

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1101113
BOARD DATE: 20130213

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20070415

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an National Guard (Temporary Tour of Active Duty) SGT/E-5 (19D/Cavalry Scout), medically separated for chronic neck pain, chronic low back pain (LBP) and right knee pain. The CI sustained injuries to his neck, back and right knee while deployed. Degenerative disc disease of the spine and a torn lateral meniscus of the knee were shown on imaging. His chronic neck, low back and right knee pain conditions did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was issued a permanent U3/L3 profile and referred for a Medical Evaluation Board (MEB). Posttraumatic stress disorder, left shoulder pain, right wrist pain and alcohol abuse conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the chronic neck pain, chronic LBP and the right knee pain conditions as unfitting, rated 10%, 10% and 0% respectively, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting and not considered disabilities (alcohol abuse). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: "I have daily problems with my neck, back and knees. My combined rating from VA is 180percent combined. I feel my daily pain and its extent was not foreseen at the time of my separation. Thank you very much".

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 not unfit PEB conditions and 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 PEB – Dated 20070322			VA (3 Mos. Post-Separation) – All Effective Date 20070416			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Neck Pain	5237	10%	Cervical Spine with Mild Degenerative Changes	5242	10%	20070724
Chronic Low Back Pain	5237	10%	Low Back Pain	5237	20%	20070724
Right Knee Pain	5099-5003	0%	DJD Right Knee; Meniscectomy	5010-5260	10%	20070724
(PTS)	Not Unfitting		Posttraumatic Stress Disorder	9411	100%	20070724
Left Shoulder Pain	Not Unfitting		NO VA ENTRY			
Right Wrist Pain	Not Unfitting		NO VA ENTRY			
Alcohol Abuse	Not a Ratable Disability		NO VA ENTRY			
↓No Additional MEB/PEB Entries↓			Degen. Joint Disease, Left Knee	5010-5262	10%	20070724
			Tinnitus	6260	10%	20070626
			Tender Scar, Left Shin	7804	10%	20070724
			Migraine Headaches	8100	10%	20070724
			Not Service-Connected x 2			
Combined: 20%			Combined: 100%			

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. 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 re-evaluate conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Chronic Neck Pain Condition. There were four goniometric range-of-motion (ROM) evaluations and one non-goniometric evaluation in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Cervical ROM (Degrees)	VA ~10 Mo. Pre-Sep (20060707)	MEB (PT) ~5 Mo. Pre-Sep (20061114)	Orthopedics ~5 Mo. Pre-Sep (20061115)	VA C&P ~3 Mo. Post-Sep (20070724)
Flexion (45 Normal)	20 (30 25 20)	10 (10 10 10)	Not recorded	40
Extension (45)	10 (20 10 10)	20 (22 22 22)	45	30
R Lat Flex (45)	25 (35 35 25)	20 (18 18 18)	45	40
L Lat Flex (45)	15 (25 25 15)	15 (14 14 14)	45	35
R Rotation (80)	30 (38 30 30)	20 (20 20 20)	45	45
L Rotation (80)	35 (35 35 35)	20 (18 18 18)	45	45
Combined (340)	135	105		235
Comment			Painful motion	Painful motion No spasm
\$4.71a Rating	20%	30%	10%	10%

The CI initially injured his neck in 1990 while on active duty during a motorcycle crash. Medical records from that time recorded that he was able to get up and walk away from the crash, however he was hospitalized for evaluation and treatment. No neurologic complications were documented. He reinjured the neck in 2004 while deployed in Iraq during combat and

combative training. X-rays demonstrated degenerative disc and joint disease, particularly at the C5-6 level. Physical therapy (PT) examination 20 October 2004 documented 3 months of neck pain incurred when seeking cover during combat. On examination there was full flexion (100%), full extension (100%), and mildly decreased motion in side bending and rotation (75% of normal). A follow up PT examination 8 November 2004 documented full flexion, extension, and rotation (all 100%) with mildly decreased lateral bending to both sides (75% of normal). He completed his deployment in March 2005 without further injury.

Orthopedic evaluation on 17 March 2005 upon return from deployment recorded full neck ROM with normal strength and reflexes. Magnetic resonance imaging (MRI) of the cervical spine 9 May 2005 demonstrated normal alignment with disc desiccation (degenerative change) at all levels and mild narrowing at C4-5. There was fusion of C5-6 consistent with a developmental variation. There was no disc herniation or compression of neural structures. These findings, including the fusion of C5-6, were similar to those reporting from an MRI dated 26 July 2000. A 10 August 2005 PT examination recorded full cervical spine ROM in flexion, extension, side bending, and rotation. A Physical Medicine and Rehabilitation examination on 16 February 2006 documented the neck ROM as normal. The electrodiagnostic study (nerve conduction velocity and electromyogram) of bilateral upper extremities in February 2006 was normal. A VA clinic examination on 7 July 2006 recorded decreased cervical spine ROM after repetition (flexion 20 degrees, extension 10, left lateral bending 15, right lateral bending 25, left rotation 35, and right rotation 30). A 24 July 2006 neurology examination recorded the neck as supple. A 2 November neurologic examination recorded a normal neurologic examination. A PT ROM examination, 14 November 2006 recorded further decrease in the cervical spine ROM (flexion 10 degrees, extension 22, left lateral bending 14, right lateral bending 18, left rotation 18, and right rotation 20; unchanged after repetition). At the time of orthopedic examination 15 November 2006, cervical spine ROM was improved. The CI was able to extend his neck to look up at the ceiling but with pain. Lateral bending and rotation were 45 degrees to both sides. Flexion was not reported. Upper and lower extremity strength and reflexes were normal and sensation was intact. X-rays of the cervical spine 16 November 2006 noted normal spinal curvature with the previously noted degenerative changes and fusion of C5-6. The MEB narrative summary (NARSUM), dictated 20 November 2006, recorded CI's report that his neck was severely limiting and that it was his major complaint. The CI reported the pain as constant, at the base of his neck, and worsened with "cracking" sensations that cause radiating pain down his arms, trunk and body. He stated PT, nonsteroidal anti-inflammatory drugs and traction had not improved his neck pain. The CI reported two neck injuries, the first in a motorcycle accident in 1990 when he was paralyzed from the neck down, and a second while deployed in 2004. On examination, cervical spine ROM was consistent with the 15 November 2006 orthopedic examination (flexion 40 degrees, extension 30, left lateral bending 35, right lateral bending 40, left rotation 45, and right rotation 45) and was associated with painful motion. There was no muscle spasm, and strength and reflexes were normal.

The Board directs attention to its rating recommendation based on the above evidence. The Board noted that the examinations of 7 July 2006 and 14 November 2006 supported consideration of a rating higher than the 10% adjudicated by both the PEB and the VA. The Board noted the CI's report of a stable condition since return from deployment, and the examinations following return from deployment that were more consistent with the 15 November 2006 and the post separation C&P examination. The Board therefore concluded that the 15 November 2006 orthopedic examination and the C&P examination which were more proximate to separation, best reflected the overall disability picture at the time of separation. ROM correlated with the 10% rating. There was no muscle spasm to warrant consideration for a higher rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the chronic neck condition.

Chronic Low Back Pain Condition. The NARSUM notes the CI reported LBP that began when he was taking cover during combat operations. The back pain was not associated with radiation into the buttocks or legs, loss of sensation, or weakness. X-rays of the lumbo-sacral spine were normal. PT did not improve his symptoms. There were four ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Thoracolumbar ROM (Degrees)	VA ~10 Mo. Pre-Sep (20060707)	MEB (PT) ~5 Mo. Pre-Sep (20061114)	Orthopedics ~5 Mo.s Pre-Sep (20061115)	VA C&P ~3 Mo. Post-Sep (20070724)
Flexion (90 Normal)	40 (45 40 40)	40 (40 40 40)	Touch toes	75 (75)
Extension (30)	15 (25 15 15)	20 (20 20 20)		30 (30)
R Lat Flex (30)	25 (25 25 25)	20 (18 18 18)	Touch knees	30 (30)
L Lat Flex (30)	25 (22 25 25)	15 (16 16 16)	Touch knees	30 (30)
R Rotation (30)	30 (35 38 35)	15 (16 16 18)	45	30 (45)
L Rotation (30)	30 (30 35 35)	20 (18 18 18)	45	30 (45)
Combined (240)	165	130		225
Comment			Lateral bend, touch knees ~45 degrees	Painful motion, pain at 70 degrees flexion No muscle spasm Gait normal
§4.71a Rating	20%	20%	10%	10%

The orthopedic MEB examination 15 November 2006 observed that the CI could bend at the knees and waist to touch his toes, able to rotate at the waist to 45 degrees in both left and right directions, and to laterally bend and touch his knees on both sides. Pain was reported with two examination maneuvers not expected to cause pain. Strength, sensation and reflexes were normal throughout the lower extremities and straight leg raise tests were negative. The orthopedic surgeon noted X-rays that day showed mild narrowing of the L5-S1 disc space but were otherwise normal including alignment and contour. At the C&P examination on 24 July 2007, 3 months after separation, the CI reported that the back pain started when dropping low to seek cover and that he later fell through a roof top landing on his shoulder and back. Examination of the low back revealed tenderness on the spinal muscles in the lumbar regions but no muscle spasm. ROM was mildly limited in flexion with painful motion in all planes per the chart. Gait, muscle strength, reflexes and sensation were normal.

The Board directs attention to its rating recommendation based on the above evidence. The Board discussed whether the disability due to the back condition more nearly approximated the 10% or the 20% rating based on limitation of motion. Although the PT examination in November 2006 supported the 20% rating, the orthopedic examination the next day reflected better motion (rotation 45 degrees, lateral bending touching the knee approximating 30 degrees) than the PT examination. The Board also noted the mild X-ray findings and the improved motion at the time of the C&P examination which was more proximate to separation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the chronic low back condition.

Right Knee Pain Condition. The NARSUM notes the right knee pain began while the CI was deployed and seeking cover during combat operations in 2004. The CI subsequently underwent arthroscopic surgery with partial meniscectomy of the medial meniscus on 14 October 2005. The orthopedic surgeon recorded (5 weeks post operatively) good outcome with pain on deep bending with a normal right knee ROM (flexion 130 degrees, extension 0 degrees). There were three goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Right Knee ROM (Degrees)	VA Clinic ~10 Mo. Pre-Sep (20060628)	Orthopedic MEB ~5 Mo. Pre-Sep (20061115)	VA C&P ~3 Mo. Post-Sep (20070724)
Flexion (140 Normal)	95	135	70
Extension (0 Normal)	5	0	0
Comment	5 degrees loss extension	Tenderness No instability +McMurray Gait normal	Painful motion No laxity +McMurray Gait normal
§4.71a Rating	10%	10%	10%

At the orthopedic MEB examination on 15 November 2006, there was tenderness only along the medial joint line consistent with previous meniscectomy and pain with McMurray tests of the meniscus but no palpable click or pop noted. There was also pain with shrug and grind of the patellofemoral joint. There was no instability, effusion or swelling. Gait was normal. ROM was near normal per the chart. At the C&P examination on 24 July 2007, three months after separation, there was no effusion, tenderness or laxity. The C&P exam ROM of the knee is delineated in the chart provided.

The Board directs attention to its rating recommendation based on the above evidence. The ROM in the MEB and VA examinations was not compensable under the codes for limitation of motion. There was no evidence of instability or condition that could cause instability. There was no dislocated and locking meniscus. The CI remained symptomatic status post partial meniscectomy meeting the guideline for the 10% rating under VASRD code 5259 (symptomatic status post removal of semilunar cartilage). 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 condition coded 5259.

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 chronic neck pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the chronic LBP 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, the Board unanimously recommends a disability rating of 10%, coded 5259 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:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Neck Pain	5237	10%
Chronic Low Back Pain	5237	10%
Right Knee Pain	5259	10%
	COMBINED	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20110801, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF
Acting Director
Physical Disability Board of Review

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, AR20130003805 (PD201101113)

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

XXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)