

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1100443
BOARD DATE: 20130131

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20070519

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SGT/E-5 (88M20/Motor Transport Operator), medically separated for right knee degenerative arthritis, radiographically proven. The condition began in 2002, when the CI ruptured his right patellar tendon in his civilian job. He had continued pain and underwent arthroscopic retropatellar cartilage removal in 2003, with later prescription of a patellar knee brace. Following increased symptoms including giving way, and locking of his right knee while deployed to Kuwait, and magnetic resonance imaging suggesting degeneration of the posterior horn of the medial and lateral menisci, the CI underwent arthroscopic partial meniscectomy for the anterior horn of a lateral meniscal tear in January 2006. The right knee condition did not respond adequately to operative and rehabilitative treatment and the CI was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was placed on temporary L3 profile and referred for a Medical Evaluation Board (MEB). Anxiety disorder, hyperlipidemia, and tinnitus conditions, identified in the rating chart below, were also identified and forwarded by the MEB as meeting standards. The Physical Evaluation Board (PEB) adjudicated the right knee degenerative arthritis condition as unfitting, rated 0% with likely application of the US Army Physical Disability Agency (USAPDA) pain policy (or AR 635-40, B-29) and the Veterans Affairs Schedule for Rating Disabilities (VASRD). Initially the CI disagreed with the PEB findings and requested a formal hearing but withdrew his request for a formal appeal and accepted the PEB findings. The CI was therefore medically separated with a 0% disability rating.

CI CONTENTION: "PTSD and Torn right meniscus"

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. The right knee degenerative arthritis condition (torn right meniscus) as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. The other requested condition posttraumatic stress disorder (PTSD) is not within the Board's purview. However, the specific contention for PTSD which is a mental health diagnosis, infers a contention for the PEB's not unfitting diagnosis of anxiety disorder. Therefore, anxiety disorder meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is also addressed below. The remaining conditions rated by the VA at separation are not within the Board's purview. 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 20070209			VA (~4 Mo. Post-Separation) – All Effective Date 20070520			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Knee Degenerative Arthritis, Radiographically Proven	5003	0%	Right Leg Exertional Compartment Syndrome, Shin Splints and Knee Pain with Grinding, Status Post Fasciotomy	5262-5312	10%*	STR
Anxiety Disorder	Not Unfitting		Scar, Right Leg	7804	10%*	STR
Tinnitus	Not Unfitting		PTSD	9411	30%*	STR/20071001
Hyperlipidemia	Not Unfitting		Tinnitus	6260	10%*	STR
↓No Additional MEB/PEB Entries↓			NO VA ENTRY			
			Left Leg Exertional Compartment Syndrome, Shin Splints and Knee Pain with Grinding	5262-5312	10%*	STR
			Not Service-Connected x 8			
Combined: 0%			Combined: 60%*			

*Combined 40% effective 19911123; R leg initially awarded 10% effective 19911123; PTSD, 9411 increased to 50% effective 201101. Combined increased to 90% effective 20090325. Not Charted: Right and Left wrist carpal tunnel syndrome retroactively added at 10% each, effective 20070520 from VARD 20091211 based on submission of service treatment records.

ANALYSIS SUMMARY:

Right Knee Condition. The goniometric range-of-motion 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.

Knee ROM	OT ~11 Mos. Pre-Sep		OT ~6 Mos. Pre-Sep		MEB ~6 Mos. Pre-Sep		VA C&P ~3 yr. Post-Sep	
	Left	Right	Left	Right	Left	Right	Left	Right
Flexion (140° Normal)	~ 135	130, 133, 132°	140°	140°	-	"R knee ROM is full"	0-130°	0-123°
Extension (0° Normal)	-5	-4, -5, -5°	0°	0°	-		0°	0°
Comment	Sx most days in R PF joint with knee in bent position		For Synvisc #2; non-tender, no effusion			Gait normal; +tender with squat; no laxity; instability tests negative	Pain-limited motion	
\$4.71a Rating	10%	10%	0%	0%	-	10% (PEB 0%)	10%	10%

* Note: Missing C&P Exams referenced in the original VARD as a result, data extracted from the VARD dated 20100610 on p. 439 was used. This VARD was closest to separation that presented RT Knee ROM. "The veteran lost 3 degrees of active flexion after repetitive usage of the right knee. Pain was the major factor causing loss of range of motion."

The narrative summary (NARUM) indicated that the CI had had bilateral anterior compartment syndrome with post-surgical infections and hospitalization in 1990, leading to permanent scarring and discoloration and had a VA rating of 30% for his legs since 1990. The CI had right knee surgical repair of a ruptured patella tendon in 2002, retropatellar cartilage removal in 2003, exacerbation of his knee condition while deployed, and surgery in January 2006 (17 months prior to separation) to repair a partial meniscus tear. The NARSUM exam is summarized above and indicated "there is tenderness behind the medial patella edge with squatting." The functional status indicated the CI would have difficulty kneeling, squatting, climbing into and out of the cab of his vehicle, etc. Synvisc knee injections had not improved

the degenerative arthritis condition. The MEB exam completed approximately 9 months prior to separation, indicated “++ pain with squat.” Multiple treatment notes indicated effusion and crepitus.

There was no VA Compensation and Pension exams proximate to separation (CI failed to show) and the VA continued their 10% rating based on the treatment records. Multiple VA exams and notes prior to separation indicated crepitus and episodic swelling.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rate the CI’s right knee as 5003 at 0% indicating patellar crepitus and no mechanical loss of motion. The MEB exam was considered to indicate pain on motion, and the treatment notes of crepitus and episodic effusion were considered. The CI had multiple surgeries including meniscal repair and disability codes of 5099-5003 (arthritis), 5259 cartilage, semilunar, removal of, symptomatic, were considered. There was no evidence of frequent locking, give way or instability. As the primary symptoms were patellar and arthritic in nature, the Board favored coding analogous to symptomatic semilunar cartilage (5003-5259). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt) and §4.59 (Painful motion), the Board recommends a disability rating of 10% for the right knee condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was anxiety disorder (specific contention was PTSD which is a different mental health diagnosis, but infers a contention for mental health rating). The Board’s first charge with respect to the anxiety disorder condition is an assessment of the appropriateness of the PEB’s fitness adjudication. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard.

The CI had a diagnosis of anxiety disorder on the MEB and appealed the MEB determination of meets retention standard as well as the diagnosis as he was being treated for PTSD. The response to the appeal listed military-specific requirements for the diagnosis of PTSD that were not required to be used by civilian psychiatrists. The PEB finding of not unfitting was based on the MEB diagnosis and meeting standards.

There are numerous treatment notes for PTSD prior to separation and the DD Form 2808 (report of medical examination) recommended/indicated an S4 profile from the military (Air Force) examiner that was not part of the later formal DA Form 3349 profile which was S1. Following return from deployment with frequent convoy duty, the CI had symptoms of nightmares, hyper-arousal, poor sleep, avoidant behavior, numbing, flashbacks, suicidal ideations and marital difficulties, avoidant behavior, and clinically significant functional impairment that impacted his ability to concentrate. He was under treatment with two medications and therapy. The CI was not working within his MOS and was on medical hold for his knee condition. The commander’s statement from the Community Based Health Care Organization (CBHCO) forward indicated good performance answering phones, maintaining personnel records, and other maintenance tasks. There was a comprehensive psychiatric re-assessment as part of a “JBLM/MEDCOM Tasker to address MEB inconsistencies” which the Board considered in deliberations. That examiner indicated that evidence at the time of separation would have indicated an S3 profile, not meeting retention standards, and a diagnosis of PTSD.

Both that JBLM/MEDCOM tasker examiner and the VA examiner highlighted the numerous psychiatric assessments and Global Assessments of Functioning (GAF) in the moderate to

serious symptom range (recorded GAFs were 45 to 51). The examiner opined that the CI had "occasional decrease in work efficiency or there are intermittent periods of inability to perform occupational tasks due to signs and symptoms, but generally satisfactory functioning (routine behavior, self-care, and conversation normal). Veteran had significantly (*sic*) difficulty with concentration, focusing due to intrusive ideation, flashback. The CI was also having difficulties with sleep and irritability which impacted both his occupational functioning as well as his marital relationship."

The VA exam 4 months after separation provided a diagnosis of PTSD. The mental status examination was notable for mood "anxious and somewhat depressed" mood. The CI had suicidal thoughts in the past, but there was no active suicidal ideation, delusional or hallucinatory symptoms, speech disturbance, or objective cognitive impairment. He endorsed flashbacks; occasional feeling of depression; occasionally feels hopeless, helpless, and worthless; withdrawn from friends, social phobia, and a 60-pound weight gain. The GAF was 50, which is in the serious range of impairment on that scale. The Axis I diagnosis was "PTSD and Major Depressive Disorder," each assigned a GAF of 50. The examiner opined that the CI seemed to be under medicated.

The Board directs attention to its fitness recommendation based on the above evidence. The Board deliberated on the symptoms documented in the medical record and the commander's statement of good performance in the CBHCO, as well as clear evidence that the CI's referral into the disability evaluation system and the CBHCO was due to the CI's unfitting knee condition rather than any inclusion of disability from any mental disorder or symptoms.

The Board discussed the 1 June 2012 psychiatric re-assessment (JBLM/MEDCOM Tasker) and deliberated if any changed diagnosis or changed MEB assessment of meeting/not meeting standards should have led to a finding of unfit, given the evidence of functional capacity at the time of separation. The CI's MOS duties of Motor Transport Operator in comparison to the duties of the CI's CBCHO assignment were considered. The Board majority considered there was no formal profile for a mental disorder and no mention by the commander indicating any adverse CBCHO duty, there was good social functioning and there was no commander comment relating to mental disorder treatments or symptoms indicating impairment from any mental disorder.

After due deliberation in consideration of the preponderance of the evidence, the Board majority concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the contended anxiety disorder condition; and, therefore, no additional disability ratings can be recommended.

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 or AR 635-40 for rating the right knee condition was likely operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right knee condition, the Board unanimously recommends a disability rating of 10%, coded 5003-5259 IAW VASRD §4.71a. In the matter of the contended anxiety disorder condition, the Board, by a vote of 2:1 recommends no change from the PEB determination as not unfitting. The single voter for dissent (who recommended an unfitting determination, rated 9411-9413 with application of §4.129 for a constructive 50%, then a

permanent 30%) submitted the appended minority opinion. 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, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Right Knee Degenerative Arthritis	5003-5259	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20110523, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF
Director
Physical Disability Board of Review

MINORITY OPINION: The AO recommends that the Anxiety Disorder (contended as PTSD) be found additionally unfitting and rated IAW VASRD §4.129 and §4.130; as a constructive TDRL period at 50% and a permanent separation rating of 30%.

The AO considered that the level of symptoms displayed throughout the treatment record and endorsed by the psychiatric re-assessment (JBLM/MEDCOM Tasker), indicated the CI did not meet retention standards and would not have been able to fulfill the duties of his MOS as a Motor Transport Operator. The CBCHO commander's assessment of good functioning in an office setting should be considered as good functioning in a protected environment and not representative of the CI's ability to deploy or function in his MOS. The AO strongly opines that had the CI's profile been corrected to an S3 and MEB corrected to a "does not meet standards," as supported by the psychiatric re-assessment (JBLM/MEDCOM Tasker), the PEB determination would more likely than not be an unfit determination. The anxiety disorder (analogous to PTSD) is therefore recommended as a new unfit condition for rating based on the preponderance of the evidence.

There is overwhelming pre-separation evidence (mental health records and award of a CAB), as well as the psychiatric re-assessment determination, that the CI met the provisions of §4.129 for a "mental disorder that develops in service as a result of a highly stressful event." There is insufficient evidence that the CI's disability picture at the time of separation was higher than the §4.130 criteria for a 50% disability level, and therefore the minimum 50% rating for a retroactive six-month period on the Temporary Disability Retired List (TDRL) is recommended.

Independent rating of the CI's symptoms and disability picture at both separation and at the end of the retroactive TDRL period would be 30% for "Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal)" and coding as 9411-9413, therefore a permanent separation rating of 30% is recommended.

The AO recommends that the CI's prior determination be modified to reflect a six month period on TDRL (IAW §4.129), and then permanently retired with a combined disability rating of 40%:

UNFITTING CONDITION	VASRD CODE	RATING	
		TDRL	PERMANENT
Right Knee Degenerative Arthritis	5003-5259	10%	10%
Anxiety Disorder	9411-9413	50%	30%
	COMBINED	60%	40%

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20130003027 (PD201100443)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board's recommendation to modify the individual's disability rating to 10% without recharacterization of the individual's separation. This decision is final.
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.
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

XXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)