

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1100913
BOARD DATE: 20130206

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20050615

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt/E-5 (3531/Motor Transport Operator), medically separated for bilateral knee pain, right greater than left. The CI injured his right knee in 2002 and had arthroscopy in December 2003 when a lateral meniscal tear and multiple loose bodies were noted. Although the tear was debrided and the loose bodies were removed, the CI noted increased right knee pain. A second arthroscopy in July 2004 noted the lateral meniscal tear had propagated and it was again debrided. The right knee also had a full thickness lateral femoral condyle defect and this was treated with microfracture. Left knee pain began in the spring of 2004. The CI did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was placed on limited duty (LIMDU) and he underwent a Medical Evaluation Board (MEB). Pain in joint, lower leg 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 adjudicated the bilateral knee pain condition as unfitting, rated 10%, with application of the SECNAVINST 1850.4E. The CI made no appeals, and he was medically separated with a 10% combined disability rating.

CI CONTENTION: "I believe my condition was under rated (20%) based on my current medical conditions. I strongly believe some things may have been overlooked or the proper medical test or exams were not conducted to confirm the severity of my injury/medical conditions. At the point of my discharge (6.15.2011) I was not able to perform my regular job duties (MOS 3531 Motor Transportation) due to my medical conditions, based on that I was not able to sit for long periods of time due to my knees locking up and the stability of my knees. Unable to drive for long periods of time which my MOS required on a constant basis."

RATING COMPARISON:

Service IPEB – Dated 20050321			VA (1 Month Pre-Separation) – All Effective Date 20050616			
Condition	Code	Rating	Condition	Code	Rating	Exam
Bilateral Knee Pain, Right Greater Than Left	5299-5003	10%	Left Knee Osteoarthritis	5260*	10%	20050520
			S/P Right Knee Arthroscopic Surgery with Scar	5260*	10%	20050520
↓No Additional MEB/PEB Entries↓			0% x 2/Not Service Connected x 1			20050520
Combined: 10%			Combined: 20%*			

*Left (20%) and Right (30%) knee instability 5257 and Left knee (10%) and Right knee (10%) painful scar 7804 added effective 20110317 with combined increased to 70%.

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 rating for unfitting conditions will be reviewed in all cases. The condition bilateral knee pain 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 conditions. The other requested or implied conditions are not within the Board's purview. Any condition or contention not requested in this application, or otherwise outside the Board's defined scope of review, remains eligible for future consideration by the Board for Correction of Naval Records.

ANALYSIS SUMMARY: The Board's authority as defined in DoDI 6040.44, resides in evaluating the fairness of the Disability Evaluation System fitness determinations and rating decisions for disability at the time of separation. 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. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

The PEB rated right knee pain and left knee pain together under the single analogous 5003 (degenerative arthritis) code. However, IAW DoDI 6040.44 the Board must apply only VASRD guidance to its recommendation. The Board must 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, however, it must satisfy the requirement that each "unbundled" condition was unfitting in and of itself using a reasonably justified standard. The Board first considered whether right knee pain, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. All members agreed that with application of the reasonably justified standard, right knee pain, as an isolated condition, would have rendered the CI incapable of continued service within his MOS, and accordingly this condition merits a separate rating. Recommendation for rating is discussed below.

The Board next considered whether left knee pain remained separately unfitting, having de-coupled it from a combined PEB adjudication. In analyzing the intrinsic impairment for appropriately coding and rating the left knee pain condition, the Board is left with a questionable basis for arguing that left knee pain was indeed independently unfitting. The LIMDU medical board from July 2004 (nearly 10 months prior to separation) listed the right knee only. The medical board report prepared for the PEB mentioned no specific injury of the left knee stated the right knee pain was worse than the left, and stated that the left knee pain had not started until spring 2004. The Joint Disability Evaluation Tracking System findings from March 2005 also indicated that CI's left knee pain started in spring 2004 and indicated that the knee pain was more on the right than the left. It also noted that the left knee had mild pain, minimal early degenerative changes, and the opinion that the left knee was not separately unfitting. Review of the service treatment record (STR) revealed complaints of bilateral knee pain as early as April 2000 with range-of-motion (ROM) measurements of 0 to 135 degrees bilaterally, the same as the ROM noted in January 2005. A physical therapy (PT) note from March 2004 also noted left knee pain but no exam of the left knee. Left knee patellofemoral syndrome (PFS) was diagnosed in April 2004 by a primary care provider. In June 2004, PT noted full active ROM of the left knee. Although patellofemoral syndrome can be unfitting, the CI's left knee injury does not appear to have reached this level of disability prior to separation. He did later have a meniscal tear and chondral fissures of the left knee that required arthroscopy but this was not until August 2009, more than 4 years after separation. After due deliberation, the Board agreed that under the reasonably justified standard, the evidence does not support a conclusion that left knee pain, as an isolated condition, would have rendered the CI incapable of continued service within his rating, and accordingly cannot recommend a separate rating for it.

Right Knee Condition: 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 – Right Knee	MEB ~ 5 Mo. Pre-Sep	VA C&P ~ 1 Mo. Pre-Sep
Flexion (140° normal)	0-135°	0-100°
Extension (0° normal)	0°	0°
Comment	Lateral joint line tenderness; mild effusion; patellar irritability with significant quad inhibition that signifies painful motion; patellar grind; no instability.	Pain-limited ROM. Normal gait with no signs of abnormal weight bearing; mild diffuse tenderness over anterior and lateromedial aspects; not additionally limited after repeated motion; negative drawer and McMurray, no crepitus or ankylosis.
§4.71a Rating	10%	10%

The MEB narrative summary completed 5 months prior to separation noted that CI's condition started after a right knee twisting injury during PT. Since that time, he was treated with oral medications and PT and ultimately had right knee arthroscopy in December 2003, in which a lateral meniscus tear was found and was debrided. His right knee pain worsened after said surgery and he underwent another arthroscopy in July 2004 where the meniscus tear had propagated and several loose bodies were found in the right knee. The meniscus tear was further debrided and the loose bodies were removed at that time. Subsequently, CI continued to have right knee pain and left knee pain emerged during the spring of 2004. X-rays were done and showed early degenerative changes in both knees. At the MEB exam completed approximately 5 months prior to separation, the CI reported that he had pain in both knees, right more than left, which prevented him from doing his fitness test, being able to go to the rifle range and affected his ability to climb in and out of trucks. The ROM of the right knee is documented in the chart above. At the VA Compensation and Pension exam completed approximately a month prior to separation, the CI reported having bilateral knee pain since 2001 and the right knee was always worse than the left. The clinical history of the right knee was the same as reported above. He also reported intermittent stiffness and swelling of the right knee. On examination of the right knee, the VA examiner indicated that there was good tone bilaterally, good active motion, no atrophy, and strength was 5/5 throughout. The VA examiner reported right knee ROM as detailed above.

The Board directs attention to its rating recommendation based on the above evidence. While the PEB utilized 5003 code under the evidence of arthritis in the knees, the VA chose to utilize 5260 which is driven by pain limited ROM. However, both assigned a 10% rating. Neither MEB nor VA exam documented any other ratable criteria that can be used to reach any rating greater than 10%. There was no motor deficit, no neurological deficit, and no evidence of instability or ligamentous instability at the time of separation from service. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication.

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 knee condition and IAW VASRD §4.71a, 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 knee pain	5099-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20050615, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

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Director
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 21 Feb 13

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:

- former USN
- former USN
- former USMC
- former USN
- former USMC
- former USN
- former USN
- former USN
- former USMC
- former USMC
- former USMC
- former USMC

xxxx
Assistant General Counsel
(Manpower & Reserve Affairs)