RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1200231 SEPARATION DATE: 20020512

BOARD DATE: 20120801

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SW2/E-5 (6010 / Advanced Steel Worker), medically separated for bilateral patellofemoral syndrome. The CI did not improve adequately with treatment to meet the physical requirements of his Rating or satisfy physical fitness standards. He was placed on limited duty (LIMDU) several times then referred for a Medical Evaluation Board (MEB). The MEB forwarded the bilateral patellofemoral syndrome (PFS), right greater than left, and medial meniscus tear. The MEB forwarded no other conditions for Physcial Evaluation Board (PEB) adjudication. The PEB adjudicated the bilateral patella femoral syndrome condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The medial meniscus tear condition was determined to be a Category II condition related to the unfitting bilateral patellofemoral syndrome but not separately ratable. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I was discharged with having patellofemoral syndrome in my right knee. I have had several surgeries on my right knee by the veteran's administration and by private doctors outside of the V.A. My doctors say I have Osteoartrosis (sic) with degenerative joint disease.”

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 remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and listed on the DD Form 294 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 (BCNR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20011210** | | | **VA (2 Mos. Post-Separation--20020723) – All Effective Date 20020513** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Patella Femoral Syndrome (PFS) | 5299-5003 | 10% | Patellofemoral Syndrome Bilateral (PFS) | 5299-5003 | 10%\* | 20020326 |
| Medial Meniscus Tear | Category II | | Carpal Tunnel Syndrome | 8599-8515 | 10% | 20020326 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 0 / Not Service-Connected x 3 | | | |
| **10%** | | | **Combined: 20%** | | | |

\*By VARD 20050812 the bilateral rating was discontinued and replaced by separate 10% ratings for each knee.

ANALYSIS SUMMARY: The Disability Evaluation System (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. 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 nor for conditions determined to be service-connected by the DVA but not determined to be unfitting by the PEB. However the 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’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.

Bilateral Patellofemoral Syndrome Condition. The CI had a history of recurrent torn medial meniscus of the right knee beginning in 1992 and underwent arthroscopic surgery of the right knee on three occasions in 1992, 1999, and December 2000. In addition to the torn medial meniscus, chondromalacia (degenerative) change in the medial compartment was noted during the arthroscopic surgery. Service treatment records (STR) document occasional problems with right knee patellar subluxation beginning prior to entering into service and bilateral patellofemoral pain syndrome, right greater than left. The MEB narrative summary (NARSUM) dated 20 July 2001 reported continued anterior knee pain consistent with patellofemoral pain syndrome, right greater than left, aggravated by stairs and prolonged flexion. The CI denied any mechanical symptoms (instability, subluxation, or locking), or swelling. Examination of both knees was noted for full extension (hyper-extending by 5 degrees “-5”), and near full flexion of 130 degrees. There was tenderness with compression of the patella. There was no instability and negative provocative maneuver for meniscus pathology. There was no swelling, and “no significant quadriceps atrophy.” The NARSUM diagnosis was bilateral patellofemoral pain syndrome, right greater than left. The 20 July 2001 MEB NARSUM advised an additional period of physical therapy however the CI did not improve sufficiently to return to unrestricted duties. An orthopedic examination performed on 16 October 2001 recorded the CI was unable to maintain adequate pace running PT due to knee pain. The surgeon noted there were no mechanical symptoms (instability, subluxation, or locking). On examination, both knees demonstrated tenderness without swelling or effusion.

Range-of-motion (ROM) of both knees was normal with five degrees of hyper-extension (past zero degrees) and flexion to 140 degrees. Both knees were stable, with negative provocative maneuver for meniscus problems. Right knee varus angulation (bow legged) present for several years, was again noted. The MEB NARSUM, dated 23 October 2001 noted persistent anterior knee pain due to patellofemoral pain syndrome. Medial right knee pain related to the meniscus was resolved at this time. At the MEB history and physical examination performed on 22 October 2001, the CI reported that the right knee locks on occasion. The PEB that convened on 10 December 2001, found the bilateral patellofemoral pain syndrome unfitting and rated the bilateral condition 10% coded 5003. An orthopedic follow up appointment conducted on 11 January 2002 noted bilateral knee pain right much greater than left (“R>>L”) with persisting symptoms of pain, popping, and cracking worse with kneeling. The right knee was examined and was unchanged from prior examinations with normal range of motion, no instability, and no meniscus signs. A 13 February 2002 orthopedic appointment recorded that symptoms were unchanged. Right knee examination was unchanged. The VA Compensation and Pension examination (C&P) was 26 March 2002, 6 weeks before separation. The examination noted the CI was bow legged, and the CI reported recurrent patellar subluxation of the right causing swelling, instability, locking, fatigue and lack of endurance. On examination, ROM was normal (extension 0 degrees, flexion 140 degrees) associated with pain during motion. There was no instability and a negative provocative maneuver for meniscus problems. X-rays of both knees were normal. By rating decision on 23 July 2002, the VA granted a single 10% rating for bilateral patellofemoral pain syndrome coded 5299-5003. The Board directs attention to its rating recommendation based on the above evidence. The PEB combined the left and right knee conditions as a single unfitting condition, coded analogously to 5003 and adjudicated a single 10% for both knees. The Board notes that “bundling,” the combining of conditions under a single code, is permissible under the VASRD code 5003 rating requirements, and that this approach does not compromise the VASRD §4.7 directive to choose the higher of two valid ratings. Under code 5003, when the limitation of motion of the specific joint or joints involved is non-compensable under the appropriate diagnostic codes, a rating of 10% is applied for each such major joint or group of minor joints affected by limitation of motion. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion. The VA similarly rated the bilateral knee condition under a single rating coded 5099-5003.

Effective January 2005, the VA assigned separate ratings of 10% for each knee based on new examination evidence supporting separate ratings for each knee. The Board noted that PEBs often combine multiple conditions under a single rating when those conditions considered individually are not separately unfitting and would not cause the member to be referred into the DES or be found unfit because of physical disability (DoDI 1332.38, paragraph E3.P3.4.4.; “overall effect”). This approach by the PEB reflects its judgment that the constellation of conditions was unfitting, not a judgment that each condition was independently unfitting. When combining conditions in this manner, the PEBs concluded that there was no need for separate fitness adjudications. However, the Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each unbundled condition was unfitting in and of itself. Thus the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. The Board therefore considered whether the right knee and the left knee considered alone was unfitting for continued military service. All members agreed that the right knee patellofemoral pain syndrome, as an isolated condition, rendered the CI incapable of continued service within his Rating, and accordingly merits a separate rating. With regard to the rating for the right knee, examinations documented normal, and therefore non-compensable ROM. There was painful motion and tenderness, and the CI was status post meniscus surgery supporting a 10% rating. There was no dislocated meniscus causing locking to warrant consideration under diagnostic code 5258. There was no instability to warrant consideration for an additional rating using diagnostic code 5257. The Board noted the history of occasional right patellar subluxation; however, there were no STR entries documenting problems with this symptom in the year or more before separation and therefore concluded this did not arise to a level warranting rating under the code for instability. VA examinations after separation, also reflect no instability, subluxation or dislocation.

Regarding the left knee patellofemoral pain syndrome, there was limited evidence that the left knee, when considered alone, interfered with performance of duties sufficiently to be considered unfitting leaving the Board is with a questionable basis for arguing that the left knee was indeed independently unfitting. Review of the STR discloses predominantly right knee pain, while the left knee was rarely mentioned. A 13 March 2001 orthopedics appointment records that patellofemoral syndrome was “now bilateral.” On examination a patellofemoral grind test was positive on the left as well as the right but the patella was non-tender. Subsequent treatment records referred to diagnosis of bilateral patellofemoral syndrome with the right knee much worse than the left. Board members discussed the fact that the right knee was the primary focus of clinical attention and overshadowed the left knee. However, there was no detail regarding impairment attributed to the left knee, and the left knee was not involved with any of the problems present in the right knee. The Board also noted VA examinations, after separation, focused only on the right knee. The majority of the Board concluded the preponderance of evidence did not support a separate finding of unfit for the left knee. During deliberation, the Board also contemplated the potential benefit to the CI if this condition was “unbundled” and each knee given an independent code and rating. The Board unanimously agreed that the right knee was in and of itself unfitting and rated at 10%. Concerning the “unbundled” left knee, even if the Board concluded it was separately unfitting the Board concluded that the evidence would support a rating of 0% for the left knee. Thus, there was no apparent value to unbundle the condition and apply a rating of 10% right knee and 0% left knee. Based on the forgoing, the Board recommends no change to the PEB’s adjudication of the bilateral knee 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. In the matter of the bilateral patellofemoral syndrome condition, the Board unanimously recommends no change in the PEB adjudication. 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 and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bilateral Patellofemoral Syndrome | 5299-5003 | 10% |
|  | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120305 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 16 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 Physical Evaluation Board:

* former USMC
* former USN
* former USN
* former USN
* former USMC
* former USN

Assistant General Counsel

(Manpower & Reserve Affairs)