RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900027 BOARD DATE: 20100218

SEPARATION DATE: 20061004

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SUMMARY OF CASE: This covered individual (CI) was an active duty NCO (paralegal) medically separated from the Army in 2006 after 7 years of service. The medical basis for the separation was a right knee condition. He sustained an open comminuted fracture of the right patella in 2005 as a result of a motorcycle accident. This required a patellectomy (surgical removal of the knee cap) and chondroplasty, followed by an extensive course of physical therapy. Despite the attempt to rehabilitate his knee, he required a hinged brace and cane for ambulation. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). The knee condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR-40-501. Additional conditions forwarded on the DA 3947 as medically acceptable included fibromyalgia, irritable bowel syndrome (IBS), dyslipidemia and hearing loss. Additional conditions supported in the disability evaluation system (DES) packet are discussed below, but were not forwarded for PEB adjudication on the DA 3947. The PEB adjudicated only the right knee condition as unfitting and the CI was medically separated with a disability rating of 0%.

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CI CONTENTION: The CI states: ‘I believe that my medical records were improperly reviewed. Causing some conditions to be improperly evaluated. In particular, all damage and injuries to my right leg occurred while I was on duty with the U.S. Army. However, some of the conditions stemming from those injuries were not even considered by the PEB.’ In this regard he cites ‘patella-femoral syndrome, chondromalacia, myositis, muscle weakness, limited flexion and hyperlipidemia’. He goes on to state, ‘Other conditions were not considered as well.’ In this regard he cites irregular heartbeat, post-traumatic stress disorder (PTSD), irritable bowel syndrome (IBS), fibromyalgia and hearing loss. He states that his knee condition requires a functional knee brace which should have been prescribed on active duty (cites the opinion of current physicians), and that this would have supported a higher rating under code 5257.

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RATING COMPARISON:

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| **Service PEB** | **VA (~4 Mo. after Separation) – All Effective 20061005** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Knee Pain… | 5009-5003 | 0% | 20060908 | Right Knee Instability… | 5257 | 30% | 20070228 |
| Right Knee Limitation of Flexion | 5299-5260 | 10% | 20070228 |
| Fibromyalgia | Not Unfitting | 20060908 | Fibromyalgia | 5025 | 10% | 20070228 |
| Irritable Bowel Syndrome | Not Unfitting | 20060908 | Irritable Bowel Syndrome | 7319 | 30% | 20070228 |
| Hearing Loss | Not Unfitting | 20060908 | Right Ear Hearing Loss | 6100 | 0% | 20070228 |
| Dyslipidemia | Not Unfitting | 20060908 | No VA Code or Rating | 20070228 |
| No Additional DA 3947 Entries. | Non-PEB X 4 / Deferred X 1 | 20070228 |
| **TOTAL Combined: 0%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 70%**   |

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ANALYSIS SUMMARY:

Right Knee Condition. The PEB coding as analogous to 5003 is not underpinned by radiographic demonstration of arthritis. Even under 5003 coding, application of the U.S. Army Physical Disability Agency (USAPDA) pain policy was necessary to achieve the 0% rating. Painful motion was specifically documented on the MEB physical, elsewhere in the record and by the VA examiner. This would achieve a 10% rating IAW the Veterans' Affairs Schedule for Rating Disabilities (VASRD) §4.59 (painful motion), although there was no compensable range-of-motion impairment. A significant issue in this case, however, is whether to apply the 5257 code for instability of the knee. The condition was, in fact, specified in the narrative summary (NARSUM) and listed on the DA Fm 3947 as ‘chronic right knee pain with instability after patellectomy’. The PEB’s DA Fm 199 omitted instability from its description of the condition, but stated, ‘Has full range of motion with joint instability that is not severe enough to be separately ratable under the joint instability code.’ This judgment is at odds with the NARSUM which states ‘his knee is quite unstable’ and ‘depends upon a cane to walk to decrease his instability’. An orthopedic addendum to the NARSUM, although stating there was no joint laxity on exam, provided the assessment ‘right leg instability and weakness’. The NARSUM and the addendum stressed that a significant issue with the leg was failure to regain muscle strength after the accident. The orthopedist was apparently ascribing the instability to overall muscle strength rather than inherent instability of the joint itself. The VA examiner stated ‘laxity of right knee from surgical absence of patella’. Since the patella is not involved with maintaining a stable knee joint, however, this is not a valid description of joint laxity. There is no examination in the service or VA records which documents joint laxity. This presents somewhat of a quandary regarding coding and rating. The 5257 code, specifically stating ‘recurrent subluxation or lateral instability’ implies *ligamental* laxity which is not present in this case. What is present to a significant degree, however, is overall functional instability. The CI required a permanent brace and cane, walked with an antalgic gait and suffered considerable functional impairment and limitation of activities. His treating orthopedist wrote a memorandum for the PEB stating, ‘His future occupational pursuits have been drastically and permanently altered.’ After due deliberation, the Board agreed that the functional *de facto* instability of the knee (and/or leg) constituted reasonable doubt favoring application of the 5257 code to rating. Since there was no significant mechanical instability of the knee, however, the code is applied analogously (5299-5257). Furthermore, the VASRD latitude for dual rating with 5257 and another compensable knee code is dubiously applicable to an analogous use of 5257. Especially since the second code would also have to be analogous and rated solely for painful motion, the Board believes that dual rating in this case would be suspect for pyramiding. The Board agrees with the VA rating decision that the ‘severe’ characterization for a 30% rating under 5257 is fair, given the degree of disability in evidence. The Board, therefore, recommends a 30% rating for the right knee coded 5299-5257 without application of any additional code for rating.

Other DA Fm 3947 Conditions. Recall that all of these conditions were judged by the MEB to meet retention standards IAW AR 40-501. Fibromyalgia met diagnostic criteria for the condition and achieved a 10% rating by the VA. The NARSUM specifically addressed its fitness implications in stating, ‘This condition has in no way ever interfered with performance of his MOS. He feels good with this condition on most days.’ The Commander’s statement attributed all of the performance limitations to the knee impairment. The physical profile was confined to the right knee condition. There are no entries in the medical record of active treatment for fibromyalgia. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for this condition.

The bowel condition, subsequently diagnosed as IBS, began in 2002. It was manifested by diarrhea and cramps. The NARSUM stated, ‘This is diarrhea predominant. It is largely managed by over-the-counter Imodium. It does not affect his lifestyle very much.’ Although the VA examination documented frequent diarrhea, it noted that the use of Imodium was limited to once weekly. The VA’s 30% rating, maximum under the code, is difficult to justify from the rating examination. There is no support for an argument that the condition was unfitting in the Commander’s statement or physical profile. Records do not reflect active treatment or complications during the MEB period. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for this condition.

The hearing loss received a non-compensable rating by the VA and the NARSUM stated that it ‘calculates out to an H1 hearing impairment’. There is nothing in evidence suggesting that this condition impacted work performance within the MOS. The PEB fitness adjudication was appropriate. Dyslipidemia, not recognized as a disability by the VA, rarely has fitness implications. It was stable on medication. The PEB fitness adjudication was appropriate.

Other Conditions. The only relevant additional conditions documented in the DES packet were a heart condition, kidney stones, a left knee condition, right arm contusion, right leg numbness and insomnia. The heart condition consisted of a history of palpitations and chest pain in 2004. The CI underwent a thorough cardiac work-up without identification of a serious arrhythmia or other cardiac pathology. Per the NARSUM there were no active symptoms at the time of separation. The VA eventually characterized the condition as ‘non-obstructive coronary artery disease’ rated 60%. No such diagnosis or rating could be supported by any facts in evidence at the time of separation. The profile was P1. The CI was diagnosed with kidney stones in 2004. There were no symptoms during the MEB period and a non-compensable rating was applied by the VA. The left knee condition, diagnosed as patellofemoral syndrome, was chronic and stable. It dated to an injury in basic training. The NARSUM characterized it as having ‘been seen on occasion’, but there were no entries in the record of active treatment during the MEB period. The VA examiner noted exacerbations ‘about once monthly’, but ‘continues to do normal activities’. It was rated 10%. It was not profiled or mentioned in the Commander’s statement. The right arm contusion was mentioned in the NARSUM as having been sustained from a fall in 2001, although there was no note of active symptoms or exam findings. It was not identified by the VA. The profile was U1. Right leg numbness was identified by the CI on the MEB physical as related to the leg injury. It was not associated with physical findings or identified by the service or the VA as a distinct condition. Insomnia was identified by the CI on the MEB physical, stating he slept only 3-5 hours nightly. The examiner attributed this to the fibromyalgia, specifying that it did not interfere with daytime activities and was not associated with daytime sleepiness.

The CI contends for PTSD in his application. This was diagnosed in 2008 by the VA (effective date 16 months after separation) and tied to the motorcycle accident. That rating decision stated, ‘Your service records are negative for diagnosis or treatment of any mental health issues.’ The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. PTSD and any other contended conditions remain eligible for ABMCR consideration.

The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right knee condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right knee condition, the Board unanimously recommends a rating of 30% coded 5299-5257 IAW VASRD §4.71a. In the matter of the fibromyalgia, irritable bowel syndrome, hearing loss and dyslipidemia conditions, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the heart condition, kidney stones, left knee condition, right arm contusion, right leg numbness, insomnia or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Knee Pain, Status-Post Patellectomy And Chondroplasty, With Right Leg Instability and Weakness  | 5299-5257 | 30% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090119, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

