

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1100228  
BOARD DATE: 20130131

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20070627

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard member on a temporary tour of Active Duty SSG/E-6 (11B30/Infantryman), medically separated for chronic neck pain and chronic right knee pain. The CI injured his neck in April or May 2005 and he injured his right knee in December 2005. Despite conservative treatment as well as a right anterior cruciate ligament reconstruction in September 2006, neither condition improved adequately; the CI was unable to meet the physical requirements of his Military Occupational Specialty or to satisfy physical fitness standards. He was issued a permanent U3/L3 profile and referred for a Medical Evaluation Board (MEB). Recurrent headaches, obstructive sleep apnea, and depression conditions, identified in the rating chart below, were identified by the MEB as meeting retention standards and forwarded to the Physical Evaluation Board (PEB). The PEB adjudicated the neck pain and knee pain conditions as unfitting, rated 10% and 0% respectively, with cited application of the US Army Physical Disability Agency (USAPDA) pain policy and the Veterans Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

**CI CONTENTION:** The CI elaborated no specific contention in his application.

**SCOPE OF REVIEW:** The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e. (2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) "identified but not determined to be unfitting by the PEB." The ratings for unfitting conditions will be reviewed in all cases. Any conditions or contention not requested in this application, or otherwise outside the Board's defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records.

**RATING COMPARISON:**

Service IPEB – Dated 20070618			VA (5 Months After Separation) – All Effective Date 20070628			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Neck Pain	5242	10%	Degenerative Disc Disease of the C-Spine C4-7	5243-5242	30%	20071120
Chronic Knee Pain	5099-5003	0%	Right Knee Residuals ACL Repair	5024	10%	20071120
Recurrent Headaches	Not Unfitting		Migraine Headache combined with Post-Traumatic headache	9304-8100	30%	20071120
Obstructive Sleep Apnea	Not Unfitting		Sleep Apnea	6847	50%	20071120
Depression, NOS	Not Unfitting		PTSD	9499-9411	30%	20071120
↓ No Additional MEB/PEB Entries ↓			Bilateral Hearing Loss	6100	10%*	20071120
			Tinnitus	6260	10%	20071120
			0% x 2/Not Service Connected x 2			

<b>Combined: 10%</b>	<b>Combined: 90%</b>
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\*Increased to 40% effective 20100628 but the combined rating remained unchanged.

**ANALYSIS SUMMARY:** The Board's authority as defined in DoDI 6040.44, resides in evaluating the fairness of Disability Evaluation System (DES) fitness determinations and rating decisions for disability at the time of separation. The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

**Neck Pain Condition.** The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Goniometric ROM – Cervical	MEB ~ 5 Mo. Pre-Sep	VA C&P ~ 5 Mo. After-Sep	VA C&P ~ 17 Mo. After-Sep
Flex (0-45)	30° (29, Pain at 19)	15° (Pain at 20); 15° after repetition	20° (Pain at 15)
Ext (0-45)	45° (Pain at 40)	20° (21); 30° (29) after repetition	40°
R Lat Flex (0-45)	35° (Pain at 25)	20° (18)	30°
L Lat Flex (0-45)	45° (With Pain)	10°	30°
R Rotation (0-80)	25° (Pain at 20)	30° (28)	45°
L Rotation (0-80)	40° (Pain at 30)	15°	45°
COMBINED (340)	220°	110°	210°
Comment	Pain limits ROM all directions; tenderness of bilateral paraspinal areas; normal reflexes and sensory exam	Limited by pain & fatigue; spasm from C3 to C6 on right and C4 to C6 on left, spasm in trapezius bilaterally; loss of lordotic curvature	No change with repetition; mildly tender to palpation of cervical spine; no crepitus, instability, spasm, or weakness; normal neurologic exam
§4.71a Rating	20%	30%	20%

The CI injured his neck in April or May 2005 when he fell approximately 5 feet out of an elevated trailer landing on his neck and upper back on sandbags. He continued to have neck and upper back pain as well as headaches despite conservative care. He did get some relief of his pain and decreased frequency of headaches with trigger point and facet injections; however, he continued to have significant neck pain. Magnetic resonance imaging (MRI) of the cervical spine from November 2006 noted diffuse multilevel degenerative disk disease and uncovertebral osteophyte formation. The MEB narrative summary (NARSUM), completed approximately 5 months prior to separation reported MRI findings that were more detailed. No study date was specified and most likely, the NARSUM was referring to the November 2006 study. The NARSUM reported the MRI showed moderate to severe narrowing of the C4-5 left neural foramen, moderate narrowing of the C5-6 bilateral neural foramina, and a broad based disk bulge with patent neural foramina at C6-7. Cervical spine degenerative changes were also shown on X-ray. The NARSUM stated the CI's pain was mild and constant. Physical examination findings are recorded in the ROM chart above. The VA Compensation and Pension (C&P) exam completed about 5 months after separation noted the CI had been medically retired from his civilian job as a police officer due to his neck, knee, and posttraumatic stress disorder (PTSD) conditions. This exam includes the CI's report of standing up and then passing

out and falling backwards while in Iraq, after which he had been evacuated to Germany to see neurology for chronic headaches without any known trauma. The CI also reported several sprain-type injuries to his neck while deployed due to wearing gear, jolting rides, and being in the vicinity of explosions. After separation, the CI reported chronic pain and stiffness in his upper neck and posterior suboccipital region with occasional radiation to his scalp but without weakness or flare-ups. Physical exam findings are noted in the ROM chart above. An MRI completed in January 2008 (7 months after separation from service) documented mid and lower cervical degenerative disk disease with significant neural encroachment bilaterally at C4-5 and C5-6 and mild spinal stenosis at C6-7. A second C&P examination was completed 17 months after the CI separated and the physical examination findings are reported in the ROM chart above.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and the VA rated the CI's neck pain using the same coding option of 5242. The PEB assigned a 10% rating for cervical spine ROM limited by pain even though cervical flexion was limited to 30 degrees. It appears this was based on language in the NARSUM which indicated the neck pain was "mild and constant," which apparently derives from the USAPDA pain policy. The VA assigned a 30% rating based on cervical flexion limited to 15 degrees after repeated motion. Both examinations appear to be complete and valid at the time they were done and both were approximately 5 months from the date of separation. However, the C&P examination was completed after separation and it appears the CI's condition worsened over time; the CI was also having particularly severe spasms the day of that examination. The Board noted that a VA examination 17 months after separation was similar to that of the MEB exam prior to separation and it surmised that the VA exam 5 months after separation likely represented an acute worsening or exacerbation of his condition, which subsequently improved to his baseline exam. There is no evidence in the record that supports a finding of cervical flexion of 15 degrees or less prior to separation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board recommends a disability rating of 20% for the neck pain condition.

Knee Pain Condition. The goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Goniometric ROM – Right Knee	MEB ~ 4 Mo. Pre-Sep	VA C&P ~ 5 Mo. After-Sep
Flexion (140° normal)	100° (Pain at 95)	120°; 115° (113) after repetition
Extension (0° normal)	Not Measured	0° (2); 5° after repetition
Comment	Pain limits ROM; normal neurologic examination	ROM limited due to pain and decreased with repetition; Instability signs negative; no antalgic gait; no effusion; negative McMurray; right thigh 2.5cm smaller than left; normal neurologic examination
§4.71a Rating*	10%	10%

The NARSUM, completed approximately 5 months prior to separation, noted that in December 2005, the CI twisted his right knee as he evacuated a vehicle while on convoy escort in Iraq and noticed immediate pain and swelling. An MRI in June 2006 noted a complete ACL tear, multiple bone contusions, and degenerative changes but no tears in the medial and lateral meniscus. Despite an ACL repair and physical therapy, he continued to have chronic right knee pain. The physical examination findings are in the ROM chart above. The CI had previously undergone removal of the right patella bursa in 1985, prior to entering service. At the C&P examination, completed approximately 5 months after separation, the CI reported no chronic pain but did

have flare ups 2 to 3 times per week with pain rated as 5-6/10 lasting 4 to 6 hours each. These were precipitated by crouching down or bending and included symptoms of weakness, stiffness, and occasional swelling. He reported no instability or locking but did report "giving way" symptoms. The CI used medications which were helpful in alleviating pain, but which were sedating.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the CI's knee pain condition at 0% for slight/intermittent pain IAW the USAPDA pain policy. The PEB noted that while the CI did have a right knee condition prior to service, the current impairment was due to the reported injury in December 2005, and the condition was therefore aggravated by service. The VA rated this condition at 10% under code 5024 (tenosynovitis) based upon VASRD §4.59 (Painful motion). Both the service and the VA examinations document pain-limited motion of the right knee at a noncompensable level and neither examination documents instability or meniscal injury. The Board deliberated on the most applicable code for the application of VASRD §4.59 Painful motion and agreed that code 5099-5003 is appropriate. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board recommends a disability rating of 10% for the right knee pain condition.

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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 was operant in this case and the CI's conditions were adjudicated independently of that policy by the Board. In the matter of the neck pain condition, the Board unanimously recommends a disability rating of 20%, coded 5242 IAW VASRD §4.71a. In the matter of the right knee pain condition, the Board unanimously recommends a rating of 10% coded 5099-5003 IAW VASRD §4.71a. There were no other conditions within the Board's scope of review for consideration.

**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:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Neck Pain	5242	20%
Chronic Right Knee Pain	5099-5003	10%
	<b>COMBINED</b>	<b>30%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, undated, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF  
Director  
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency  
(TAPD-ZB / XXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for XXXXXXXXXXXXXXXXXXXX, AR20130003074 (PD201100228)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual's original medical separation for disability with severance pay.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum:

a. Providing a correction to the individual's separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have

shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

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Deputy Assistant Secretary  
(Army Review Boards)