

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1200848
BOARD DATE: 20130131

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20020228

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCPL/E-3 (2146/Main Battle Tank Repair Technician), medically separated for instability of left knee, status post (s/p) left anterior cruciate ligament (ACL) reconstruction. CI initially injured his knee playing football in September 2000. He received physical therapy, bracing, and nonsteroidals. The left knee condition did not improve adequately with treatment and the CI was unable to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was placed on limited duty and referred for a Medical Evaluation Board (MEB). The two conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the instability of left knee condition as unfitting, rated 10%. The remaining conditions were determined to be not unfitting and determined to be Category II. The CI made no appeals, and he was medically separated with a 10% disability rating.

CI CONTENTION: "Knee is torn again (ACL) and grossly unstable. Severe back pain from favoring one leg all the time."

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 other requested condition of back pain is not within the Board's purview. Any conditions or contentions 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 20020110			VA (5.5 Mos. Post-Separation) – All Effective Date 20020301			
Condition	Code	Rating	Condition	Code	Rating	Exam
Instability of Left Knee, status post Left Anterior Cruciate Ligament Reconstruction	5257	10%	Left Knee Injury, Lateral Meniscal Tear; S/P ACL Reconstruction	5260	*10%	20020816
Mild Amount of Pain with Prolonged Standing or Running	Cat II					
Grade I Medial Collateral Ligament Injury	Cat II					
↓No Additional MEB/PEB Entries↓			Lumbosacral Strain	5295	20%	20020816
Combined: 10%			Combined: 30%			

*The CI failed to show for his scheduled C&P examination and his original rating Initial rating was 0% based on the service records that did not include ROM measurements. However, after the C&P exam noted above was completed, the rating was changed to 10% with the same effective date of 20020301. The rating was temporarily increased to 100% effective 20031113 for surgery but was then decreased back to 10% effective 20040101.

ANALYSIS SUMMARY: The Board’s authority as defined in DoDI 6040.44, resides in evaluating the fairness of Disability Evaluation System fitness determinations and rating decisions for disability at the time of separation. The Board utilizes VA 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. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Instability of Left Knee 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.

Left Knee ROM	Ortho ~5 Mo. Pre-Sep	VA C&P ~5.5 Mo. Post-Sep
Flexion (140° Normal)	“Full”	120°
Extension (0° Normal)		0°
Comment	Instability; graded I-II pivot shift, 10mm Lachman’s; opens approximately 8mm with valgus stress; negative joint line tenderness; negative McMurray; no effusion; decreased sensation in infrapatellar branch of saphenous nerve region, otherwise NVI	Lachman’s and anterior drawer mildly positive as compared to right; ; McMurray normal; audible popping noises with repeated flexion; feeling of grinding within the knee; no swelling
§4.71a Rating	10%	10 %

After the injury in September 2000, magnetic resonance imaging indicated a large lateral meniscal tear and a complete loss of the ACL and in December 2000 the CI underwent surgery left knee lateral meniscal tear repair and ACL reconstruction. After separation from service in February 2002, the CI reinjured his left knee in June 2003 and underwent a revision of the left knee ACL reconstruction in November 2003. At the MEB report completed by an orthopedic surgeon approximately 5 months prior to separation, the CI reported an inability to do pivoting activities. He had initially done well after surgery but around the 90-120 day time period after surgery, he began to have symptoms of instability with pivoting activities. At that time, he had a Lachman’s of 10mm, Grade I pivot shift, and opening of the medial side with valgus stress. However, a subsequent exam noted that the Lachman’s of 10mm was only 1 mm different from the asymptomatic right side and further surgery was not recommended. The MEB report physical exam noted “full range of motion” but no actual measurements were provided. Physical examination findings are in the ROM chart above. The VA Compensation and Pension exam completed 5 months after separation included a similar clinical history and the CI reported persistent stiffness and discomfort and fatigability, with precipitating factors that included kneeling and squatting or standing for prolonged periods. Physical exam findings are documented in the ROM chart above.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 10% rating for instability using the Veterans Affairs Schedule for Rating Disabilities (VASRD) code 5257. The VA also assigned a 10% rating effective the day after separation; however, using VASRD code 5260 and the rating was based on painful or limited motion. Both examinations document mild joint instability as compared to the right knee and neither examination contains evidence of a recurrent meniscal injury or limitation of ROM at a compensable level. 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 instability of left 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 left 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
Instability of Left Knee, status post Left Anterior Cruciate Ligament Reconstruction	5257	10%
	COMBINED	10%

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 21 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:

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

xxxx
Assistant General Counsel
(Manpower & Reserve Affairs)