

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200858
BOARD DATE: 20130227

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20020515

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-2 (6123/Helicopter Dynamic Mechanic), medically separated for left knee patellar chondromalacia (left knee condition). He was originally injured while operating a motorcycle in 1998 and has had both lateral and medial knee pain since with some episodes of catching and giving way. In November of 2001 he had a left knee arthroscopy with a near total medial meniscectomy for a chronic bucket handle tear of the meniscus. Since his surgery, he had improvement with the catching, but continued pain with no further course of action available. Despite the surgery and physical therapy, the CI could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty satisfy physical fitness standards. In 1999 the CI met his first limited duty (LIMDU) Board for myofascial pain and was placed on an 8 month LIMDU. The case was not forwarded to a Physical Evaluation Board (PEB). In September of 2001, the CI met his second LIMDU board for chronic left knee pain with evidence of displaced medial meniscus tear. Two months later he had arthroscopic surgery and the Medical Evaluation Board (MEB) was placed on hold. Two months post surgery he was placed on his third LIMDU and referred for a MEB. The conditions forwarded to the PEB were left knee medial meniscus tear and left knee patellar chondromalacia. Both conditions are identified in the rating chart below. The PEB adjudicated the left knee condition as not unfitting and recommended the CI was "Fit to Continue on Active Duty." The CI requested a Records Review Panel reconsideration of his case and filed a 2 page statement outlining why "the findings are not compatible with the evidence provided and the condition I currently have." The Records Review Panel agreed with the CI and changed the rating to an unfit left knee patellar chondromalacia, rated 10% with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The left knee medial meniscus tear was determined to be a Category II condition (contributing to the unfitting condition). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Continued instability [sic] & left knee pain"

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 conditions left medial meniscal tear, implied from the CI's contention "left knee pain," as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below, in addition to a review of the Service rating for the unfitting condition. 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 Recon PEB – Dated 20020321 | | | VA (2 Mos. Pre -Separation) – All Effective Date 20020516 | | | |
|------------------------------------|-----------|--------|---|-----------|--------|----------|
| Condition | Code | Rating | Condition | Code | Rating | Exam |
| Lt Knee Patellar Chondromalacia | 5299-5003 | 10% | No VA Entry | | | |
| Lt Knee Medial Meniscus Tear | CAT II | | Residuals, S/P Arthroscopy, Debridement of Medial Meniscus, Lt Knee | 5258-5257 | 10% | 20020311 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% X 3 / Not Service-Connected x 3 | | | 20020311 |
| Combined: 10% | | | Combined: 10% | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for service 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 anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation.

Left Knee Condition. The CI sought care for over 4 years for left knee pain after an injury from operating a motorcycle. The pain was located anterior and medial with some catching and giving way but no locking. He had some mild intermittent effusions (swelling). The pain was aggravated with stair climbing, "Indian style" sitting, prolong standing, and relieved minimally with the non-steroidal anti-inflammatory medication, Motrin. He ultimately opted for surgical intervention, arthroscopy, which found two knee pathologies, chondromalacia of the patella and femoral condyle and a large bucket handle tear of the medial meniscus, which was partially debrided. The surgery did not resolve his pain. The non-medical assessment documented that he was performing assigned maintenance tasks, as long as they do not require prolong standing however was unable to participate in physical training testing, marksmanship training, martial arts training and he was not World Wide Deployable. There were three 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 | PT Post-Surgery ~5 Mo. Pre-Sep | MEB C&P ~4 Mo. Pre-Sep | PCC ~2 Mo. Pre-Sep |
|-----------------------|--------------------------------|------------------------|--------------------------------|
| Flexion (140° Normal) | 110° | 130° | 100° |
| Extension (0° Normal) | 3° | 0° | 0° |
| Comment | | no laxity | Reinjured – Grade I MCL strain |
| §4.71a Rating | 0% | 0% | 0% |

The MEB physical exam demonstrated normal patellar tracking, no effusion, mild patellofemoral crepitus, mildly positive patellar compression test, abnormal patella glide, normal provocative ligament, and meniscal testing, and tenderness to palpation on the medial aspect of his knee. The examiner documented he was eight weeks status post (s/p) left knee arthroscopy with a near total medial meniscectomy for a chronic bucket handle tear of the meniscus with improvement of the catching in his knee, however the pain was still persistent both medial and anterior and he has not been able to return to vigorous activity. The examiner further opined since surgery did not correct most of his pain that more than likely most of the pain pathology was coming from the anterior knee for which there was no corrective surgery.

Until the PEB process was final the examiner recommended no forced marches, formation runs, physical fitness testing, lifting or carrying more than ten pounds, squatting or twisting activities.

At the VA Compensation and Pension (C&P) exam prior to separation, the CI reported daily pain, stiffness, fatigability and lack of endurance, but there was no locking. The actual C&P orthopedic exam of the left knee for this C&P exam was not in evidence. X-ray revealed lower than normal width of the patellofemoral joint and otherwise within normal limits. The VA left knee exam in February 2004 demonstrated; the gait on level is normal with a mild suggestion of lateral thrust at the knee on heel strike, was able to walk on tip toes and heel, had a hard time doing a deep knee bend and particularly getting up again, no swelling or effusion and no specific ligament laxity. With regards to ROM there was 10 degrees hyperextension bilaterally and full flexion with mild discomfort in flexing at the extremes. No patella signs, specifically no crepitus of the patellofemoral joint, tracking ok and negative patella inhibition and grind tests. Positive meniscal provocative testing (McMurray's) with pain noted on the lateral side. X-rays were ordered and no confirmatory diagnosis was made for the left knee pain.

The Board directs attention to its rating recommendation based on the above evidence. Both the unfitting condition and the Category II condition for the left knee are considered in the analysis below. The PEB and VA chose different coding options for the condition which had some implications on the rating for the Board to consider yet they both assigned the same 10% rating which is consistent for either code IAW §4.71a—Schedule of ratings—musculoskeletal system. The PEB coded analogous to 5003 (arthritis, degenerative) for pain resulting from the left chondromalacia patella pathology and determined the residuals of the medial meniscal pathology contributed to the patella pathology. The VA coded analogous to 5257 (Recurrent subluxation or lateral instability) for slight recurrent subluxation or lateral instability of the knee for the residual of the left knee medial meniscus debridement. Members agreed there is no evidence of ligament instability or recurrent subluxation to support a rating with the 5257 code or to consider dual coding. The Board notes the analogous code used by the VA 5258 (Cartilage, semilunar, dislocated, with frequent episodes of “locking,” pain, and effusion into the joint) can result in a 20% rating however the VA chose not to assign the higher rating likely due to lack of evidence to support this criteria. Members also agreed the evidence does not support “locking” and or frequent knee effusions, rather intermittent. There is in-service diagnosis of chondromalacia patella pathology and medial meniscal pathology however; there was not medical certainty of any clear error in PEB unfitting diagnosis. The Board agreed it is the knee pain which results in the CI's functional impairments which could either come from either pathology or both and therefore could consider a rating with 5003 or with 5259 (Cartilage, semilunar, removal of, symptomatic). However, IAW VASRD §4.14 (Avoidance of pyramiding) the Board could not consider coding the residual pain from either pathology with both codes. There is no evidence of incapacitation episodes to support the 20% higher rating under 5003 and the highest rating is 10% for the 5259 code. Therefore 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 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 |
|---------------------------------|-------------------|---------------|
| Lt Knee Patellar Chondromalacia | 5299-5003 | 10% |
| Lt Knee Medial Meniscus Tear | | CAT II |
| | COMBINED | 10% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120505, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

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Acting 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 8 Mar 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 USN
- former USMC
- former USMC
- former USN
- former USMC

XXXXXX
Assistant General Counsel
(Manpower & Reserve Affairs)