

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX
CASE NUMBER: PD1200780
BOARD DATE: 20130117

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20030315

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PVT/E-1 (9900/Basic Marine Recruit), medically separated for a right knee condition (medical meniscus tear). The CI was deemed a nonsurgical candidate and was unable to complete recruit training. He was placed on limited duty and referred for a Medical Evaluation Board (MEB). Horizontal and radial tear of the posterior horn of the medial meniscus was forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB's submission. The PEB adjudicated the right knee condition as unfitting, rated 10% with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: "When seperated [sic], received 10% disability from PEB, never received any monthly comp. When get re-eval wasn't missing work due to injury – given 0% rating. Have had 3 knee operations since seperation [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. 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 20030127			VA (6+ Yrs. Post-Separation) – All Effective Date 20081126*			
Condition	Code	Rating	Condition	Code	Rating	Exam
Horizontal & Radial Tear of Posterior Horn of the Rt Medial Meniscus	5299-5003	10%	Scar as Residual S/P Rt Knee Surgery for Meniscal Tear	7805	0%	20091025
Combined: 10%			Combined: 0%			

*This was the date the CI's application for VA Compensation and Pension was received.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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, at the time of separation. The Board's operative instruction, DoDI 6040.44, specifies a 12-month interval for special consideration to VA findings. This does not mean that later VA evidence was disregarded, but the Board's recommendations are directed to the severity of unfitting conditions at the time of discharge from military service. In this case, therefore, the evidence from the service record is assigned significantly more probative value as a basis for the Board's recommendations.

Right Knee Condition. The CI sought treatment for right knee pain and swelling aggravated with activity. He reported a prior history of meniscal injury which had required arthroscopic surgery. The evidence documented the symptoms developed either without trauma or due to a twisting injury on a bayonet course. Orthopedics evaluated his right knee for a meniscal tear confirmed by magnetic resonance imaging and deemed him a non-surgical candidate at that time. The MEB physical exam demonstrated pain with right knee pivoting that was 7 of 10 in intensity, normal neuromuscular findings of the right lower extremity and no loss of range-of-motion (ROM). At the VA Compensation and Pension (C&P) exam more than 6 years after separation, the CI reported weakness, stiffness, giving way, locking, pain at night and with activity, flare-ups as often as 10 times per day with each lasting various periods of time, with a pain severity level of 10. He denied incapacitation, swelling, heat, redness, lack of endurance, fatigability, deformity, tenderness, drainage, effusion, subluxation or dislocation. The CI was not taking medications for his condition, was employed as a vet technician and the duties aggravated his condition. The C&P exam documented normal posture and gait and the right knee was without signs of edema, instability, abnormal movement, effusion, weakness, tenderness, redness, heat, deformity, misalignments, drainage, subluxation or guarding of movement. All ligament and meniscal testing were normal, there was no loss of ROM and there were no Deluca criteria observations. The right knee X-ray findings were within normal limits.

The Board directs attention to its rating recommendation based on the above evidence. The PEB's 10% rating coded analogous to 5003 (arthritis degenerative) likely concedes VASRD §4.59 (Painful motion) for the pivot pain. The VA chose to rate only the residual scar as their evidence did not support residual joint disease. Members deliberated if a 20% rating could be recommended under the 5258 code for cartilage, semilunar, dislocated, with frequent episodes of "locking," pain, and effusion into the joint." This would require its analogous application, since the code cites "dislocated" cartilage and this was not in evidence, although there were meniscal findings on imaging. The description of symptoms in the MEB history, and degree of disability proximate to separation, however, did not closely align with the criteria of code 5258. The Board additionally considered rating analogous to code 5257 (recurrent subluxation of the knee); this would allow for a 20% or 30% rating were the condition judged to be "moderate" or "severe," respectively, however the evidence reflected the joint was stable. 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 for the right 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. 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 §4.71a, 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
Horizontal & Radial Tear of Posterior Horn of Medial Meniscus	5299-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120614, 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 08 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:

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

xxxxx
Assistant General Counsel
(Manpower & Reserve Affairs)