

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200056  
BOARD DATE: 20121106

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20070529

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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 (88M20/Wheeled Vehicle Operator), medically separated for right knee patellar tendinopathy, without compensable limitation of motion. The CI developed right knee pain after standing for prolonged periods of time while running combat security missions in Iraq. Despite steroid electrophoresis, physical therapy (PT) and non steroidal anti inflammatory drugs (NSAIDS) the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. The CI was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded patellar tendonopathy of right knee on the DA Form 3947 to the Physical Evaluation Board (PEB). The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the right knee patellar tendinopathy as unfitting, rated 0%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% disability rating.

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**CI CONTENTION:** "The condition of my right knee is worsening and has begun affecting my left knee. In a conversation with my VA doctor she informed me that having to compensate for the injured right knee is possibly causing the left knee to deteriorate. The VA decided on my case on April 2, 2008, less than one year from the date of my separation. The VA determined that my right knee should be rated at 10%. I am currently employed as a police officer. The current condition of my knees limit my ability to run and get in and out of my patrol car easily. I have routinely been seen by VA doctors in reference to this condition. I have tried multiple therapy approaches to included braces and exercises. There has been no improvement in my condition through the steps taken so far."

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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 right knee patellar condition, found unfitting by the PEB, and as requested for consideration, meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. The other requested conditions, left hand neuropathy, right upper arm/ulnar neuropathy, posttraumatic stress disorder (PTSD) and reoccurring folliculitis (cysts) on the inner left thigh, left knee 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 20070403			VA (2-7 Mos. Post-Separation) – All Effective Date 20070530			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Knee Patellar Tendinopathy...	5024	0%	Patellofemoral Syndrome of the Right Knee	5257	10%	20070813
No additional MEB / PEB entries			Ulnar Neuropathy of the Right Upper Extremity...	8516	10%	20070813
			Residual of Laceration to the Left Hand with Scarring and Neuropathy	8516	10%	20070813
			PTSD	9411	10%	20080130
			0% X 1 / Not Service-Connected x 1			
<b>Combined: 0%</b>			<b>Combined: 30%</b>			

\* VARD 20080402 rated folliculitis affecting the left inner thigh with residual scarring (claimed as cyst inner left thigh) as 7820 at 0% and lumbar spine disability (claimed as back condition) as “Not Service Connected, Not Incurred / Caused by Service.”

**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 Disability Evaluation System (DES) has neither the role nor the authority to compensate 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’s authority as defined in DoDI 6044.40, 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.

**Right Knee Condition.** There were two range-of-motion (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	PT~4 Mo. Pre-Sep	MEB ~2 Mo. Pre-Sep	VA C&P ~2 Mo. Post-Sep
Flexion (140° Normal)	124°, 126°, 128°	Referenced PT ROMs	“FROM”
Extension (0° Normal)	0°		
Comment	“Reason for limitation Pain ‘No’”; Consult noted laxity patella ligament (bilateral); tenderness to palpation (TTP) medial/lateral joint line; crepitus	Referenced PT exam; Lachman’s test +1 (laxity)	Pain at full flexion; Gait wnl; Slight lateral patellar laxity; reflexes 2+
§4.71a Rating	10%	10% (PEB 0%)	10%

The physical therapy (PT) examination requested 4 months prior to separation noted right knee patellar ligament laxity and crepitus. The exam findings are summarized in the chart above. The MEB examination 2 months prior to separation noted constant right knee pain interfered with walking, sitting standing bending or climbing, along with waking the CI up at night periodically. The MEB exam findings are summarized in the chart above. The commander’s comments indicated that the CI’s load bearing limitations precluded him from performing strenuous duties or deployments. Radiographs indicated patellar tendinopathy with magnetic resonance imaging (MRI) consistent with patellar tendinopathy. The orthopedic letter of intent for the MEB indicated “chondromalacia patella refractory to treatment and severe limitations to duty.” The DD Form 2807-1 indicated history of knee swelling and knee brace use.

The VA Compensation & Pension(C&P) examination performed 2 months after separation indicated right knee stiffness and weakness in the mornings and pain in the evenings. The C&P exam findings are summarized in the chart above.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the right knee condition as 5024 Tenosynovitis rated 0%. The VA coded the condition 5257 knee, other impairment, recurrent subluxation or lateral instability: slight rated at 10%. The Board must decide which exam has the higher probative value as both the MEB exam and the VA exam are equidistant from the date of separation. The CI had well documented findings of laxity of the patella ligament on both the PT consult request, and C&P exams along with findings of a Lachman 1+ (laxity) and crepitus on the MEB exam. All the exam findings substantiated a 10% rating. The Board conceded painful motion (§4.59) and considered the tenets of VASRD code §4.40 (functional loss). The Board determined that the VA rating schema which focused on the instability coding 5257 best reflected the CI’s knee disability for ideal coding, but that the PEB code of 5024 was also acceptable and neither code was more favorable to the CI. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% coded 5024 for the right knee patellar tendinopathy.

**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 right knee patellar tendinopathy condition, the Board unanimously recommends a disability rating of 10%, coded 5024 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, effective as of the date of his prior medical separation:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Right Knee Patellar Tendinopathy	5024	10%
	<b>COMBINED</b>	<b>10%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120112, 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 / XXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for XXXXXXXXXXXXXXXXXXXX, AR20130000261 (PD201200056)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PD BR) 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

XXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
( ) DoD PD BR  
( ) DVA