

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:  
CASE NUMBER: PD1200407  
BOARD DATE: 20121114

BRANCH OF SERVICE: NAVY  
SEPARATION DATE: 20020803

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Petty Officer Second Class/E-5 (9545/Law Enforcement Specialist), medically separated for chondromalacia patellae of the left knee and advanced impingement with partial-thickness rotator cuff tear of the left shoulder. The left knee condition began in 1999 and the left shoulder condition began in 2001; neither condition was a consequence of injury. Despite two knee surgeries and conservative treatment for both conditions, the CI did not improve adequately 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 chondromalacia patellae, left knee, advanced impingement, left shoulder and partial thickness rotator cuff tear, left shoulder 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 chondromalacia patellae of the left knee and advanced impingement with partial-thickness rotator cuff tear of the left shoulder conditions as unfitting, rated 10% and 0% respectively, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

**CI CONTENTION:** "REQUESTING TO CHANGE STATUS FROM MEDICAL SEPERATION TO RETIREMENT ON ON THE PERMANENT DISABILITY LIST." [sic]

**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 left knee and left shoulder conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. 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 IPEB – Dated 20020522			VA (~1.5 Mos. Post-Separation) – All Effective Date 20020804			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chondromalacia Patellae of the Left Knee	5299-5003	10%	Chondromalacia of the Patella, Left Knee	5099-5014	10%	20020918
Advanced Impingement with Partial-Thickness Rotator Cuff Tear of the Left Shoulder	5301	0%	Impingement Syndrome, Left Shoulder	5299-5203	10%*	20020918
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 2			20020918
<b>Combined: 10%</b>			<b>Combined: 20%</b>			

\*VA decision 20110119 increased to 20% based on later exam, code changed to 5299-5201, effective 20100325; combined 30%

**ANALYSIS SUMMARY:** The Board notes the current VA ratings listed by the CI for all of his service-connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The VA ratings which it considers in that regard are those rendered most proximate to separation. The Disability Evaluation System has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans' Affairs.

**Left Knee Condition.** Progressively worsening knee pain with no prior trauma led to an arthroscopy on 12 April 1999 which established the diagnosis of chondromalacia patellae. Due to ongoing pain, magnetic resonance imaging (MRI) performed in September 2000 re-confirmed that diagnosis and revealed no other abnormalities. On 22 January 2001, a lateral patellar release surgery was performed in an attempt to alleviate persistent pain. There were three 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.

Left Knee ROM	PT ~5.5 Mo. Pre-Sep	PT ~4 Mo. Pre-Sep	VA C&P ~1.5 Mo. Post-Sep
Flexion (140° Normal)	125°	140°	"Full Active Motion"
Extension (0° Normal)	5°	0°	
Comment	+ Tenderness, swelling	Non-tender	+ Tenderness
§4.71a Rating	10%	10%*	10%

\*Conceding pain with use

The narrative summary (NARSUM) examiner reported that the CI continued to experience difficulty with knee swelling from minimal activity. He was unable to run short distances without significant pain, and experienced difficulty climbing and descending stairs. Examination noted painful motion and a positive grind with crepitation, but no joint line tenderness. Ligament stability testing was normal. X-rays were normal. At the VA Compensation and Pension (C&P) exam performed on 18 September 2002, the CI complained of pain primarily over the anterior aspect of the knee. He also described intermittent episodes of catching, but denied any swelling or giving way. He occasionally used a brace. Examination revealed a normal gait without use of a brace. There was no knee swelling, and no signs of ligament instability or meniscal injury.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB's 10% determination was consistent with §4.71a standards. Although the first PT exam shows limitation of extension sufficient to justify only a 0% rating, there is ample evidence of pain with use (§4.40) or painful motion (§4.59) to warrant a 10% rating. The Board agreed that a route to a higher rating under 5257 (knee, other impairment of) or 5262 (tibia and fibula, impairment of) was not supported by the evidence. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the left knee condition.

**Left Shoulder Condition.** An MRI performed on 17 April 2001 confirmed a partial thickness tear of the rotator cuff. The right hand dominant CI did not improve with physical therapy.

Left Shoulder ROM	MEB ~8 Mo. Pre-Sep	VA C&P ~1.5 Mo. Post-Sep
Flexion (0-180°)	170°	"Full Active Motion"
Abduction (0-180°)	170°	

Comments	+ Painful motion	+ Painful motion, tenderness
§4.71a Rating	10%	10%

At the NARSUM exam, the CI reported an inability to perform overhead activities or to lift heavy objects due to left shoulder pain. Examination revealed no evidence of instability and normal strength. Evidence of painful rotator cuff impingement was present. The MEB examiner noted “full ROM with fluid motion” and weakness of the supraspinatus muscle (the key muscle of the rotator cuff). X-rays were normal. At the C&P exam, the CI reported that pain was along the anterior and superior aspect of the shoulder and occurred primarily with overhead activity. Sleeping on his left side exacerbated the pain. Examination revealed no signs of instability. Evidence of painful rotator cuff impingement was present.

The Board directs attention to its rating recommendation based on the above evidence. The VASRD §4.71a threshold for compensable ROM impairment is “shoulder level,” and the evidence demonstrated motion well above this level. The PEB based a 0% rating on “slight” disability under the 5301 code (Group I muscle injuries - ‘shoulder girdle’). The VA’s 10% rating under an analogous 5203 code (impairment of clavicle or scapula) assumed non-union without loose movement or malunion. Board members agreed that a 10% rating was easily supported based on painful use (§4.40) or painful motion (§4.59) of the shoulder joint. It was agreed that there is no pathway to a rating higher than 10%. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the left shoulder condition, coded 5299-5201.

**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 chondromalacia patellae condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the left shoulder rotator cuff tear condition, the Board unanimously recommends a disability rating of 10%, coded 5299-5201 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:

UNFITTING CONDITION	VASRD CODE	RATING
Left Knee Chondromalacia Patellae	5299-5003	10%
Left Shoulder Rotator Cuff Tear	5299-5201	10%
	<b>COMBINED</b>	<b>20%</b>

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120427, 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 17 Dec 12  
(c) PDBR ltr dtd 5 Dec 12  
(d) PDBR ltr dtd 11 Dec 12  
(e) PDBR ltr dtd 26 Nov 12  
(f) PDBR ltr dtd 20 Nov 12

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (f).
2. The official records of the following individuals are to be corrected to reflect the stated disposition:
  - a. former USMC: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
  - b. former USMC: Disability separation with a final disability rating of 10 percent (increased from zero percent) with entitlement to disability severance pay.
  - c. former USN: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
  - d. former USN: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
  - e. former USMC: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
3. Please ensure all necessary actions are taken, included the recoupment of disability severance pay if warranted, to implement these decisions and that subject members are notified once those actions are completed.

Assistant General Counsel  
Manpower & Reserve Affairs)