

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200784
BOARD DATE: 20121205

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20040215

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl, /E-4 (1341/Engineer Equipment Mechanic), medically separated for a right knee and associated right lower leg condition. The CI had non-traumatic onset of right knee pain, swelling and giving way/locking in 2000. Radiographs and magnetic resonance imaging (MRI) demonstrated right knee bony abnormality (femoral condyle osteochondritis dissecans) and possible meniscal injury. The CI underwent right knee arthroscopic surgery with plica repair, and repair (debridement and drilling) of bony lesions on the femur and tibia. The CI had a post-operative deep venous thrombosis (DVT) which required anticoagulation and delayed rehabilitation of the knee. The CI was placed on limited duty, the DVT resolved and the CI was taken off of anticoagulant therapy. The right knee could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently referred for a Medical Evaluation Board (MEB). The right knee/lower extremity condition, characterized as “right medial femoral condyle osteochondritis dissecans lesion status post surgical debridement and drilling, and right knee symptomatic medial plica status post surgical debridement;” and the right lower extremity DVT condition were forwarded to the Physical Evaluation Board (PEB). The PEB adjudicated the right medial femoral condyle condition as unfitting, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The PEB included the right knee plica condition as a Category II diagnosis; a condition contributing to the unfitting medial femoral condyle condition. The DVT condition was determined to be not unfitting. The CI made no appeals, and was medically separated with A 10% disability rating.

CI CONTENTION: The application states in part “My knee that carries the 10% disability rating should have been 30% due to the fact that I was using a brace and a cane. My medical records will show that a hole was drilled into my femur bone which never healed. Dropping bone fragments into the joint I have torn my meniscus. I have a number of other disabilities that I claimed that were (skipped over) during my exam on Camp Lejeune...” (sic) The CI goes on at length to claim the following conditions: neck, right foot, left thumb, dysautonomia, tinnitus, and gastric problems. The application was accompanied by a four page letter from the CI which detailed the aforementioned conditions and associated symptoms as well as claimed headaches, chest pain, “botched surgery” and DES irregularities. The accompanying letter specifically contends the deep venous thrombosis condition. The letter was reviewed by the Board and considered in its recommendations.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 right knee (all aspects) and the right leg DVT conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting right medial femoral condyle condition. All other conditions contended by the CI are excluded from scope as these conditions were not mentioned by the PEB. Any other conditions intended

in request for Board consideration, or any condition or contention outside the Board's defined scope of review, remain eligible for future consideration by the Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

Service IPEB – Dated 20031210			VA (STR + 10 Mo. Post-Separation) – Effective 20040216						
Condition	Code	Rating	Condition	Code	Rating	Exam			
Right Medial Femoral Condyle Osteochondritis Dissecans Lesion ...	5299-5003	10%	Status Post Arthroscopic Surgery Right Knee	5003-5260	10%*	STR then 20041201			
Right Knee Symptomatic Medial Plica ...	Cat II								
Right Lower Extremity Postoperative DVT	Not Unfitting		Status Post Deep Venous Thrombosis Right Leg	7199-7121	NSC	STR			
↓No Additional MEB/PEB Entries↓			Mood Disorder with Anxiety and Panic Attacks	9499-9435	10%*	20060224			
			Left Thumb Numbness	8614	20%	20041201			
			Tinnitus	6260	10%	20060203			
			GERD	7399-7346	10%	20041201			
			Sinusitis	6513	0%*	20060224			
			Not Service Connected x 15						2004-2011 various
			Combined: 10%			Combined: 50%*			

*Note: R knee (VA code 5003-5260) increased to 30% from 20090316; VA code 9499-9435 increased to 70% from 20081019; VA code 6513 increased to 10% from 20090316; combined disability increased to 80% from 20081019; 90% from 20090316; Individual Unemployability granted from 20081019.

ANALYSIS SUMMARY: The disability picture of the right knee was considered in its entirety as it is a single major joint and the symptoms for both right medial femoral condyle osteochondritis dissecans lesion and the associated Category II right knee symptomatic medial plica debridement are not separable from a fitness or functional perspective.

The Board acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation, some of which were evaluated and determined not to be individually unfitting for continued service. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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 is empowered to evaluate the fairness of fitness determinations, and to make recommendations for rating of conditions which it concludes would have independently prevented the performance of required duties (at the time of separation). The Board's threshold for countering DES 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.

The Board also acknowledges the CI's opinion that a medical error ("botched surgery") was responsible for his disability, with the implication that the disability rating should provide for remedy. It must be noted for the record that the Board has neither the jurisdiction nor

authority to scrutinize or render opinions in reference to allegations regarding suspected improprieties or faulty medical care. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB disability ratings and fitness determinations as elaborated above. Redress in excess of the Board’s scope of recommendations must be addressed by the BCNR.

Right Medial Femoral Condyle Osteochondritis Dissecans Lesion and Right Knee Plica Condition. The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Right Knee ROM (In degrees)	PT ~5 Mo. Pre-Sep	MEB ~4.5 Mo. Pre-Sep	VA C&P ~10 Mo. Post-Sep
Flexion (140 Normal)	116	115	Normal (see comments)
Extension (0 Normal)	2	0	Normal (see comments)
Comment: Surgery ~9 Mo. Pre-Sep	Motor Quad function 4/5; + effusion; knee brace; 4 Mo. post- surgery	Quad and calf muscle mass slightly asymmetric; 5/5 strength; TTP; stable Lachman exam and varus and valgus; 5 Mo. post-surgery	Gait normal; “flare-ups requires use of a cane”; “... additional 5° of limitation due to pain and weakness when climbing stairs”; no brace
§4.71a Rating	10%-20%	10%	10%

The narrative summary (NARSUM) documented the history described above, with post-surgical “medial pain in the right knee with weightbearing activities that necessitate his walking with a cane.” The exam is summarized above and radiographs indicated medial femoral condyle osteochondritis dissecans lesion still visible with some interval filling since pre-operative exam. The VA Compensation and Pension (C&P) exam performed 10 months after separation indicated a normal exam with normal gait, with the examiner indicating additional limitation due to pain as summarized above. A VA exam that was over 3 years remote from separation indicated an antalgic gait, with complaints of locking and gives way, and pain limited flexion on repetition. The VA continued their 10% rating following that exam.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the “right medial femoral condyle osteochondritis dissecans lesion status post surgical debridement and drilling as 5299-5003 with an associated category II right knee symptomatic medial plica status post surgical debridement.” The VA rated the entire right knee condition, based on the service treatment records alone (as the CI missed his VA exam), at 10% under code 5003-5260 (Leg, limitation of flexion). The VA continued the 10% rating after the post-separation VA exam summarized above. All ROMs proximate to separation would support no higher than a 10% rating regardless of coding choice. The plica condition has similar characteristics to meniscal tears and analogous meniscal coding was evaluated. The Board deliberated regarding alternate analogous coding using 5258 (Cartilage, semilunar, dislocated), however there was insufficient evidence of instability or “frequent episodes of “locking,” pain, and effusion into the joint” to warrant a 20% rating. Although analogous coding to 5259 could be supported, it would be at the 10% level and offer no benefit to the CI as meniscal coding includes painful motion and dual coding was not indicated. Given the tibial bone defect and surgery the Board also considered analogous coding under 5262 (Tibia and fibula, impairment) with knee disability and deliberated if the disability picture more nearly represented the moderate (20%) knee disability level.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority concluded that there was insufficient cause to recommend a change in the PEB adjudication of the right medial femoral condyle osteochondritis dissecans lesion with right knee plica condition.

Contended Right Lower Extremity Postoperative DVT Condition. The Board's main charge with respect to this condition is an assessment of the fairness of the PEB's determination that it was not unfitting. 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. The deep vein thrombosis (DVT) condition was part of the CI's LIMDU; it was not specified in the non-medical assessment (NMA) commander's statement; but, it was considered to adversely impact retention as it carried a risk of recurrence. The CI had no recurrent DVTs, no pulmonary embolus symptoms or lower leg/calf residuals that would rise to the level of unfitting proximate to separation. History of postoperative right leg DVT was reviewed by the action officer and considered by the Board. There was no performance based evidence from the record that the DVT 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 DVT condition; thus no additional disability rating can be recommended.

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 medial femoral condyle osteochondritis dissecans lesion with right knee plica condition and IAW VASRD §4.71a, the Board by a vote of 2:1 recommends no change in the PEB adjudication. The single voter for dissent (who recommended a 20% rating coded 5003-5262) did not elect to submit a minority opinion. In the matter of the contended right lower extremity postoperative DVT condition, the Board unanimously agrees that it cannot recommend it for additional disability rating. 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
Right Medial Femoral Condyle Osteochondritis Dissecans Lesion with Medial Plica Repair	5299-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120606, 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)