RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900179 BOARD DATE: 20101013

SEPARATION DATE: 20060322

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SUMMARY OF CASE: This covered individual (CI) was an Air National Guard Technical Sergeant (2E672 , Communication Cable and Antenna Systems) medically separated from the Air Force in 2006 after 16 years of combined service. The medical basis for the separation was Right Knee Pain. CI had no significant medical history prior to his mobilization. While deployed to OEF (Operation Enduring Freedom) in Kuwait Apr-May 2003, he complained of intermittent, nagging lumbosacral junction pain with numbness radiating down the right leg. After redeploying he received a magnetic resonance imaging (MRI), 25 Jul 03, which revealed a degenerated bulging disc at L5-S1. Given surgical and nonsurgical treatment options, he chose anti-inflammatory medication (NSAIDS) for symptomatic relief of pain with moderate results. The narrative summary (NARSUM) noted that, as of December 2005, he was still having low back pain with some occasional radicular symptoms in the right leg and anterior left thigh. In July 2003 while assigned to Tallil AFB, Iraq, CI noted his right knee to have a "pop," give way and developed immediate burning pain while attempting to climb out of a manhole. He was evaluated and subsequently found to have a torn medial meniscus. This was corrected by arthroscopic meniscectomy on 14 August 2003. He had a slow recovery and continuous pain despite NSAIDS treatment. His orthopedic surgeon recommended he no longer participate in running, climbing, jumping, or use of ladders. In December 2005, the CI reported intermittent right knee swelling and pain as much as 3 out of 5 days during the week. He was not engaged in any sort of regular physical activity, nor had he been for the past 2-3 years since the onset of symptoms. He was ambulating without limitations or restrictions however, he was still unable to climb telephone towers or maneuver in/out of manholes. The CI underwent a Medical Evaluation Board (MEB) for his right knee and back conditions. The informal Physical Evaluation Board (PEB) determined the Right Knee Pain condition was unfitting applied a 0% disability rating. The Degenerative Disc Disease of Lumbar Spine condition was determined to be a Category II condition, one that can be unfitting but was not currently compensable or ratable and therefore no disability rating was applied. The CI was then separated from service at a 0% disability using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Air Force and Department of Defense regulations.

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CI CONTENTION: The CI states: ‘’My complaint is that the Air Force used a VA Diagnostic code to determine my disability without giving me an exam to determine a percentage of disability nor was any other health issues secondary or primary addressed. The remark section of my physical evaluation said that my condition is not compatible with the rigors of military service, and the next sentence the board said that I was reluctant to deploy and I was relatively normal. (Continued) If the remark section of my evaluation were true I should have been returned to duty to finish up my 3 and half years. The following evidence will supports my claim that the board did not get the full extent of my condition and that the evidence will show a quite different look at my condition. 1) My military orthopedic doctor determine that my knees were so bad that climbing ladders could damage my knees more. My military job was communications this means I climb poles, towers, and I climb in and out of manholes. This was probably 75% of my job. Someone wrote that I was reluctant to deploy even though I was never ask too, and that my knees were normal, but Lt. Col. K---- said different. I felt like this comment was a slap to my patriotism after I served in Iraq as a volunteer National Guardsmen.

2) The Veterans Administration had my knees and back evaluated at 40% one year before the evaluation board meet. The National Guard nor did the active duty Air Force evaluate me for the purpose to determine a percent of disability in accordance with Veterans Administration code. I believe the determination was made on incomplete medical notes, Lt. Col. K---- conflicted the exam and the Veterans Administration evaluation also conflicts with this finding. 3) Social Security determined that my condition was so poor that I was found fully favorable to receive social security disability 12 days prior to the evaluation board meeting that determined that I had relatively normal knees, and coded my back but gave me no percentage. 4) I believe the VA, military and private physicians and National Guard did not combine my medical records to give an accurate accounting of my condition. I still have issues pending with the VA in which I have a congressional flash awaiting a DRO on issues that I had a line of duty on. 5) I hope the letter from Lt. Col. K---- is proof that my knees were not normal as said, and that the VA rating and Social Security letter are evidence enough to prove that this was an incorrect decision. I hope your decision will be in my favor and for others who are like me that had a short time left before retiring and were pushed out the door with no benefits. I hope to inform congressmen C---- that I have a restored hope in the military and that my 16 and half years of service and my service and Iraq and giving of my health was enough to receive health benefits and that’s all that I ask for. Thank you for your time.

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RATING COMPARISON:

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| **Service IPEB – 20060222** | | | **VA Ratings in March 2006**  **(Exam 1.5 Months after Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** | **Effective Date** |
| Right Knee Pain, Status Post Medial Meniscus Repair, Full Range of Motion and Strength | 5299-5257 | 0% | Arthritis and Torn Medial Meniscus Surgery, Right Knee | 5010-5260 | 10%  10%  10% | 200311142006051020070419 | 20040205  20040205 |
| Degenerative Disc Disease of the Lumbar Spine, Normal Range of Motion | 5243 | CAT II | Degenerative Disc Disease Thoracolumbar | 5242 | 10%  20% | 20031114  20060510 | 20040205  20051205 |
|  | NARSUM | | Peyronie’ s Disease w/Erectile Dysfunction | 7599-7522 | 20% | 20060510 | 20040205 |
|  | Not in DES | | Depression and Anxiety Associated with Peyronie’ s disease with Erectile Dysfunction | 9434 | 50% | 20060510 | 20051205 |
|  | Not in DES | | Arthritis Left Knee  (CI Contention) | 5010-5260- | 10% | 20060510 | 20040205 |
|  | Not in DES | | Left Lower Plantar Fasciitis/Pes Cavus | 5278 | 0% | 20060510 | 20051205 |
|  | Not in DES | | Right Lower Plantar Fasciitis | 5278 | 0% | 20060510 | 20051205 |
|  | Not in DES | | GERD | 7346 | 30% | 20060510 | 20051205 |
|  | Not in DES | | Residual Scar from Removal of Actinic Keratosis of Left Forehead | 7800 | 0% | 20060510 | 20051205 |
|  | | | NSC X 17 as of 20100303 |  |  |  |  |
| **TOTAL Combined: 0%** | | | **TOTAL Combined: 80% from 20051205**  **Individual Unemployability granted from 20070322**  **40% from 20040205** | | | | |

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ANALYSIS SUMMARY:

Right Knee Pain, Status Post Medial Meniscus Repair, Full Range of Motion and Strength. In July 2003 while assigned to Tallil AFB, Iraq, CI noted his right knee to have a "pop," give way and developed immediate burning pain while attempting to climb out of a manhole. He was evaluated by orthopedics and MRI on 20030710 revealed inferior surface tear of the body and posterior horn of the medial meniscus and mild patellar tendinosis. This was corrected by arthroscopic right medial meniscectomy on 14 August 2003. Postoperatively he had a slow recovery with continuous pain despite non-steroidal anti-inflammatory medications and it was recommended he no longer participate in running, climbing, jumping, or use of ladders. His Commander’s Statement notes that “he is not able to perform duties associated with climbing ladders to include duties requiring working in manholes and climbing various towers as his last profile recommended that this activity not be accomplish so as not to potentially aggravate the surgery performed on his right knee.” The NARSUM of 20051209 (3.5 months before separation) notes that he is ambulating without limitations or restrictions, however, he is still unable to climb telephone towers or maneuver in and out of manholes. It further states that, in 7 December 2005, the CI reports intermittent right knee swelling and pain as much as 3 out of 5 days during the week, not allowing any sort of regular physical activity since the onset of symptoms in 2003. The NARSUM also notes full strength and range of motion of both knees with no instability (laxity) or crepitus, however there was tenderness over the right knee extensors. He was given a P4 and L4 profile, being unable to perform within his military occupational specialty or complete a physical fitness test, and the condition was forwarded to the Physical Evaluation Board on the AF IMT 618, *Medical Board Report*, as medically unacceptable.

The informal PEB adjudicated the Right Knee Pain condition as unfitting, rated 0 percent (code 5299-5257). It is rated analogously as Knee, other impairment of, (code 5257) with 0 percent rating. This code requires slight recurrent subluxation or lateral instability for a 10 percent rating. A 20 percent rating would have required moderate subluxation or lateral instability. Based on a VA compensation and pension (C&P) examination of 20031114, the VA initially granted service connection for Arthritis and Torn Medial Meniscus Surgery, Right Knee with an evaluation of 0 percent effective February 5, 2004. The VA Rating Decision of 20050502 increased this rating to 10 percent disabling effective the same date and based on the same examination. The 10 percent evaluation was assigned for painful motion of his right knee with normal range of motion. A higher evaluation of 20 percent could not be established because the medical record did not show flexion was limited to 30 degrees, extension was limited to 15 degrees, or there was moderate instability. The VA C&P examination of 20060510 (1.5 months after separation) did not address any knee complaints in the history or examination. A later VA C&P examination on 20070419 (14 months after separation from service) did reveal restricted range of motion of the right knee. Right knee flexion was limited to 110 degrees (normal 140). No joint instability was noted and there was no additional limitation after repetitive use. The 10% rating for painful motion was continued.

The physical examination and functional limitations do not support a rating greater than 10% using any VASRD code. The most accurate code for this condition is 5259 Cartilage, semilunar, removal of, symptomatic. The CI’s right knee meets the 10% (only) rating criteria for this code. VASRD 5260 and 5261 could also be used because although flexion and extension of the right knee were not limited to the compensable level, VASRD §4.59 would allow ratings of 10% under either of these codes. In general, Service PEBs did not recognize painful motion as productive of disability prior to 2008 and did not apply VASRD §4.59 when rating joints. VASRD 5257 requires recurrent subluxation or lateral instability and no instability of the right knee was ever documented. Therefore this code should not be used. No code allows a rating greater than 10% and no code offers any advantage to the CI.

Degenerative Disc Disease of the Lumbar Spine, Normal Range of Motion. While deployed to OEF in Kuwait April to May 2003, the CI complained of intermittent, nagging lumbosacral junction pain with numbness radiating down the right leg. After redeploying he received an MRI (25 Jul 03) which revealed a L5-S1 posterior central and right paramedian disc protrusion which did not result in any significant central canal or neuroforaminal stenosis. The CI was given surgical and nonsurgical treatment options, though the risks of surgical treatment, at that point, appeared to outweigh any potential benefit. The CI chose anti-inflammatory medication for symptomatic relief of pain with moderate results. The NARSUM of 20051209 documented full lumbar range of motion with no pain to palpation, normal gait, and mild muscular spasm. It does not appear that measurements were taken with a goniometer. In December 2005, he was still having low back pain with some occasional radicular symptoms in the right leg and anterior left thigh. He has also been prescribed Neurontin and this helped with his radicular symptoms.

VA C&P examination of 20060510 (approximately 2 months after separation) noted that the CI has not seen a back doctor since August 2003. He reported no prolonged periods of incapacitation in the last one year because of his back or spine. He related that his pain is mostly in his lower back and sometimes goes down to his right hip. He also reported stiffness in his back and also had some weakness at times. He stated that since being started on the Neurontin and Lyrica, his back symptoms had improved. The examination showed degenerative joint disease of the lumbosacral spine with normal gait and posture. There was palpable tenderness and weakness however there was no muscle spasm. Range of motion revealed flexion of 0 to 60 degrees with pain at 45 degrees, extension of 0 to 25 degrees, right and left lateral flexion of 0 to 28 degrees, and left and right lateral rotation of 0 to 28 degrees. His flexion was additionally limited by 5 degrees with repetitive motion. The VA Rating Decision of 20060731 assigned a 20 percent rating based on these limitations of range of motion and additionally limited flexion with repetitive motion. A higher evaluation of 30% was not warranted as the medical evidence did not show forward flexion of the thoracolumbar spine of 30 degrees or less or favorable ankylosis of the entire thoracolumbar spine.

The CI had an earlier evaluation at the VA in 2004 when he left active duty but remained in the reserves. At this exam, his thoracolumbar flexion was limited by pain but only by 10 degrees. An initial rating of 10% based on limitation of motion was applied effective 20040205. His back pain appears to have worsened over time between 2004 and 2006. After the exam in May 2006 the rating was increased to 20% based on a compensable level of limitation of motion.

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| Thoracolumbar | Separation Date: 20060322 | | | |
| Chronological Record 20040729 | VA C&P  20041114 | MEB  NARSUM 20051220 | VA C&P  20060510  2 months after separation |
| Flexion  0-90⁰ normal | Not measured | Limited by Pain | Not measured | 0⁰- 60⁰  Pain at 45⁰  Pain at 40⁰ with repetitive motion |
| Combined  240⁰ normal | Not measured | 230⁰ | Not measured | 190⁰ |
| §4.71a Rating | NA |  | NA | 20% |
| Comments | L-Spine demonstrated full ROM but w/some discomfort. | X-rays show degenerative arthritis | Full lumbar range of motion with no pain to palpation, mild muscular spasm noted | Repetitive use did cause an increase in pain only on flexion and decreased flexion by about 5 degrees more, but had no impact on any other ROM and pain has a major impact. |

The informal PEB determined the CI’s back condition was a Category II condition--a condition that can be unfitting but was not currently compensable or ratable. The commander’s letter does not specifically mention back pain. It mentions assigned duties the CI could not perform due to his right knee condition. Many of these restrictions could have also been required by back pain. The CI could not climb ladders or towers or work in manholes and the commander considered these essential functions of his AFSC. Both knee pain and back pain could necessitate these restrictions. The profile available for review does not specify what activities the CI could or could not perform or what conditions were present that required restrictions.

The NARSUM provides some evidence suggesting that the Degenerative Disc Disease of the Lumbar Spine, normal range of motion condition interfered with AFSC performance, stating that the “patient is being medically boarded because of work-related limitations secondary to his chronic knee and back pains.” There was no evidence of ratable peripheral nerve impairment in this case. The CI did have radiating pain but no evidence of nerve entrapment at any level of the spine. Pain, whether or not it radiates, is included in the rating applied using the VASRD §4.71a General Rating Formula for Diseases and Injuries of the Spine.

The CI applied for and was granted Social Security disability as of 20060210, approximately one month prior to separation from service. The Social Security disability determination was signed 20090203. This was based on the presence of a multitude of medical conditions including back pain. The CI had gone on medical leave from his civilian job as a physical education teacher starting in February 2006 secondary to his radicular/neuropathic pain and injuries sustained while working. He was also granted individual unemployability by the VA effective 20070322, twelve months after separation.

Peyronie’s Disease w/Erectile Dysfunction. The CI was diagnosed with Peyronie's Disease in July 2003. A letter to the CI from The 137th Medical Squadron in Oklahoma City dated 20040105 stated that his Peyronie’s Disease was not a disqualification and the service member could still be deployed and perform their duties. A urology consultation on 20040113 noted that his Peyronie’s Disease had improved greater than 50 percent and caused no functional impairment. No additional medical intervention was needed. The NARSUM of 20051209 notes a past medical history of Peyronie's disease, currently in remission. The Commander’s Statement also mentions the CI’s Peyronie's Disease condition, noting that it does not exempt him from deployment. The VA C&P Examination of 20060510 documented a history of Peyronie’s disease with erectile dysfunction. The VA did rate this condition at 20%. There is no evidence this condition interfered with performance of any required duties and no duty restrictions can be attributed to this condition.

Dupuytren’s Contractures. Dupuytren’s Contractures are noted in the NARSUM which stated that the condition was in remission. The VA did not service connect this condition. There is no evidence this condition interfered with performance of any required duties and no duty restrictions can be attributed to this condition.

Other Conditions Not in the Disability Evaluation System (DES)

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 however they remain eligible for Air Force Board for Corrections of Military Records (BCMR) consideration. The following conditions were rated by the VA but were not mentioned in the DES and are therefore outside the scope of the Board: Depression and Anxiety Associated with Peyronie’s disease with Erectile Dysfunction; Arthritis Left Knee; Left Lower Plantar Fasciitis/Pes Cavus; Right Lower Plantar Fasciitis; Gastroesophageal Reflux Disease(GERD); Residual Scar from Removal of Actinic Keratosis of Left Forehead

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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. After careful consideration of all available information the Board unanimously determined that the CI’s right knee condition is most appropriately rated as 5259 at 10%. The most accurate code Right Knee Pain, Status Post Medial Meniscus Repair, Full Range of Motion and Strength is 5259 Cartilage, semilunar, removal of, symptomatic. The CI’s right knee meets the 10% rating criteria for this code. Additionally VASRD 5260 and 5261 could be used because, although flexion and extension of the right knee were not limited to the compensable level, VASRD §4.59 would allow ratings of 10% under either of these codes. While there was no instability or decreased flexion of the knee at the time of separation from service, the CI did have painful motion of the right knee. No code allows a rating greater than 10% and no code offers any advantage to the CI. After careful deliberation the Board unanimously recommends a change in VASRD code to 5259 with a rating of 10%.

The Board considered the Degenerative Disc Disease of the Lumbar Spine, Normal Range of Motion Condition and determined by simple majority that this condition was not unfitting at the time of separation from service and therefore no disability rating was applied. Although the back condition clearly appears to have worsened after separation there is not a preponderance of evidence that the condition was unfitting at the time of separation. After lengthy deliberation, the Board found, by simple majority, insufficient evidence to determine that, more likely than not, the CI’s back pain was unfitting at the time of separation from service. Although the CI’s duty restrictions could have resulted from either a knee or back condition, the service treatment record (STR) only contains evidence that the limitations were attributed to his knee condition.

The single voter for dissent (who recommended rating 5243 Degenerative Disc Disease at 20%) did not elect to submit a minority opinion.

The Board also considered Peyronie’s disease with Erectile Dysfunction and Dupuytren‘s Contractures and found no evidence to support a determination that these conditions were unfitting at the time of separation from service and therefore no disability rating is applied. The other diagnoses rated by the VA (Depression and Anxiety Associated with Peyronie’s disease with Erectile Dysfunction, Arthritis Left Knee, Left Lower Plantar Fasciitis/Pes Cavus, Right Lower Plantar Fasciitis, Gastroesophageal Reflux Disease, and Residual Scar from Removal of Actinic Keratosis of Left Forehead) were not mentioned in the Disability Evaluation System (DES) 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** |
| Right Knee Pain, Status Post Medial Meniscus Repair, Full Range of Motion and Strength | 5259 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090320, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

