

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1201327
BOARD DATE: 20130206

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20030527

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO2/E-5 (PH2/Photographer's Mate) medically separated for chondromalacia, right medial femoral condyle and trochlea. The CI suffered a direct blow to his patella in 1997. He was treated, but could not be adequately rehabilitated to fully perform his military duties or meet physical fitness standards. 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 chondromalacia, right medial femoral condyle and trochlea as unfitting, rated 10%. The CI made no appeals, and was medically separated.

CI CONTENTION: The CI attached a seven page statement to his application which was reviewed by the Board and considered in its recommendations. Excerpted below is the final statement made on the last page: "My sole request is for the Physical Disability Board of Review to right a wrong perpetrated against me. I believe that I should be medically retired at a range of 35% to 45% due to having served 15 years, 10 months, 27 days of active duty. I was not allowed to complete my 20 years at NO fault of myself. Had the Navy acted aggressively in treating my injury in 1996, damage to my knee would have been minimal and it would NOT have interfered with career. Thank you for your consideration."

SCOPE OF REVIEW: The Board's scope of review is defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2). It is limited to those conditions determined by the PEB to be unfitting for continued military service and those conditions identified but not determined to be unfitting by the PEB when specifically requested by the CI. Ratings for unfitting conditions will be reviewed in all cases. The chondromalacia , right medial femoral condyle and trochlea as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. 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 respective Board for Correction of Naval Records (BCNR).

Also IAW DoDI 6040.44, the Board's authority is limited to making recommendations on correcting disability determinations. The Board's role is thus confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to Veteran's Affairs Schedule for Rating Disabilities (VASRD) and, to review those fitness determinations within its scope (as elaborated above) consistent with performance-based criteria in evidence at separation. The Board acknowledges the CI's opinion that the Service did not act aggressively in treating his injury which contributed to his disability, and that a "wrong" was perpetrated against him. It is noted for the record that the Board has no jurisdiction to investigate or render opinions in reference to such allegations; and, redress in excess of the Board's scope of recommendations (as noted above) must be addressed by the BCNR and/or the United States judiciary system.

RATING COMPARISON:

Service IPEB – Dated 20030408			VA - (~3 years Post-Separation)			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chondromalacia , Right Medial Femoral Condyle and Trochlea	5299-5003	10%	Degenerative Joint Disease Right Knee, Post Operative	5010	10%	20060814
No Additional MEB/PEB Entries			Left Rotator Cuff Strain	5299-5010	10%	
Combined: 10%			0% X 2/ Not Service-Connected x 1			
			Combined: 20%			

VAR 20060925 (most proximate to Date of Separation) , no other VARDS in evidence

ANALYSIS SUMMARY:

Chondromalacia, Right Knee. The CI injured his right knee in 1997. He was treated, but his pain persisted and an MEB was initiated. His MEB physical examination (PE) of the right knee was on 19 November 2002, 6 days after arthroscopy. On exam, there was no effusion and the portals were benign. There was some tenderness to palpation (TTP) of the right medial femoral condyle. He had 135 degrees of flexion on the right, which was equal to the left knee. As noted above, the CI was medically separated from the Navy on 27 May 2003. Three years later, he had a VA Compensation and Pension (C&P) exam. At that time, the CI continued to complain of right knee pain. Gait was normal, and he was not using any assistive devices. On exam, there was mild patellofemoral crepitus of both knees, right greater than left. The right knee had full range-of-motion (ROM), but there was some pain with motion. All tests for ligamentous laxity were negative. The two ROM evaluations which the Board weighed in arriving at its rating recommendation are summarized in the chart below.

Right Knee ROM	MEB ~ 6 mo. Pre-Sep (20021119)	VA C&P ~3 years Post-Sep (20060814)
Flexion (140° is Normal)	135°	140°
Extension (0° is Normal)	-5°	0°
§4.71a Rating	10%*	10%*

*10% based on VASRD §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all evidentiary information available. The right knee was non-compensable based on the VASRD §4.71a diagnostic codes for loss of knee motion (5260 and 5261). However; IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. The Board tried to find a path to a rating higher than 10%, using other codes which could be applied to the right knee condition. The other VASRD codes that were considered did not result in a rating higher than 10%, since the treatment record did not show evidence of ankylosis, malunion, or any other significantly disabling joint abnormality which would justify a rating higher than 10%. 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 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 §4.40, §4.45, §4.59, and §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
Chondromalacia, Right Knee	5299-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120623, 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)