

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX  
CASE NUMBER: PD1200730  
BOARD DATE: 20130122

BRANCH OF SERVICE: MARINE CORPS  
SEPARATION DATE: 20020115

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (0341/Infantry Mortarman) medically separated for right knee pain. He was treated, but did not improve adequately to fully perform his military duties, or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). The MEB found his right knee condition medically unacceptable, and referred him to a Physical Evaluation Board (PEB). No other conditions were listed on the NAVMED 6100/1. The PEB found the right knee pain unfitting, and rated it 10% IAW the Veterans' Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with 10% disability.

**CI's CONTENTION:** "I feel I can't excel in my line of work, I have constant pain all the time and still can't straighten leg."

**SCOPE OF REVIEW:** The Board's scope of review as defined in DoDI 6040.44, 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 unfitting knee condition (early right knee arthritis, status post right lateral meniscal allograft) meets the criteria prescribed in DoDI 6040.44, and is accordingly addressed below. No other conditions are within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Board for Correction of Naval Records.

**RATING COMPARISON:**

Navy PEB – dated 20011113			VA (4 mos. Post-Separation) – All Effective 20020116			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Knee Pain	5003	10%	Right Knee, Degenerative Changes	5010-5259	10%	20020617
↓No Additional MEB/PEB Entries↓			Pseudofolliculitis Barbae and Seborrheic Dermatitis	7899-7814	10%	20020617
			Not Service Connected (NSC) x 4			20020617
<b>Combined: 10%</b>			<b>Combined: 20%</b>			

**ANALYSIS SUMMARY:** The Board acknowledges the sentiment expressed by the CI regarding the impairment with which his knee condition continues to burden him, and the significant impact that it has had on his quality of life. It is noted for the record that the Board 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 members for future severity or potential complications of conditions. That role and authority is granted to the Department of Veterans Affairs (DVA). The Board evaluates DVA evidence in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation. Compensation can only be granted for the degree of

severity present at the time of separation. The DVA, however, is empowered to periodically re-evaluate a CI's conditions for the purpose of adjusting the disability rating should the degree of impairment change over time.

Right Knee Condition. In November 1999, this Marine injured his right knee while playing basketball. He was evaluated, and was diagnosed with a torn lateral meniscus. He had multiple procedures done on the right knee; including arthroscopic debridement, near subtotal meniscectomy and lateral meniscal allograft. In spite of treatment, his right knee problems persisted and an MEB was initiated. His MEB clinical evaluation was in September 2001. Examination revealed a slight lateral bulge and slight lateral joint line tenderness (JLT). Range-of-motion (ROM) was 0 to 140 degrees. There was a positive lateral opening with varus force. McMurray's was negative and Lachmann's was stable at Grade IA.

After separation from service, the CI was scheduled for a VA Compensation and Pension (C&P) examination of his joints, but he failed to appear for that exam. He did have a C&P joint exam on 7 February 2004. At that time, he reported occasional pain and popping in the right knee. He denied any episodes of swelling or instability. The CI was able to run and play basketball, but had pain following that activity. He was not taking any medications. On exam, there was normal longitudinal alignment of the right knee, and some lateral JLT. Right knee ROM was 5 to 130 degrees. There was no instability to varus/valgus stress. Drawer signs (anterior and posterior) were negative. The two ROM evaluations which the Board weighed in arriving at its rating recommendation, are summarized in the chart below.

Right Knee ROM	MEB ~ 19 weeks Pre-Sep (20010905)	VA C&P ~ 2 years Post-Sep (20040207)
Flexion (140° Normal)	140°	130°
Extension (0° Normal)	0°	5°
Comment	slight bulge & tenderness	mild pain & popping
§4.71a Rating	10%*	10%*

\*10% based on VASRD §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all evidentiary information available. The right knee was non-compensable based on the VASRD §4.71a diagnostic codes for loss of knee motion (5260 and 5261). However; IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. The Board tried to find a path to a rating higher than 10%, using other codes which could be applied to the right knee condition. The other VASRD codes that were considered did not result in a rating higher than 10%, since the treatment record did not show evidence of ankylosis, malunion, or any other significantly disabling joint abnormality which would justify a rating higher than 10%. 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 right knee condition.

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**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 right knee condition and IAW VASRD §4.40, §4.45, §4.59, and §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:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Right Knee Pain, due to Early Right Knee Arthritis	5003	10%
	<b>COMBINED</b>	<b>10%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120602, 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 31 Jan 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 USMC
- former USMC
- former USMC
- former USN
- former USN
- former USN
- former USN

XXXXXXXXXXXXXXXXX  
Assistant General Counsel  
(Manpower & Reserve Affairs)