RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100718 SEPARATION DATE: 20050509

BOARD DATE: 20120508

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (91S/Preventive Medicine), medically separated for chondromalacia patella of the left knee. The CI participated in airborne school in December 2003 and developed swelling and 10/10 sharp, grinding pain in his left knee after performing multiple parachute landing falls (PLF). After he failed to respond to conservative treatment, including physical therapy and was unable to complete airborne school, he transferred from the 9th PSYOP Bn where he was a psychological operations SGT to the 261st ASMB and the 91S Military Occupational Specialty (MOS). He underwent arthroscopic surgery of the left knee in July 2004 with partial medial and partial lateral meniscectomies, chondroplasty of patella and trochlear groove, microfracture of trochlear groove, and tricompartmental synovectomy. He did not respond adequately to treatment after surgery, had limited abilities to perform within his MOS, and was unable to meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Left knee grade II chondromalacia and chronic pain were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the left knee condition as unfitting, rated 10%; with probable application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “I am currently at a rating of 50% up from 30% a year or so ago, increased from an initial 10%, and believe that the initial rating upon discharge was in error as it did not encompass and evaluate all of my conditions wholly and properly. If my initial evaluation would have been substantiated, I believe I would have been able to challenge it and be qualified for a profile versus medical discharge.” He elaborates no specific contentions regarding coding and mentions no additionally contended conditions.

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SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” 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 – Dated 20050209** | **VA (2 Months Prior to Separation) – All Effective Date 20050510** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chondromalacia Left Knee | 5099-5003 | 10% | Osteoarthritis Status Post Surgical Repair With History Of Chondromalacia | 5003 | 10%\* | 20050314 |
| Residual Scar, Left Knee | 7805 | 0% | 20050314 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 1 other/Not Service-Connected x 6 | 20050314 |
| **Combined: 10%** | **Combined: 10%\*\*** |

\*Increased to 30% effective 20091022.

\*\*Increased to 50% effective 20091022 after left knee increased to 30% and Back and Right Knee added at 10% each.

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. It is a fact; however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs. 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 wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the 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 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’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. 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 Knee Condition. There were three 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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| ROM –Left Knee | PT ~ 6 Months Pre-Separation(20041118) | MEB ~ 5 Months Pre-Separation(20041217) | VA C&P ~ 2 Months Pre-Separation(20050314) |
| Flexion (140⁰ normal) | 135° (133⁰) | 120° (120°, 121⁰, 122°) | 140⁰ |
| Extension (0⁰ normal) | Not measured | 0⁰ (-1°, -1°, -1°) | 0⁰ |
| CommentArthroscopy 20040714 | Decreased flexibility persists; Strength: quad 4/5; hamstring 4 to 4+/5; gait was slight antalgic; “still weak” after surgery. The CI requested a dynamic knee brace but therapist explain it was not indicated.  | ROM from PT exam 20050106. Severe Crepitus and mild pain with flexion and extension, stable A/P, lateral, medial, no edema. | Normal gait; no assistive devices; Drawer test and McMurray’s test were normal; general appearance of the knee was normal; range of motion was not additionally limited by pain, fatigue, weakness, lack of endurance or incoordination after repetitive use; normal motor function in lower extremities and DTRs equal and symmetric |
| §4.71a Rating | 10% | 10% | 10% |

The CI injured his left knee in airborne school in December 2003 and x-rays taken at the time of injury showed degenerative changes with a joint effusion. After the CI failed to respond to conservative treatment, including physical therapy, he was evaluated by orthopedics at Womack in June 2004. The impression was anterior knee pain and he was referred to physical therapy for quadriceps strengthening. Follow-up in 8 weeks was planned. A magnetic resonance imaging (MRI) in February 2004 had appeared normal except for a small joint effusion. He was also seen by civilian orthopedics in June 2004 who noted crepitance and pain with left knee patellofemoral compression and palpation as well as lateral joint line tenderness. No instability or medial joint line tenderness was noted. The impression was degenerative joint disease, mainly patellofemoral, cannot rule out lateral meniscal tear. The knee was injected with a steroid at this visit. When seen in follow-up a month later he had a normal gait, full ROM, and a small effusion. No instability was noted but he was quite tender along the medial joint line. The examiner felt this was more than typical patellofemoral pain and a diagnostic arthroscopy was scheduled. Arthroscopy was done on 14 July 2004 and included left knee partial medial and partial lateral meniscectomy for meniscal tears, chondroplasty of the patella and trochlear groove with microfracture of the trochlear groove for left knee grade III chondromalacia, and tricompartmental therapeutic synovectomy for posttraumatic arthropathy and tricompartmental synovitis. He continued to have pain and swelling after surgery and was unable to return to any strenuous activities. He was issued a permanent profile and referred for MEB. The NARSUM physical exam was completed 5 months after surgery and 5 months prior to separation and it revealed severe crepitus with flexion, extension and mild pain with same motions. He was stable A/P, lateral and medial. No edema. The C&P physical exam revealed normal weight bearing. The CI’s gait was normal and did not require the use of an assistive device for ambulation. The x-ray of the left knee revealed early osteoarthritic change.

The PEB rated the left knee condition as chondromalacia patella 5099-5003 at 10% with probable application of the US Army Physical Disability Agency (USAPDA) pain policy. The VA also rated the left knee condition at 10% under 5003 but as osteoarthritis with probable application of §4.59 painful motion. VASRD §4.71a specifies for 5003 that “satisfactory evidence of painful motion” constitutes limitation of motion and specifies application of a 10% rating “for each such major joint or group of minor joints affected by limitation of motion.” As the CI did have two partial meniscectomies, his knee could be rated as 5259 cartilage, semilunar, removal of, symptomatic at 10%. This would be instead of, not in addition to, the rating under 5003 because while the CI does have painful motion evidenced in the majority of the medical record, he had full ROM documented prior to separation and therefore pain-limited ROM was not present. No coding schema offers an advantage to the CI. 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 knee condition under a separate code. Thus, neither the PEB choice of VASRD code nor 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 knee condition.

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 for rating the left knee condition was operant in this case and the condition was adjudicated independently of that policy regulation by the Board. However, neither the PEB choice of VASRD code nor application of the USAPDA pain policy was detrimental to arriving at the highest achievable rating IAW VASRD §4.71a. In the matter of the left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently.

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** |
| Chondromalacia Patella of the Left Knee | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110825, 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 XXXXXXXXXXXXXX, AR20120009500 (PD201100718)

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 XXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA