

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200527
BOARD DATE: 20121204

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20040305

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 (IT2/Information Systems Technician), medically separated for a left knee tibial plateau fracture. The condition began as a result of injury in 2002. Despite initial surgery, rehabilitation and later arthroscopy, 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 tibial plateau fracture, healed, and full thickness skin and subcutaneous defect, anterolateral left thigh, 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 healed tibial plateau fracture condition as unfitting, rated 10% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD); and full thickness skin and subcutaneous defect, anterolateral left thigh, as 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 10% disability rating.

CI CONTENTION: "My conditions has gotten worst. I have gone from 20% to 80% and I'm requesting 100%."

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 full thickness skin and subcutaneous defect of the left thigh condition requested for consideration and the unfitting tibial plateau fracture condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The remaining conditions rated by the VA at separation and listed on the DA Form 294 application 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 IPEB – Dated 20031120			VA (~2 Mos. Pre-Separation) – All Effective Date 20040306			
Condition	Code	Rating	Condition	Code	Rating	Exam
Tibial Plateau Fracture	5299-5003	10%	Residuals, Fractured Left Proximal Tibial Plateau	5275-5262	10%*	20040107
Full-Thickness Skin and Subcutaneous Defect, Anterolateral Left Thigh	CAT III		Scars, Left Knee, Thigh and Gluteal Area	7801	20%	20040107
			Muscle Herniation Left Thigh	5314	10%	20040107
↓No Additional MEB/PEB Entries↓			0% X 5 / Not Service-Connected x 1			
Combined: 10%			Combined: 40%**			

*VA decision 20050415 changed code to 5299-5262; then on 20081007 increased to 20% effective 20080527; combined 70% including non-PEB conditions. **VA decision 20091117 increased combined to 80% effective 20090729 based on non-PEB conditions.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment and worsening severity with which his service-incurred condition continues to burden him. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate 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 utilizes DVA 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. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation. It is furthermore noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statement in the application regarding the disability rating by the VA of 80% instead of 100%. The CI should contact a DVA counselor to learn how to bring this concern to the VA’s attention.

Tibial Plateau Fracture Condition. The CI sustained a fracture of the tibial plateau of the left knee in a motorcycle accident on 17 August 2002 which required surgical fixation. A concurrent lateral thigh de-gloving injury required split thickness skin grafting. Persistent knee pain led to evaluation with magnetic resonance imaging (MRI) and arthroscopy, which only identified limited chondromalacia of the patellofemoral joint. Removal of the surgical hardware on 1 May 2003 resulted in substantial improvement in medial knee pain; however, lateral knee pain persisted despite ongoing physical therapy. There were three 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.

Left Knee ROM	Ortho ~6.5 Mos. Pre-Sep	MEB ~6 Mos. Pre-Sep	VA C&P ~2 Mos. Pre-Sep
Flexion (140° Normal)	135°	125°	130°
Extension (0° Normal)	0°	0°	0°
Comment	Non-tender	+Tenderness	+Pain with use
§4.71a Rating	10%	10%	10%

At the narrative summary (NARSUM) exam 6 months prior to separation, the CI reported left knee pain severity of two on a 0-10 scale that worsened with activity. He denied swelling or symptoms of knee instability. The CI believed that discomfort in the area of the thigh skin graft

caused his duty performance problems. Examination revealed no gait abnormality and no signs of knee ligament instability. Lower extremity muscle strength was normal. Hip ROM was normal. The large split-thickness skin graft of the anterolateral thigh exhibited no tenderness, swelling or inflammation. A physical therapy (PT) evaluation on 14 October 2003 5 months prior to separation reported some stiffness, but no pain. Gait was normal. A follow-up PT evaluation on 24 November and 20 December 2003 also reported a normal gait. He was no longer wearing a knee brace. At the VA Compensation and Pension (C&P) exam 2 months prior to separation, the CI reported that it was difficult to run, jump, exercise, push a lawn mower or climb stairs because of left knee pain and giving out. He reported swelling of the knee and limping after prolonged walking, and used a knee brace. He also complained of pain in the area of the posterolateral upper thigh when sitting, which caused him to shift his weight to his right side. The area was sometimes sensitive to touch. Examination revealed a slight limp, "possibly due to his left knee," but did not note if a brace was present. Knee pain caused decreased ability to toe and heel walk. Lower extremity length measured 98 centimeters on the left and 99 centimeters on the right. A 31 centimeter by 10 centimeter (approximately 12 inch by 4 inch) scar was present at the graft site on the left upper posterolateral thigh. It exhibited some decreased sensation, and there was some underlying tissue loss and focal muscle herniation present. Another 3 centimeter by 1 centimeter scar in the gluteal area was indented. ROM of the hips was equal. The left knee showed no redness or swelling. The patellar tendon area was reportedly painful, but evident tenderness or painful motion was not explicitly described. X-rays of the knee showed post-surgical changes. A C&P exam 6 months after separation noted that the CI was ambulating without assistive devices. Gait and lower extremity muscle strength was normal. There was no tenderness of the thigh graft site.

The Board directs attention to its rating recommendation based on the above evidence. Although noncompensable limitation of motion was present, the ratings by the PEB and the VA were supported by evidence of pain with use (§4.40) or painful motion (§4.59). The Board considered a higher rating under the 5262 code (tibia and fibula, impairment of). Board members agreed however that the evidence elaborated above does not reflect a "moderate" level of knee disability, and therefore a 20% rating is not justified under that code. 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 tibial plateau fracture condition. The Board further debated the left thigh full thickness skin and subcutaneous defect adjudicated as Category III by the PEB. The Board's first charge with respect to this condition is an assessment of the appropriateness of the PEB's fitness adjudication. 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. Although this condition was identified by the CI as an impediment to duty performance, there was no physical examination evidence supporting this. The thigh was non-tender and exhibited normal muscle strength. Except for the first C&P examiner who noted a slight limp that may have been due to knee pain, other examiners before and after separation noted a normal gait. There was no indication from the record that this condition 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 full thickness skin and subcutaneous defect 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. 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 tibial plateau fracture condition and IAW VASRD

§4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended full thickness skin and subcutaneous defect condition, the Board unanimously recommends no change from the PEB determination 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 and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Tibial Plateau Fracture	5299-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, 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 31 Dec 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:

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

Assistant General Counsel
(Manpower & Reserve Affairs)