RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD0900082 BOARD DATE: 20100520

SEPARATION DATE: 20060418

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SUMMARY OF CASE: This Covered Individual (CI) was a SSG/E-6 Army Reservist (Telephone Repairman/35N). CI was medically separated in April 2006 after more than 10 years of total combined military service, including Navy active duty and Army Reserve components. Medical basis for separation was chronic Left Knee Pain. The Left Knee was determined to be medically unacceptable IAW AR 40-501. CI was referred to the Physical Evaluation Board (PEB), and was found unfit for the Left Knee condition. His Low Back Pain & Major Depressive Disorder were both determined by the PEB to be “Line of Duty (LOD)-no.” He was separated at 20% disability using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Army and DoD regulations.

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CI’s CONTENTION (20090127): The CI states: “The MEB would not look into other conditions that were caused or inflamed by Left Knee injury, because of no LOD for said items. 13 months after military discharge VA gave a Disability rating of 10% going back to May 7, 2007. I believe that I should have received a higher disability rating from the military medical board and should have been entitled to full retirement benefits and Tri-care health care eligibility.”

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RATING COMPARISON:

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| **Army PEB** | **VA (6 Mo. after Separation)** |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Left Knee Pain without Neurologic Abnormality | 5099-5003 | 20% | 20050428 | Status Post Lateral Meniscectomy, Left Knee, with Chondromalacia | 5257 | 10%To100%To 20% | 19830715 | 19830521 to 19991012 to 19991201 |
| Low Back Pain without Neurologic Abnormality | 5299-5237 | (EPTS)MEBNARSUM | 20050309 | Degenerative Disease of the Lumbar Spine w/ Compression at L1 (claimed as lower back condition) associated with status post lateral meniscectomy, left knee with chondromalacia | 5293-5295 | 10%  | 20020930To20050811 | 20030424To 20040716 |
| Low Back Pain without Neurologic Abnormality | 5237 | (EPTS)MEBPEB | 20050309 | Degenerative Disc Disease of Lumbar Spine (with compression at L1) Associated with Status Post Lateral Meniscectomy, Left Knee with Chondromalacia | 5237 | 40%To50% | 20080811 | 20040716To20070507 |
| Major Depressive Disorder Requiring Psychotropic Meds | 9434 | (EPTS)MEBPEBNARSUMPSY Adden | 20050309 | Major Depressive Disorder Associated with Degenerative Disc Disease of Lumbar Spine (with Compression at L1) | 9434 | 30% | 20080511 | 20040716 |
|  |  |  | Right Knee Chondromalacia due to Patella Malalignment Syndrome | 5257 | 10%To20% | 19830715 | 19870601To 20070507 |
|  |  | Not in DES | Scars, Residuals of Left Knee Meniscectomies | 7804 | 10% | 19830715 | 19970612 |
|  |  | Not in DES | Left Quadriceps Atrophy | 5318 | 0%To10% | 19830715 | 19970529 To20070507 |
|  |  |  | 3 X NSC |  |  |  |  |
| **TOTAL Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*):** **10% from 19830521****20% from 19970612****(Bilateral factor of 1.9% for diagnostic codes 7804,5257)****30% from 19970801****(Bilateral factor of 2.7% for diagnostic codes 7804, 5257,5257)****100% from 19991012****(Bilateral factor of 1.9% for diagnostic codes 7804,5257)****40% from 19991201****(Bilateral factor of 3.5% for diagnostic codes 7804,5257,5257)****50% from 20030424****(Bilateral factor of 3.5% for diagnostic codes 7804,5257,5257)****70% from 20040716****(Bilateral factor of 3.5 % for diagnostic codes 7804, 5257,5257)****80% from 20070507****(Bilateral factor of 4.8% for diagnostic codes 7804,5257,5257,5318)**  |

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ANALYSIS SUMMARY:

Left Knee Condition: CI’s left knee problems began when he was a teenager, before he entered military service. He was seen at age 19 with complaints of left knee popping out of joint, and shortly later he was seen again, this time for right knee slipping out of joint. He was diagnosed with bilateral bucket handle tears of the lateral menisci (both knees). In Nov 1977, CI underwent right knee meniscectomy. In May 1979, CI enlisted in the Navy. Interestingly, his Navy entrance examination made reference only to his right knee. There was no mention of problems with left knee. Shortly after entry on active duty, he was seen for left knee pain that occurred with running. Approximately one year later, he was seen for increased pain and swelling involving left knee. This left knee problem eventually culminated with surgical excision of the left lateral meniscus in December 1980. Navy Military Evaluation Board (MEB) Proceedings (1981/82) determined that left knee condition was existing prior to service (EPTS), but had been aggravated by military service. He was declared Fit for Duty. He separated from the Navy (May 1983), and started working for the US Postal Service. In 1990 (seven years after leaving Navy) he joined the Army National Guard, and then in Sep 1996 he transitioned to the Army Reserve. At Warrant Officer Candidate School, he re-injured the left knee while doing deep knee bends. According to CI, he has had (over his lifetime) a total of 7 surgeries on his knees. Range-of-Motion (ROM) testing of left knee (18 Oct 2004) showed 95 degrees flexion (normal is 140 degrees), and -15 degrees extension (normal is 0 degrees). The Army Formal Physical Evaluation Board (PEB) determined that his left knee condition made him unfit for military service, and granted a 20% disability rating for Left Knee Pain, without neurologic abnormality. The pain was described as moderate/constant. In rating the Left Knee Pain, the PEB relied upon U.S. Army Physical Disability Agency (USAPDA) Policy/Guidance Memorandum #13, dated 08 April 2002, subject: Rating Pain. After careful review of all available evidentiary information, the Board unanimously recommends a disability rating of 10% for Left Knee Pain. It is appropriately coded 5099-5010, and meets rating criteria for 10%. The Board also took up the issue of Left Knee Instability. Evidence regarding Left Knee Instability is somewhat equivocal. Some examiners found slight ligamentous instability, and other examiners did not. After lengthy discussion and thoughtful deliberation, the Board has determined that, IAW VASRD §4.3, reasonable doubt is resolved in favor of the CI. The Board unanimously recommends Left Knee Instability as an additionally unfitting condition. It is appropriately coded 5299-5257 and meets the criteria for the 10% rating.

Low Back Pain: The record indicates that Low Back Pain developed gradually and insidiously, around the 1997 timeframe. There is no history of a specific traumatic event or mechanism of back injury that occurred while he was performing military duties. There is also no clear cut evidence that his Low Back Pain condition was permanently aggravated by military service, beyond natural progression. The Board unanimously recommends that at the time of separation, the Low Back Pain condition should be considered LOD-no, and permanent service aggravation (PSA)-no.

Major Depressive Disorder: The record indicates that Depression developed gradually, around the 2001 timeframe. There is no clear cut evidence that the onset occurred while he was performing military duties, or that his psychiatric condition was permanently aggravated by military service, beyond natural progression. The Board unanimously recommends that at the time of separation, the Major Depressive Disorder should be considered LOD-no, and PSA-no.

History of Other Conditions (documented in Disability Evaluation System (DES) package): Right knee condition, Allergies (multiple), Hemorrhoids, Constipation, and Fracture of left arm (healed) were all discussed and considered by the Board. There is no clearly documented evidence that any of these conditions caused any significant adverse effect on the performance of required military duties. These other conditions are all judged by the Board to be not unfitting at the time of separation from service, and are not relevant for disability rating. The Board therefore has no reasonable basis for recommending any additional unfitting conditions.

History of Other Conditions (not documented in DES package): Left quadriceps atrophy and Significant scarring of skin were also considered by the Board. There is no clearly documented evidence that these conditions were a matter of record in the DES package. Therefore, these conditions are judged to be outside the scope of this Board.

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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 Left Knee condition was operant in this case and the condition was adjudicated independently of that policy by the Board. Also, PEB reliance on DoDI 1332.39 may have been operant in this case and the Left Knee condition was adjudicated independently of that instruction by the Board.

In the matter of the Left Knee Pain, the Board unanimously recommends a rating of 10% coded 5099-5010 IAW VASRD §4.71a. In the matter of the Left Knee Instability, the Board unanimously recommends that it be added as an additionally unfitting condition for separation rating; coded 5299-5257 and rated 10% IAW VASRD §4.71a.

In the matter of the Low Back Pain and Major Depressive Disorder, the Board unanimously recommends no recharacterization of the PEB adjudication for those two conditions. In the matter of the Right knee condition, Allergies, Hemorrhoids, Constipation, Left arm fracture, 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.

The other diagnoses of Left quadriceps atrophy and significant skin scarring, rated by the VA were not a matter of record in the Disability Evaluation System package and are therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Military Records (BCMR) to consider adding these conditions as unfitting.

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RECOMMENDATION:

The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Knee Pain | 5099-5010 | 10% |
| Left Knee Instability | 5299-5257 | 10% |
| **COMBINED**  | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090127, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

