes in weather, walking and running and underwent an MEB. The LIMDU’s documented the following limitations; no participation in any physical readiness testing, prolong walking, standing, running, crawling, or entering into any area where his unsteady gait may pose a danger to himself, and shore duty only.

There were two goniometric 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 | MEB ~ 4 Mo. Pre-Sep | | VA C&P ~ 7 Mo. Pre-Sep | |
|  | LEFT | RIGHT | LEFT | RIGHT |
| Flexion (140⁰ normal) | 135⁰ | 135⁰ | 115⁰ | 120⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ | 0⁰ | 0⁰ |
| Comment | Negative ligament instability | Negative ligament instability | Negative ligament instability, Deluca negative | Negative ligament instability, Deluca negative |
| §4.71a Rating\* | 10% | 10% | 10% | 10% |

\*Conceding §4.59 (painful motion)

At the MEB exam, the CI reported his symptoms were much improved after surgery, but he still had significant bilateral knee pain and swelling with activity. The MEB physical exam bilaterally demonstrated wounds that were well-healed and trace effusion, palpable joint line crepitus, mild medial and lateral joint line tenderness no instability to varus, valgus or anterior-posterior stress testing, and both lower extremities were distally neurovascularly intact. X-rays showed mild cartilage loss, without advancement at that point to frank arthrosis. At the VA Compensation and Pension (C&P) exam, 7 months prior to separation, the CI reported daily discomfort in both of his knees, especially with climbing stairs or walking for more than 30 minutes, aching and stiffness with sitting more than 1/2 hour, occasionally giving away occurring once or twice per month, and mild swelling approximately once a week related to the amount of walking he did. He denied instability or locking, was not receiving any specific treatment and stated that he relieved his knee pain with rest. The C&P physical exam bilaterally demonstrated numerous scars which were hyerpigmented with slight keloid formation, normal gait without assistive devices, negative ligament or cartilage testing, and no swelling, redness or effusion. X-rays revealed moderately severe osteoarthropathy (arthritis) both knees with localized osteochondritis dissecans left medial femoral condyle and associated changes of bilateral patellar chondromalacia (soft cartilage under the knee cap).

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were complete, well documented, and compliant with VASRD §4.46 (accurate measurement) and similar in terms of ratable data and therefore the Board assigns both exams equal probative value. The Board first considered if each knee, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. All members agreed that either knee, as an isolated condition, would have rendered the CI incapable of continued service within his Rating, and accordingly merits a separate rating. There was no evidence in the clinical record or the LIMDU, to distinguish one knee from the other in terms of duty impairment. The PEB’s chosen code analogous code 5003 (arthritis, degenerative) reflected application of the SECNAVINST 1850.4E for rating, and its 10% determination was not consistent with §4.71a standards. The 5003 code specifies that, in the presence of degenerative arthritis established by X-ray findings, when “the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10% is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5003. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.” There was noncompensable ROM impairment of each knee, and the Board agreed that there was adequate documentation of degenerative changes and painful motion of each joint in the pre-separation data to merit application of a minimal compensable rating under this code. The VA’s chosen code analogous 5014 (osteomalacia) which defaults to 5003 was applicable to the underlying pathology and likewise results in a 10% rating for each knee. There was no VASRD compliant coding or rating approach that would yield higher or additional rating than a minimal compensable rating for either knee. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends that the bilateral knee condition be rated for two separate unfitting conditions as follows: right knee coded 5014 for clinical specificity subsuming painful motion, degenerative changes and noncompensable loss of flexion, rated 10%, and left knee coded 5014 for clinical specificity, subsuming painful motion, degenerative changes and noncompensable loss of flexion, rated 10%.

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 1850.4E for rating bilateral knee condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right and left knee condition, the Board unanimously recommends a disability rating of 10% for each knee, coded 5003-5014 IAW VASRD §4.71a. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Chondromalacia of Right Knee, S/P Bilateral Osteochondral Autograft Transfers | | 5003-5014 | 10% |
| Chondromalacia of Left Knee, S/P Bilateral Osteochondral Autograft Transfers | | 5003-5014 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120123, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 26 Jul 12

(c) PDBR ltr dtd 22 Aug 12

(d) PDBR ltr dtd 8 Aug 12

1. Pursuant to reference (a) I approve the recommendations of the PDBR set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. former USMC: Placement on the Permanent Disability Retired List with a 50 percent disability rating effective 15 April 2006.

b. former USMC: Placement on the Temporary Disability Retired List for the period 31 March 2006 through 10 January 2008 with a disability rating of 100 percent (increased from 30 percent) and final separation on 11 January 2008 with a disability rating of 10 percent with entitlement to disability severance pay.

c. former USN : Disability separation with entitlement to disability severance pay with a final disability rating of 20 percent (increased from 10 percent) effective 21 November 2001.

3. Please ensure all necessary actions are taken to implement these decisions, included the recoupment of disability severance pay, if warranted, and notification to the subject members once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)