

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX  
CASE NUMBER: PD1201021  
BOARD DATE: 20130201

BRANCH OF SERVICE: MARINE CORPS  
SEPARATION DATE: 20030815

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (2311/Ammunition Technician), medically separated for right knee osteochondral defect, medial femoral condyle. The CI presented to orthopedic clinic in 2002 for right knee pain. He underwent arthroscopy in May 2002. The CI did not respond adequately to operative and rehabilitative treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards (44). He was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the right knee osteochondral defect, medial femoral condyle condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

**CI CONTENTION:** The CI attached a one page letter pleading to his application which was reviewed by the Board and considered in its recommendations. He requests a rating increase for service connected right and left knee disabilities based on his current condition.

**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 right knee condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The requested left knee condition is not within the Board's purview. Any condition 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 20030613			VA (~25 Mos. Post-Separation)– All Effective Date 20040927			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Knee Osteochondral Defect, Medial Femoral Condyle	5299-5003	10%	DJD, R Knee, S/P Arthroscopic Surgery	5003-5260	10%*	20050909
No Additional MEB/PEB Entries			No Additional VARD Entries			
<b>Combined: 10%</b>			<b>Combined: 10%*</b>			

\*Effective 20040927, date claim filed, over one year post separation; R knee temporary 100% 20081110 due to surgery, then 10% effective 20081201 post recovery; L knee 10% coded 5262-5003 effective 20081110 (combined 20%).

**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. While the DES considers all of the 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. The DVA, however, is empowered to compensate 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.

**Right Knee Osteochondral Defect, Medial Femoral Condyle Condition.** There were three goniometric 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.

Right Knee ROM (degrees)	Ortho ~12 Mo. Pre-Sep	MEB ~9 Mo. Pre-Sep	VA C&P ~25 Mo. Post-Sep
Flexion (140 Normal)	135	130	140 (minus 10-20 w/ flare)
Extension (0 Normal)	0	0	0
Comment: Surgery ~15 Mo. Pre-Sep Surgery >5 Mo. Post-Sep (2004)	Stable; 2-mos. post surgery)	Stable to ENT, posterior, and V/V stressing; tenderness medial femoral condyle; 1+ crepitus w/ ROM; 6 mos. post surgery	Note: After post-sep surgery. No deformity; neg Lachman’s & McMurray’s; no laxity or effusion; estimated 10-20° loss of flexion with flare-up; Hx lock/give way;
§4.71a Rating	10%	10%	10% (VA 10%)

The narrative summary (NARSUM) noted that the CI had right knee pain for about a year prior to separation following an injury to the right knee. X-rays and magnetic resonance imaging (MRI) of the right knee showed an osteochondral defect of the medial femoral condyle (MFC). The CI had surgery about 15 months prior to separation when the symptoms did not improve with LIMDU and physical therapy (PT). After surgery he continued to have tenderness of the inside of the knee, crepitus, and pain during activity, especially running. At the MEB exam the CI reported that he did not have power in his knee and the pain limited his capabilities. The MEB exam showed well healed arthroscopic portals. The knee ROMs from that exam are summarized in the table above. There was no laxity of the knee. There was tenderness at the medial femoral condyle with +1 crepitus to ROM. The right lower extremity was intact to motor and sensory testing. The MEB stated that the CI “is unable to run any significant distance with right medial knee pain and occasional swelling” and also “has difficulty with stair climbing and kneeling.”

The VA Compensation and Pension (C&P) exam, approximately 25 months after separation noted that the CI had re-injured the right knee post separation and had a second arthroscopic surgery (in 2004) prior to the VA exam. At the exam the CI reported that he would wear a brace on his knee if doing activities that would stress his knee. He complained of an achy pain on the inside of his knee since his second surgery. It was an achy pain that could last up to a day. It was improved with nonsteroidal anti-inflammatory drugs (NSAIDs). He reported aggravation of his right knee by sitting or standing too long, and that walking did not really affect his knee pain, but that walking caused lock-up and stiffness. He reported flare-ups involving lock-up and

stiffness that would be once per week and last a little while. The right knee would give out once in a while. He reported swelling most of the time in his knee. The VA exam showed a normal gait, with muscle strength 5/5, normal sensation. The CI was able to walk on his heels, toes, and squat without pain. His knee was able to extend to zero degrees and flex to 140 degrees. There was no tenderness to palpation of the patella; no laxity; no effusion were noted. X-ray of the right knee showed degenerative joint disease (DJD) and possible medial femoral condyle osteochondral damage. The VA examiner stated that “The Deluca issue is primarily pain. It is estimated there is a 10 to 20 degrees loss of flexion with flare-up”.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the right knee osteochondral defect, medial femoral condyle, surgically treated as 5299-5003 at 10%. The VA rated DJD, right knee, status post arthroscopic surgery as 5003-5260 (Arthritis limiting flexion of the leg) also at 10% for painful motion. 5003 (Degenerative arthritis) and 5260 (Limitation of leg flexion) are appropriate codes to consider in this case. Either of these codes results in a rating of 10% for the right knee condition. Coding as 5299-5255 (analogous to Femur, impairment of) was deliberated because the CI’s diagnosis was osteochondral (OC) defect, which involves the bone and cartilage of the femur at the knee joint. The Board deliberated if the persistent tenderness of the MFC was comparable to a malunion of the femur under this code, and if the CI met the moderate knee disability (20%) criteria of 5255. Based on the CI’s functional capabilities, described in the record as “able to do some light treadmill and bicycle aerobic activity,” and lack of frequent effusions into the joint, the Board adjudged the record supported the CI’s knee condition to be a mild (10%) knee disability under code 5255 at the time of separation. The Board opined that the original PEB rating code of 5299-5003 was a better match to the CI’s disability picture. 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 osteochondral defect, medial femoral condyle 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 osteochondral defect, medial femoral condyle 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:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Right Knee Osteochondral Defect, Medial Femoral Condyle	5299-5003	10%
	<b>COMBINED</b>	<b>10%</b>

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120625, 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 26 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 USMC
- former USN
- former USMC
- former USMC
- former USN
- former USMC

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Assistant General Counsel  
(Manpower & Reserve Affairs)