RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100696 SEPARATION DATE: 20081023

BOARD DATE: 20120619

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SSG/E-6 (25B, Information Technology Specialist), medically separated for left wrist pain and right knee pain*.* The CI was in a military vehicle accident on 18 November 2005 while serving on a drill weekend. The CI was ejected from the vehicle and sustained injuries to his left wrist and right knee. He fractured his left wrist and underwent open reduction and internal fixation and subsequent rehabilitation with physical therapy. His right knee bone contusion and patellar dislocation was also treated with physical therapy and steroid injections but required arthroscopy and synovectomy in May 2006. He also underwent rehabilitation with physical therapy after the surgery. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3/L3/S3 profile and underwent a Medical Evaluation Board (MEB). Left wrist pain, right knee pain and major depressive disorder (MDD) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The Informal PEB (IPEB) adjudicated the left wrist pain and right knee condition as unfitting, rated 10% and 10% respectively; with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). MDD was not addressed. The CI rebutted the findings, requesting the addition of MDD and increasing ratings for the left wrist and right knee, and a formal Board was scheduled. However, the PEB then issued discontinuance so that a psychiatric addendum could be obtained. A Reconsideration IPEB convened on 22 August 2008, and determined the MDD was not separately unfitting. It also confirmed the 10% disability ratings for the left wrist and right knee conditions. The CI was then medically separated with a 20% combined disability rating.

CI CONTENTION: “Because when the Medical Board decided about my separation, they didn’t want to consider the psychiatric part because I was studying. When I went to VA for treatment, they service connected me for Mood Disorder (Major Depression).”

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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 condition of MDD, as requested for consideration, meets the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below in addition to a review of the ratings for the unfitting conditions. 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 the Correction of Military Records (ABCMR).

RATING COMPARISON:

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| **Service PEB Reconsideration – Dated 20080822** | **VA (35 and 24 Months Pre-Separation and 12 Months Post-Separation)** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Effective Date** | **Exam** |
| Left Wrist Pain | 5009-5003 | 10% | Left Wrist Fracture, status post Surgery | 5299-5215 | 10% | 20051121 | 20060123 |
| Residual Scar, status post Left Wrist Surgery | 7804 | 10% | 20051121 | 20060123 |
| Left Carpal Tunnel Syndrome; Guyon’s Canal Syndrome associated with Left Wrist Fracture, status post Surgery | 8615 | 10% | 20091105 | VA Treatment Records 20090916 -20090917 |
| Right Knee Pain | 5009-5003 | 10% | Right Knee Lateral Meniscus Cyst, status post Arthroscopy and Synovectomy | 5299-5260 | 10%\* | 20051121 | 20060123 |
| Major Depressive Disorder | Not Unfitting | Mood Disorder, Depressed, Secondary to Physical Conditions | 9434 | 30% | 20060923 | 20071129 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 1 |
| **Combined: 20%** | **Combined: 50% Effective 20060923** |

\*Temporarily increased to 100% from 20060526 to 20060630 for surgery and then resumed 10% rating.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes DVA 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. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Left Wrist Condition. The CI was in a military vehicle accident and was ejected from the vehicle in November 2005 while on drill duty. He fractured his left wrist and underwent a surgical open reduction and internal fixation. He subsequently went through physical therapy rehabilitation but continued to have persistent pain exacerbated by repetitive movements and weather changes and relieved by rest and pain medications. He is right hand dominant. He was unable to perform the duties required of his MOS and was given a permanent U3 profile and referred for an MEB.

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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| Separation Date: 20081023 |
| ROM –L Wrist | VA C&P ~ 33 Months Pre-Separation(20060123) | NARSUM ~ 18 Months Pre-Separation(20070424) | PT Exam ~ 12 Months Pre-Separation(20071025) p.87 |
| Dorsiflexion (Extension) (0-70) | 45⁰ | 66⁰ | 55⁰ (60°, 55°, 58°) |
| Palmar Flexion (0-80) | 45⁰ | 44⁰ | 24⁰ (24°, 48°, 42°) |
| Ulnar Deviation (0-45) | Not measured | 32⁰ | 28⁰ (28°, 28°, 28°) |
| Radial Deviation (0-20) | Not measured | 16⁰ | 24⁰ (28°, 24°, 26°) |
| Comment | Pain from 0 to 45 degrees of both movements; Loss of motion was after repetitive motion and fatigue was most responsible for additional loss; X-ray noted evidence of fracture and surgery; | Normal neurologic exam with normal reflexes and sensations |  |
| §4.71a Rating | 10%  | 10% | 10% |

The MEB Narrative Summary (NARSUM) dictated in September 2007 included an examination completed on 24 April 2007, greater than 12 months prior to separation from service. However, subsequent ROM measurements were taken by physical therapy in October 2007. Both sets of measurements are in the chart above. The NARSUM exam reported left wrist swelling, pain, and limited movements that failed to respond to nonsteroidal anti-inflammatories (NSAIDs) and muscle relaxants. Left wrist x-rays were consistent with left distal radial fracture. The physical exam noted the neurological examination was within normal limits with normal reflexes and sensations. The left wrist pain was assessed as slight/intermittent.

A VA Compensation and Pension (C&P) examination was completed on 23 January 2006. While this was within 2 months of the time when the CI separated from active duty on 20 November 2005, it was almost 3 years prior to the CI’s separation from the Reserves. No further VA C&P examinations were completed on the left wrist. This exam reported the same history of the military vehicle accident and subsequent surgery and treatment. The CI reported pain, stiffness, weakness, swelling, deformity, giving way, and instability as well as daily flare-ups with severe pain, increased limitation of motion for hours, and warmth, redness, swelling, and tenderness. The ROM measurements are noted in the chart above and pain was reported throughout the entire wrist ROM. He was unemployed as he was not able to work in Subway or in the Reserves and was waiting for orders to be activated for his MEB.

The initial PEB convened on 17 April 2008 and determined the left wrist condition was unfitting and appropriately rated at 10% for pain limited motion. It is not clear whether the US Army Physical Disability Agency (USAPDA) pain policy was applied. The CI rebutted the findings, asking for increased ratings for his left wrist and right knee and the addition of MDD as an additional unfitting condition. A Reconsideration PEB convened on 22 August 2008 and the 10% rating for the left wrist was continued. Although they used a different VASRD code, the VA also rated the left wrist at 10% for pain limited motion. The VA also applied a 10% rating for residual scar, status post left wrist fracture based on the presence of a painful superficial scar. Additionally the VA later service-connected left carpal tunnel syndrome; Guyon’s canal syndrome associated with left wrist fracture, status post surgery. A 10% disability rating was effective from 5 November 2009, approximately 12 months after the CI separated from the Reserves.

The PEB did not specifically adjudicate the residual scar, status post left wrist fracture condition; left wrist carpal tunnel; or Guyon’s canal syndrome. Therefore these conditions are outside the scope of Board review. These conditions remain eligible for future consideration by the ABCMR.

There is no route to a rating higher than 10% under any applicable code and no coexistent pathology which would merit additional rating for the left wrist condition under a separate code. Thus, neither the PEB choice of VASRD code nor potential application of the USAPDA pain policy was detrimental to arriving at the highest achievable rating IAW VASRD §4.71a. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s coding or rating decision for the left wrist condition.

Right Knee Condition. The CI also injured his right knee in the military vehicle accident described above. After the accident the CI had right knee pain with swelling and limited movement that was worse with ambulation. The CI had only a slight response to physical therapy and was referred to orthopedics. A right knee MRI in December 2005 was consistent with bone marrow edema in the lateral aspect of the tibial plateau, likely related to the prior bone contusion from the accident. Based on the poor response to physical therapy and steroid injections, a right knee arthroscopy was performed in May 2006. The surgery included repair of a patellar dislocation, lateral retinacular release, and synovectomy. He underwent rehabilitation with physical therapy after the surgery but failed to respond adequately and further surgery was not indicated. A repeat MRI in December 2006 noted normal medial and lateral collateral ligaments, normal anterior and posterior cruciate ligaments, normal quadriceps tendon, and no tears of either the medial or lateral meniscus. The patellar tendon was markedly thickened and this was felt to be related to the surgery. He was unable to perform the duties required of his MOS, was given a permanent L3 profile, and was referred for an MEB.

There were three goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Separation Date: 20081023 |
| ROM –R Knee | VA C&P ~ 33 Months Pre-Separation(20060123) | NARSUM ~ 18 Months Pre-Separation(20070424) | Military Exam ~ 12 Months Pre-Separation(20071025) |
| Flexion (140⁰ normal) | 140⁰ | 130⁰ | 130⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ | 0⁰ |
| Comment | No pain on motion documented on exam; no instability or evidence of meniscal tear; functional limitations on standing and walking | Tenderness to palpation at the medial and anteromedial aspect; neuralgic examination was within normal limits with normal reflexes and sensations |  |
| §4.71a Rating\* | 10% | 10% | 10% |

The MEB NARSUM dictated in September 2007 included an examination completed on 24 April 2007, greater than 12 months prior to separation from service. However, subsequent ROM measurements were taken by physical therapy in October 2007. Both sets of measurements are in the chart above. The NARSUM exam reported the clinical history described above. At the time of the NARSUM, the CI continued to have right knee pain that was constant, exacerbated by walking and prolonged standing, and alleviated with rest and medications. The right knee pain was assessed as slight/intermittent.

A VA C&P examination was completed on 23 January 2006. While this was within 2 months of the time when the CI separated from active duty on 20 November 2005, it was almost 3 years prior to the CI’s separation from the reserves. No further VA C&P examinations were completed on the left knee. This exam reported the same history of the military vehicle accident and subsequent surgery and treatment. He was evaluated for right knee pain with weakness, swelling, and bony deformity on the patella. His symptoms had progressively worsened since the time of the accident, despite physical therapy and medication. The CI was able to stand for 15 to 30 minutes without increased symptoms. However, walking more than a few yards led to increased symptoms. He reported right knee pain, deformity, giving way, instability, stiffness, weakness, locking daily or more often, repeated swelling, and severe daily flare-ups with warmth, redness, swelling, tenderness, and inability to bend his knee or drive. His right knee ROM measurements are in the chart above. They were normal with no pain or loss of ROM after repetitive motion. There was no evidence of instability or meniscal injury. There was an exostosis deformity at the superior and lateral aspect of the patella. The right knee condition limited his ability to engage in chores, shopping, exercise, sports, recreation, and traveling. He was unemployed as he was not able to work in Subway or in the Reserves and was waiting for orders to be activated for his MEB.

The initial PEB convened 17 April 2008 and determined the right knee condition was unfitting and appropriately rated at 10% for pain limited motion. It is not clear whether the US Army Physical Disability Agency (USAPDA) pain policy was applied. The CI rebutted the findings, asking for increased ratings for his left wrist and right knee and the addition of MDD as an additional unfitting condition. A Reconsideration PEB convened 22 August 2008 and the 10% rating for the right knee was continued. Although they used a different VASRD code, the VA also rated the right knee at 10% for pain limited motion. Although there was no limitation of motion on the VA examination itself, the VA noted there was compelling evidence for pain limited ROM in the rest of the records available to them.

There is no route to a rating higher than 10% under any applicable code and no coexistent pathology which would merit additional rating for the left wrist condition under a separate code. Thus, neither the PEB choice of VASRD code nor potential application of the USAPDA pain policy was detrimental to arriving at the highest achievable rating IAW VASRD §4.71a. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s coding or rating decision for the right knee condition.

Major Depressive Disorder. After the initial PEB convened in April 2008, the CI rebutted the findings and requested that MDD be added as an additional unfitting condition. The PEB discontinued the PEB proceedings until a psychiatric evaluation and a psychiatric addendum was completed. This evaluation was performed on 28 July 2008, and MDD was added to the CI’s permanent profile with an S3. This profile prohibited the CI from carrying and firing a weapon. A Reconsideration PEB was completed on 22 August 2008 and it determined that MDD was not unfitting.

The CI was first diagnosed with MDD by a VA psychiatrist in August 2007. He had been referred to psychiatry by another provider who had noted the CI was exhibiting depressive features during an evaluation. He was noted to have crying spells, fragmented sleep, fatigue, avolition, irritability, forgetfulness, lack of concentration, low self-esteem, and social isolation. He also reported high anxiety levels and fear that something is going to happen but cannot explain this fear. Mental status exam documented an appropriate affect and euthymic mood. He was currently unemployed, living with his parents, and attending college. He had completed 2 years of college. He was diagnosed with a mood disorder, related to his accident. He received psychotherapy that day and was started on medication including an antidepressant, an anxiolytic, and Trazodone. The Global Assessment of Functioning (GAF) was assessed at 50-55 and he was scheduled to follow-up in a month.

A VA C&P examination was completed in November 2007, 11 months prior to separation from service. At the time of the exam he was living with his parents and attending college. He was working in a mailroom in a clinic as a work study job, approximately 15 to 18 hours per week. He was pursuing a degree in computer sciences and had started school in August 2006. The CI complained of variable symptoms of depression, anxiety, irritability, and problems with communication. He had become more introverted, hardly speaking to anyone in his neighborhood or at church. He also reported episodes of extreme anger but without loss of control and feeling distrustful of others. He reported having no friends as they had all abandoned him after the accident. He did have a girlfriend. He also reported the medication enabled him to feel calmer but he continued to have difficulty sleeping and feeling anger when encountering former friends and associates as they had abandoned him. He sometimes would not take his medication because it upset his stomach and he felt OK when he occasionally skipped doses. Mental status examination noted depression, anger, and frustration and sleep impairment. The diagnosis was mood disorder, secondary to physical conditions and the GAF was assessed at 70-65, reflecting mild to mild-moderate impairment occupationally and moderate impairment socially.

It is unclear how many follow-up visits the CI had as the next note is dated 26 March 2008, and its contents imply other visits occurred. This note documents an anxious mood, constricted affect, and diagnoses of MDD and posttraumatic stress disorger (PTSD) with a GAF of 70. He reported flashbacks, nightmares, and avoidance of the area where the accident occurred. He denied any side effects of medication but Risperidone was not helping and it was discontinued at this visit. The examiner noted gradual mood improvement with medications (same three listed above) but also noted psychotherapy was needed. His concentration had improved at school. The psychiatrist also recommended the CI not drive as it was causing him a paralyzing fear. The record also contained multiple visits from July 2010 through April 2011 with psychotherapy and medical treatment for continued depression and anxiety with GAFs consistently assessed at 60 (with the exception of one visit in September 2010 with a GAF of 70). These notes consistently report work related problems on axis IV.

The psychiatric addendum to the MEB NARSUM was dated 2007 but the content revealed it must have been completed on 28 July 2008 and was based on two previous visits earlier in the same month. It contained the same history of the accident and the resultant injuries. The CI’s mother noticed he was depressed soon after the accident and she encouraged him to be evaluated at the VA. He initially saw a social worker who refereed him to a psychologist. The psychologist referred him to psychiatry and the initial visit on 15 August 2007 is referenced above. Several other visits were also mentioned from September 2007 through March 2008. The addendum states the CI reported he had weaned himself off all medications as they were making him feel tired and sleepy. It also states he had not taken any medication since November 2007. However, multiple VA treatment notes available for review (both before and after November 2007) mention medication and psychotherapy. It was not until July 2010 that the CI stated he did not want to continue medications but wanted to continue with therapy. Medications were stopped at that time. This report also states the CI denied a family history of mental illness but the VA notes stated the CI’s father was in treatment for mental illness. Mental status examination noted a constricted affect and a mood congruent with his reported feeling down most of the time. The report also states the CI is working full time in the mail room at the VA clinic and attending classes after 5PM and a GPA of 3.83 although the CI reported difficulty concentrating during classes. The CI also reported an event where he attended a drill weekend and had to leave as it was the site of the accident. This military examiner did not provide a GAF and stated the CI’s MDD was in partial remission but determined the CI required a permanent S3 profile that prohibited him from ever carrying or firing a weapon. He opined a marked impairment for further military duty and a mild impairment for social and industrial adaptability.

The Reconsideration PEB in August 2008 determined MDD was not separately unfitting, stating it was in partial remission and the CI was not taking medication, was working full time, and attending college.

The Board’s threshold for countering PEB fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. The CI was issued a permanent S3 profile and was permanently prohibited from carrying or firing a weapon. This is not compatible with military service. While the psychiatric addendum states the CI had not taken any medication since November 2007, VA treatment records show overwhelming evidence of treatment with medication and psychotherapy through July 2010 when medication was stopped and psychotherapy was continued. The psychiatric addendum and the VA treatment notes also describe the CI’s work situation differently with the VA records stating he was working part time in a work study job and the addendum sating he was working full time and going to classes at night. There is no further evidence to corroborate either version. However, the VA treatment records consistently report work related issues as an axis IV concern and it cannot be concluded that the CI was working without any impairment. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of the MDD condition favors its recommendation as an additionally unfitting condition for separation rating. It is appropriately coded 9434 and meets the VASRD §4.130 criteria for a 10% rating.

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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 the matter of the left wrist pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right knee pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended MDD condition, the Board unanimously agrees that it was unfitting at the time of separation and unanimously recommends a disability rating of 10%, coded 9434 IAW VASRD §4.130. 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Major Depressive Disorder | 9434 | 10% |
| Left Wrist Pain | 5009-5003 | 10% |
| Right Knee Pain | 5009-5003 | 10% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110820, 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 XXXXXXXXXXXX, AR20120011861 (PD201100696)

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 XXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA