

discharge, and therefore ratable under those criteria.

The Board noted that patellofemoral syndrome (PFS) is not listed in the VASRD, and must be rated by analogy to a listed condition. It has been the Board's observation that the PEB generally rates PFS by analogy to degenerative arthritis under VASRD code 5003. In those cases where the syndrome results in ankylosis of the knee joint, recurrent subluxation or lateral instability of the joint, limitation of flexion, or limitation of extension, it may be rated under codes 5256, 5257, 5260 or 5261, respectively. The Board noted that the medical board addendum dated 2 March 1994 indicates that you had a normal gait, and there was no swelling, redness, or discoloration. You had full range of motion in the knee joints, and full strength. Four common tests of knee pathology were negative, and the knee was stable to inward and outward lateral stresses. There was tenderness above the kneecaps. Tendon reflexes and multiple radiographs were normal. In the Board's opinion, as your symptoms were almost entirely subjective in nature, and as there was no evidence of ankylosis, recurrent subluxation or lateral instability, or significant limitation of flexion or extension, your condition was not ratable under any of the knee-specific codes. It concluded that the bilateral PFS should have been assigned a single rating of 10% under code 5003.

The Board rejected your contention to the effect that the difference between the VA and PEB ratings resulted from "...the PEB's unjust attempt to deny benefits, and their inability to admit they are wrong." As noted above, your condition did not meet the criteria for the rating assigned by the VA for the subjective residuals of your repaired inguinal hernia or the PFS. It should be noted that the Navy employs a centralized rating system, which results in the uniform application of rating criteria, whereas the VA system is decentralized, and that the application of the VASRD varies widely throughout the VA system. The fact that local VA rating officials determined that you were entitled to a combined rating of 40% is not probative of error or injustice in your case, because the ratings assigned to your conditions by the VA are clearly erroneous. As indicated in the 17 January 1997 advisory opinion, although the PEB did not agree with your contention that you are entitled to disability retirement, it did "admit" that the rating it had previously assigned was incorrect, and it recommended that the rating be amended.

The Board questioned your contention to the effect that you were not "medically able to remain on active duty", and that your discharge was particularly unjust because of your lengthy Marine Corps service. It concluded that although you were questionably unfit for duty because of your knee pain and resultant inability to participate in physical training, it appears that you could have remained on active duty and performed your duties as a technician in a very creditable manner had you been excused from physical training requirements. In addition, you could have proceeded with a formal hearing, or requested continuation on active duty in a limited duty status, but did not do so.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new

and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY

DISABILITY EVALUATION SYSTEM
BALLSTON TOWER #2
801 NORTH RANDOLPH STREET
ARLINGTON, VIRGINIA 22203-1989

5420
Ser:95-246
17 Jan 97

From: President, Physical Evaluation Board
To: Chairman, Board for Correction of Naval Records
Subj: COMMENTS IN THE CASE OF FORMER [REDACTED]

Ref: (a) SECNAVINST 1850.4C

Encl: (1) BCNR ltr JRE:jdh DN:2177-96 of 8 Jan 97

1. The records in the case of the petitioner, enclosure (1), have been reviewed in accordance with reference (a) and are returned. By his response to advisory opinion of 26 November 1996, [REDACTED] is requesting to have his left knee condition and inguinal hernia condition separately rated.

2. Comments:

a. Former [REDACTED] entered into the Disability Evaluation System (DES) based on a medical board report dated 29 October 1993. His diagnoses were: (1) RIGHT PATELLOFEMORAL PAIN SYNDROME AND (2) RECURRENT RIGHT INGUINAL HERNIA.

b. He was referred to the Physical Evaluation Board (PEB) for a determination of his fitness for continued active service.

c. He was found FIT FOR DUTY by the Record Review Panel (RRP) of the PEB on 16 February 1994 for RIGHT PATELLOFEMORAL PAIN SYNDROME AND (2) RECURRENT RIGHT INGUINAL HERNIA.

d. He disagreed with the findings and requested reconsideration of his case by the RRP. On 14 April 1994, the RRP reconsidered his case and granted him a disability rating of 10%.

e. He demanded a formal hearing on 4 March 1994, and after consulting with counsel he accepted the findings dated 14 April 1994. He requested that his formal hearing scheduled for 27 July 1994 be cancelled.

f. The PEB finalized his case by issuing a Notification of Decision to the Commandant of the Marine Corps on 4 September 1994 directing his separation.

g. He was subsequently discharged from the Marine Corps on 17 October 1994.

Subj: COMMENTS IN THE CASE OF FORMER ██████████

h. Former ██████████ asserts in his petition that the left knee and inginal hernia conditions should have been rated separately and that they were not related to each other. He further asserts that his knee condition should have been rated under VA code 5257 because it requires reconstructive surgery and the rating under VA code 5299-5003 requires only arthritic changes.

i. Former ██████████ submitted a claim to the VA on 18 October 1994. He was rated under VA codes 6018, chronic blepharoconjunctivitis at 10%; VA code 7338/S, Status post right inguinal hernia at 10%; VA code 5257, patellofemoral syndrome left knee at 10%; VA code 5257/S, patellofemoral syndrome right knee at 10%; VA code 7800, Status post injury right eyebrow at 0%; VA code 5225 injury first finger left hand at 0%; VA code 5284, fracture large toe right foot at 0%; VA code 7599-7523, oligospermia, status post right vas deferens injury at 0%; for a combined total rating of 40%.

j. In light of the newly provided response in the former member's case and consultation with a medical representative of the RRP, it is recommended that the petition be granted as follows: Rate under VA code 7338, Right inguinal hernia at 10%; VA code 5009-5003, Right patellofemoral syndrome at 10%; VA code 5009-5003, Left patellofemoral syndrome at 0% with a bilateral factor of 1.0 for a total combined disability rating of 20%.

4. It must be noted that the VA and the PEB are two separate governmental agencies acting under different statutory authority. The VA's jurisdiction is over individuals who are veterans, while the PEB's jurisdiction is over individuals who are still members of the armed services. The VA's concern is whether the veteran's medical condition is service-connected; the PEB's concern is whether the service member's condition interferes with the ability to continue active service. The fact that a service member's medical condition was or was not determined a physical disability requiring separation or retirement from the armed services has nothing to do with VA's jurisdiction over a case. In fact, the VA can delete, add or change diagnoses made by services as the veteran's condition changes after separation from the service if it determines that the condition for which it is currently evaluating the veteran is service connected. The VA can also increase and decrease the disability percentage rating as the condition worsens or improves. The PEB, on the other

Subj: COMMENTS IN THE CASE OF FORMER S [REDACTED]

hand, acting under Title 10 U.S. Code Chapter 61, only determines the member's condition AT THE TIME OF THE MEMBER'S SEPARATION/RETIREMENT from the service, and, except for those placed on the TDRL and then only at the time of removal from the TDRL, cannot change the disability percentage ratings assigned at the time the case was finalized by issuance of a Notification of Decision.

4. I defer, to the Board for Correction of Naval Records and the Secretary of the Navy, resolution of the issue of whether the matter alleged by the member resulted in an injustice for purposes of 10 U.S.C. section 1552(a).


C. J. SCHOENER
COL USMC



DEPARTMENT OF THE NAVY

DISABILITY EVALUATION SYSTEM
BALLSTON TOWER #2
801 NORTH RANDOLPH STREET
ARLINGTON, VIRGINIA 22203-1989

5420
Ser:95-186
7 Oct 96

From: President, Physical Evaluation Board
To: Chairman, Board for Correction of Naval Records

Subj: COMMENTS IN THE CASE OF FORMER [REDACTED]

Ref: (a) SECNAVINST 1850.4C

Encl: (1) BCNR ltr JRE:jdh DN:2177-96 of 1 Aug 96

1. The records in the case of the petitioner, enclosure (1), have been reviewed in accordance with reference (a) and are returned. By his petition of 28 February 1996, [REDACTED] is requesting to be medically retired.

2. Comments:

a. Former [REDACTED] entered into the Disability Evaluation System (DES) based on a medical board report dated 29 October 1993. His diagnoses were: (1) RIGHT PATELLOFEMORAL PAIN SYNDROME AND (2) RECURRENT RIGHT INGUINAL HERNIA.

b. He was referred to the Physical Evaluation Board (PEB) for a determination of his fitness for continued active service.

c. He was found FIT FOR DUTY by the Record Review Panel (RRP) of the PEB on 16 February 1994 for RIGHT PATELLOFEMORAL PAIN SYNDROME AND (2) RECURRENT RIGHT INGUINAL HERNIA.

d. He disagreed with the findings and requested reconsideration of his case by the RRP. On 14 April 1994, the RRP reconsidered his case and granted him a disability rating of 10%.

e. He demanded a formal hearing on 4 March 1994, and after consulting with counsel he accepted the findings dated 14 April 1994. He requested that his formal hearing scheduled for 27 July 1994 be cancelled.

f. The PEB finalized his case by issuing a Notification of Decision to the Commandant of the Marine Corps on 4 September 1994 directing his separation.

g. He was subsequently discharged from the Marine Corps on 17 October 1994.

Subj: COMMENTS IN THE CASE OF FORMER [REDACTED]

h. Former [REDACTED] asserts in his petition that he should be rated at 40% and medically retired. He states that the PEB used the wrong diagnostic codes and did not consider the whole person in rating his case. After consultation with RRP medical representative, it was determined that there was no ligament reconstruction to the knee, which means he only warranted 10% for the patellofemoral syndrome. Furthermore, the former member is entitled to a rating of 10% under VA Code 5299-5003 or VA Code 5257(R)/5257(L), but he is not authorized to be rated under both. This is called pyramiding. Pyramiding by definition in paragraph 2112 of reference (a) is as follows, in part:

"Pyramiding is the term used to described the application of more than one rating to any area or system of the body when the total functional impairment of that area or system is adequately reflected under a single appropriate code."

Additionally, the condition of chronic blepharoconjunctivitis is a Category III condition. This means it is a condition that is not considered separately unfitting nor contributing to the unfitting condition. Therefore, it is not assigned a disability rating.

i. Former [REDACTED] submitted a claim to the VA on 18 October 1994. He was rated under VA codes 6018, chronic blepharoconjunctivitis at 10%; VA code 7338/S, Status post right inguinal hernia at 10%; VA code 5257, patellofemoral syndrome left knee at 10%; VA code 5257/S, patellofemoral syndrome right knee at 10%; VA code 7800, Status post injury right eyebrow at 0%; VA code 5225 injury first finger left hand at 0%; VA code 5284, fracture large toe right foot at 0%; VA code 7599-7523, oligospermia, status post right vas deferens injury at 0%; for a combined total rating of 40%.

3. It must be noted that the VA and the PEB are two separate governmental agencies acting under different statutory authority. The VA's jurisdiction is over individuals who are veterans, while the PEB's jurisdiction is over individuals who are still members of the armed services. The VA's concern is whether the veteran's medical condition is service-connected; the PEB's concern is

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whether the service member's condition interferes with the ability to continue active service. The fact that a service member's medical condition was or was not determined a physical disability requiring separation or retirement from the armed services has nothing to do with VA's jurisdiction over a case. In fact, the VA can delete, add or change diagnoses made by services as the veteran's condition changes after separation from the service if it determines that the condition for which it is currently evaluating the veteran is service connected. The VA can also increase and decrease the disability percentage rating as the condition worsens or improves. The PEB, on the other hand, acting under Title 10 U.S. Code Chapter 61, only determines the member's condition AT THE TIME OF THE MEMBER'S SEPARATION/RETIREMENT from the service, and, except for those placed on the TDRL and then only at the time of removal from the TDRL, cannot change the disability percentage ratings assigned at the time the case was finalized by issuance of a Notification of Decision.

4. I defer, to the Board for Correction of Naval Records and the Secretary of the Navy, resolution of the issue of whether the matter alleged by the member resulted in an injustice for purposes of 10 U.S.C. section 1552(a).


C. J. SCHOENER
COL USMC