RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900085 BOARD DATE: 20100817

SEPARATION DATE: 20051228

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SUMMARY OF CASE: This covered individual (CI) was an Army SGT/E-5 Chemical Equipment Repairer (MOS 63J) medically separated in December 2005 after five years of active military service. The medical basis for separation was left knee pain. The left knee condition was determined to be medically unacceptable IAW AR 40-501. The CI was referred to the Physical Evaluation Board (PEB), was found unfit for the left knee condition, and was separated at 0% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Army and DoD regulations.

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CI CONTENTION: The CI states: “VA overall combined evaluation of 50% eight months after medical discharge. Under a lot of pressure, stress and depression, I agreed to an unfair rating by the Army and waived my right to a hearing. I received an impact to the head when I injured my knee which has caused me constant and severe headaches and was not included in my rating. Under a lot of pressure, stress and depression, I agreed to the wrongful rating of zero percent given by Army Medical Board. Army medical discharge board did not have, or failed to look, at all evidence regarding my case. Army medical discharge board disagreed that I had problems with my back even though I received a VA rating for that disability less than 12 months after discharge. Being still assigned to an active military unit, I was not allowed the opportunity for time to have independent doctors and specialists look at my conditions. My disability has changed my life completely, I cannot walk without a cane, I must take pain medicine all the time, and wear a brace to walk.

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RATING COMPARISON:

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| **Service PEB** | **VA (2 Mo. after Separation)** |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Left Knee | 5099-5003 | 0% | 20050920 | S/P ACL repair, L knee | 5259 | 10% then 20% | 20050922 | 2005122920090128 |
|  |  |  |  | L knee, degenerative changes | 5010 | 10% | 20050922 | 20060823 |
|  |  |  |  | Headaches s/p head injury | 9304-8045 | 10% | 20050922 | 20051229 |
| Low Back Pain  | Medically acceptable  |  |  | Thoracolumbar spine | 5243 | 0% then 10% | 20050922 | 2005122920060307 |
| No Additional DA 3947 Entries.↓ |  |  |  | Scars, Left knee | 7805 | 0% | 20050922 | 20051229 |
|  |  |  |  | Anxiety Disorder Then PTSD | 9400 | 0% then 30% | 20051031 | 2005122920060823 |
| **TOTAL Combined: 0%** | **TOTAL Combined (*Includes Non-PEB Conditions*):** **20% from 20051229** **30% from 20060307****50% from 20060823** **60% from 20090128**  |

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ANALYSIS SUMMARY:

Left Knee Condition – CI injured his left knee in February 2004, by jumping off a one-story building in Iraq. After returning to CONUS (May 2004), Magnetic Resonance Imaging (MRI) showed internal damage to the left knee. The CI underwent left knee surgery in July 2004 for anterior cruciate ligament (ACL) reconstruction, and debridement of lateral and medial meniscal cartilage. Despite intensive physical therapy and rehabilitation over a nine month period, the CI could not perform the duties of his job or participate in the Army physical fitness program. In addition to pain, CI noticed some instability of his left knee and he began using a knee brace while exercising. Examination of the left knee on 20 May 2005 revealed no effusion, no crunching, no grating, no grinding, and no pain with motion. Negative Lachman’s and negative McMurray’s. Range-of-motion (ROM) testing of the left knee showed 110 degrees of flexion (normal is 140), and 0 degrees extension (normal is 0).

The Board carefully examined all of the evidentiary information available. Following thoughtful deliberation, the Board unanimously recommends a disability rating of 10% for chronic left knee pain, status post partial removal of semilunar (meniscal) cartilage. The painful left knee condition is appropriately coded 5259, and IAW VASRD §4.71a-25 meets criteria for the 10% rating. The Board then considered the issue of left knee instability. The CI clearly complained of subjective instability, and his Commander’s statement provides corroborating evidence of left knee instability. However, several examinations have shown no objective evidence of instability. After lengthy discussion, the Board has determined that (IAW VASRD §4.3) reasonable doubt shall be resolved in favor of the CI. By majority opinion (2:1 vote), the Board recommends “Other impairment of left knee: slight ligamentous instability” as an additional unfitting condition. It is appropriately coded 5299-5257, and IAW VASRD §4.71a-25 meets criteria for the 10% rating.

Low Back Pain – The CI complained of low back pain beginning in March 2005. He denied any specific episode of traumatic injury. The pain usually occurred if he was standing for long periods or lying flat on his back. Examination of his back revealed no tenderness, no spasm, negative straight-leg-raise, normal neurological exam, no muscle atrophy, and full range-of-motion (ROM). MRI (July 2005) showed mild multilevel desiccative disc disease, but was otherwise normal. X-rays of the spine showed no evidence of arthritis, and were read as normal. The Board unanimously recommends that at the time of separation, the low back pain was not unfitting and is therefore non-ratable.

Headaches – CI reported that headaches started in 2004. In September 2005, the head pain was described as “Headaches of unspecified nature, brief in duration and managed with mild analgesics without complication.” The Board unanimously recommends that at the time of separation, the Headache condition was not unfitting and is therefore non-ratable.

History of Other Conditions (documented in Disability Evaluation System package) - Acne, Ganglion cyst, Tonsillectomy, tingling and numbness of legs, defective visual acuity, Insomnia, and scarring of skin were all discussed and considered by the Board. There is no clearly documented evidence that any of these other 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 separation from service, and are not relevant for disability rating.

History of Other Conditions (not documented in Disability Evaluation System (DES) package) -

Anxiety Disorder and Post-traumatic Stress Disorder (PTSD) 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. In addition, Army PEB reliance on the U. S. Army Physical Disability Agency (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.

In the matter of the left knee condition, the Board unanimously recommends a rating of 10% for chronic left knee pain, status post partial removal of semilunar cartilage (coded 5259) IAW VASRD §4.71a-25. The Board recommends by majority decision (2:1 vote) a rating of 10% for chronic left knee instability – slight (coded 5299-5257) IAW VASRD §4.71a-25. The single voter for dissent (who recommended no rating for instability) did not elect to submit a minority opinion.

In the matter of the low back pain, headaches, acne, Ganglion cyst, Tonsillectomy, tingling and numbness of legs, defective visual acuity, Insomnia, skin scars, 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.

Anxiety disorder and PTSD, rated by the VA, were not mentioned in the Disability Evaluation System (DES) 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 this condition 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** |
| Lt Knee, s/p cartilage removal, symptomatic | 5259 | 10 |
| Lt Knee, slight instability | 5299-5257 | 10 |
| **COMBINED** |  **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090130, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

