RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100657 SEPARATION DATE: 20080709

BOARD DATE: 20120307

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard, CW3 (92A, Food Service Officer), medically separated for a left knee condition. While stationed in Kuwait in 2005, the CI tore his anterior cruciate ligament (ACL) during unit sports activities. He underwent a menisectomy in 2006, followed by an ACL reconstruction the same year. Post-operatively his knee could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The knee condition characterized as “chronic left knee pain and instability status post anterior cruciate ligament injury and subsequent repair” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Four other conditions, as identified in the rating chart below, were addressed by the MEB and forwarded as medically acceptable conditions. The PEB adjudicated the left knee condition as unfitting, rated 20%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with that disability rating.

CI CONTENTION: “All conditions at separation did not receive proper rating.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| **Service PEB – Dated 20080317** | **VA (9 Mo. Post-Separation) – All Effective 20080710** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Knee Instability | 5257 | 20% | Left Knee Pain and Instability | 5257 | 10% | 20090220 |
| Prostate Adenocarcinoma p/ Resection | Not Unfitting | Prostate Cancer | 7528 | 10% | 20090220 |
| Urinary Incontinence p/ Prostatectomy | Not Unfitting | No VA Entry | 20090220 |
| Essential Hypertension | Not Unfitting | Hypertension | 7101 | 10% | 20090220 |
| Hyperlipidemia | Not Unfitting | Hyperlipidemia | Not Service Connected | 20090220 |
| No Additional MEB/PEB Entries | 0% x 0 / Not Service Connected x 2 | 20090220 |
| **Combined: 20%** | **Combined: 30%** |

ANALYSIS SUMMARY:

Left Knee Condition. While playing basketball in December 2005, the CI twisted his knee. Magnetic resonance imaging (MRI) indicated a complete ACL tear, a partial lateral collateral ligament (LCL) tear, and a moderate joint effusion. In March 2006, he underwent arthroscopic meniscal repair, partial menisectomy, and debridement of the joint and ligament. Subsequent physical therapy (PT) failed to adequately strengthen the knee; and, in August 2006, an ACL reconstruction (with patellar tendon autograft) was performed. Despite protracted efforts at rehabilitation, the CI continued to experience pain and joint instability. A repeat MRI in December 2007 noted a suspected disruption of the ACL graft, laxity in the posterior cruciate ligament (PCL), mild chondromalacia (cartilage destruction), and a complex tear of the medial meniscus. The option for additional surgery was discussed, but ultimately considered premature given a likely need for a joint replacement in the future. There were three goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Left Knee ROM | MEB ~10 Mo. Pre-Sep | Ortho ~5 Mo. Pre-Sep | VA C&P ~7 Mo. Post-Sep |
| Flexion (140⁰ Normal) | 90⁰ | 130⁰ | 125⁰ |
| Extension (0⁰ Normal) | 0⁰ | 0⁰ | 0⁰ |
| Comment | No lateral instability; positive tests for ACL instability as below. | Painful motion; positive laxity. |
| §4.71a Rating | 10% vs. 20%\* | 10% vs. 20%\* | 10%\*\* |

 \* Under 5257, grading instability. \*\* Conceding §4.59 under joint code (as below) or ‘mild’ instability.

At the MEB exam, the CI reported constant, throbbing pain throughout his knee with frequent sharp pains (latter rated 9/10); which was aggravated with running, squatting, or any impact activities; and, which prohibited multiple soldiering requirements. He could not lift more than 20 pounds, wear body armor, or carry a backpack. The physical exam documented a positive Lachman (2B), anterior drawer sign, and a pivot shift (+2); all indicative of significant ACL dysfunction. Of note, the recorded limitation of flexion to 90⁰ by the MEB examiner was in sharp contrast to a quoted contemporary normal flexion by PT. An orthopedic addendum to the MEB (charted above) noted a slightly limited ROM and pain with activity. That physical exam documented equivalent signs of ACL laxity; but, added normal testing to varus/valgus stress (no lateral instability). At the post-separation Department of Veterans’ Affairs (DVA) Compensation & Pension (C&P), the CI reported pain with flexion and demonstrated a modestly limited ROM. The DVA physical exam was of a template format with a “yes” response to laxity; providing no elaboration of severity or planes of instability. The DVA physician opined that the condition had a “severe” affect on ability to perform daily activities, and noted that the CI was unable to find a job because of his left knee condition.

The Board directs attention to its rating recommendations based on the above evidence. The MEB and orthopedic addendum examinations were considered more probative for their detail regarding stability testing; although the MEB measurement of flexion (still non-compensable) was considered an outlier. No compensable rating is supported under code 5260 (limitation of flexion); although, application of VASRD §4.59 (painful motion) could be considered in order to achieve the minimal compensable rating of 10%. The 5259 code for continued pain after menisectomy is also applicable to this case, and confers a sole 10% rating. Both the MEB and VA rated this case under code 5257 for knee instability; which confers 10% for “slight” instability, 20% for “moderate,” and 30% for “severe.” The PEB’s 20% rating may therefore be considered appropriate, since the “severe” rating implies recurrent subluxations or routine requirement for a rigid brace. The Board deliberated the application of dual ratings, based on separate ratings for instability and limitation of motion. This was sanctioned by VA Training Letter TL 04-22 (October 1, 2004); and, by precedent and legal opinion, may be applied by the Board. Members thus deliberated if a second compensable code could be justified under this sanction. The 5260 code, however, designates that flexion be limited to at least 60⁰ to achieve a 0% rating; and thus, even if §4.59 were applied, a higher 10% rating would not be supported by the parameters of the code. Application of §4.59 is furthermore not endorsed by TL 04-22; nor, is additional rating for codes not based on limitation of motion as with 5259 (cartilage removal). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the left knee condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were prostate adenocarcinoma, urinary incontinence as a surgical residual of prostatectomy, essential hypertension and hyperlipidemia. The CI underwent a prostatectomy (non-nerve sparing) 11 months prior to separation, following a diagnosis of early stage cancer. A post-op note 2 months later documented a good recovery without sequelae, except for the need for erectile adjuncts and mild incontinence. The latter was characterized as “no pad use, rare small volume leakage with strenuous maneuvers.” The hypertension was controlled on medication, and hyperlipidemia is not a VASRD ratable disability. None of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period; none carried attached profiles; and, none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the prostate adenocarcinoma, urinary incontinence post-prostatectomy, essential hypertension and hyperlipidemia conditions; the Board unanimously recommends no change from the PEB adjudications as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Knee Instability | 5257 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110804, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

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 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXXX, AR20120004763 (PD201100657)

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 and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA