RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD0900058 COMPONENT: GUARD

BOARD DATE: 20090709 SEPARATION DATE: 20050915

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SUMMARY OF CASE: This covered individual (CI) was active duty Technical Sergeant Aerospace Maintenance Craftsman medically separated from the Air Force in 2005 after almost fourteen total years of service.

He suffered multiple injuries to his right knee and underwent seven knee arthroscopies from 1991 to 2004 for repeated torn medial meniscus and various other chondroplasties as well as an open high tibial osteotomy with iliac bone graft. At the Tibial osteotomy surgery he had a plate inserted. He was called to active duty, deployed to Iraq and injured his right knee on 20 July 2003. This injury was severe enough to warrant returning to CONUS for definitive care. A line of duty investigation determined that his injury was incurred in the line of duty.

Despite the surgeries and appropriate care, he continued to have significant pain and swelling as well as marked tenderness over the medial joint and crepitus and he was referred to the Air Force Physical Evaluation Board (PEB). Despite the line of duty investigation, the Informal PEB determined he was unfit for continued military service but that his injury had existed prior to service and was not aggravated by service. However, the formal PEB determined there was insufficient evidence to overturn the line of duty investigation. He was then separated with a 20% disability rating for 5258 Chronic right knee pain secondary to meniscal injury using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations.

Using an evaluation completed prior to the time separation from the Air Force, the Veterans Administration (VA) rated this disability as 5010-5260 Status post meniscal tear repair, right knee with degenerative joint disease at 10%. The VA also rated 7805 Scar, right knee at 0% and degenerative joint disease, thoracolumbar spine 5242 initially at 0% and later increased this to 20%.

The CI contends that the formal board did not consider all of his medical evidence as they repeatedly referred to his meniscal repair which was a removal not a repair and they did not specifically address the tibial osteotomy. He may not have been aware that when a meniscus is repaired, the loose portion is removed.

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BOARD FINDINGS: IAW DoDI 6040.44, the Board used the VASRD as the most favorable basis for rating. After careful consideration of all available information, the Board unanimously concluded that the CI’s condition is appropriately rated at a 30% for 5299-5262 Tibia and fibula, impairment of, Malunion with marked knee disability. While the CI did have multiple surgeries to repair, that is remove the loose portions of, his right medial meniscus he also had various chondroplasty procedures and a high tibial osteotomy to clean up his knee joint and his residual symptoms appear to be more closely related to the osteotomy and to degenerative changes. He did have slightly decreased range of motion and painful motion of his knee but this was not sufficient to warrant a rating under VASRD 5260 Leg, limitation of flexion. His right lower leg had a valgus deformity of six degrees, his right knee had degenerative changes, decreased ROM, and significant pain on motion. He also had a marked amount of tenderness over the tibial osteotomy site and hardware as well as significant pain at rest and crepitus. He continued to have severe problems and required more surgeries after separation.

The Board considered rating this disability under 1) 5258 Cartilage, semilunar, dislocated with frequent episodes of locking, pain and effusion, 2) 5259 Cartilage, semilunar, removal of, symptomatic or 3) 5260 Leg limitation of flexion of or analogous to 4) 5257 Knee, other impairment of but rated analogous to 5262 IAW VASRD 4.7: When there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise the lower rating will be applied.

The Board also examined each of the other conditions rated by the VA and did not find any to be unfitting.

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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 disability retirement, effective as of the date of his prior medical separation.

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| Unfitting Condition | VASRD Code | Rating |
| Tibia and fibula, impairment of, Malunion with marked right knee disability | 5299-5262 | 30% |
| Combined | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090121, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

PDBR PD-2009-00058

**DEPARTMENT OF THE AIR FORCE**

WASHINGTON, DC

MEMORANDUM FOR THE CHIEF OF STAFF

SEP 1 2009

Having received and considered the recommendation of the Physical Disability Board of

Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) and

Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating to XXXXXXXXXXXbe corrected to show that:

a. The diagnosis in his finding of unfitness was tibia and fibula, impairment of,

malunion with marked right knee disability, VASRD code 5299-5262, rated at 30%, rather than

chronic right knee pain secondary to meniscal injury, V ASRD code 5258, rated 20%.

b. On 11 September 2005, he elected spouse-only coverage under the Survivor Benefit

Plan (SBP) based on full retired pay, naming Evelyn M. O'Neal as the eligible beneficiary.

c. He was not discharged on 12 September 2005 with entitlement to disability severance

pay; rather, on that date he was released from active duty and on 13 September 2005 his name was

placed on the Permanent Disability Retired List.