RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX
CASE NUMBER: PD1200322
BOARD DATE: 20121207

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20080201

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SGT/E-5, (63B/All Wheel Mechanic), medically separated for thoracolumbar back pain associated with a T11 compression fracture and chronic right knee pain. While he was working on a vehicle in September 2005, the CI was hit in the back by a transmission hanging from a chain lift and was knocked to the ground. He was able to complete his deployment but his symptoms did not respond adequately to conservative therapy and surgery was not indicated. The CI injured his right knee in basic training but despite surgical repair of a lateral meniscal tear in 2004 and chondroplasty in 2006, he continued to have pain and functional limitations. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P2L3S3 profile and referred for a Medical Evaluation Board (MEB). Posttraumatic stress disorder (PTSD), hypercholesterolemia, nasoseptal abnormality, identified in the rating chart below, were also identified and forwarded by the MEB as conditions meeting retention standards. The Physical Evaluation Board (PEB) adjudicated the thoracolumbar and right knee conditions as unfitting, rated 10% and 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting and therefore not ratable. The CI made no appeals, and was medically separated with a 20% combined disability rating.

After the CI separated, an administrative correction by the US Army Physical Disability Agency (USAPDA) was completed due to changes mandated by NDAA 08. The USAPDA recommended placement on the Temporary Disability Retired List (TDRL) with a 20% rating for the back pain condition and a combined rating of 30% but the CI's concurrence was required to process this modification. The record indicates the while the CI did not respond and the modification for TDRL 30% was not executed, other corrections were made.

CI CONTENTION: "I am requesting that the PDBR review my Army disability ratings for chronic thoracolumbar back pain, associated with compression fracture of the T11 vertebrae (10%) and chronic right knee pain due to meniscus degeneration evaluated as degenerative arthritis, persisting after two arthroscopic procedures (10%). I wish to have my army service records reviewed to determine if my current 20% rating is appropriate."

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. 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:

PDA Admin Correction – Dated 20090604			VA (4 Mos. Post-Separation) – All Effective Date 20080202			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Chronic Thoracolumbar Back Pain with T11 Compression Fracture	5299-5235	10%	Mild Degenerative Changes with probable Compression Fracture of T11 and Right Lower Extremity Radiculopathy	5237	40%	20080530
Chronic Right Knee Pain due to Meniscus Degeneration and status post Meniscus Repair x 2	5099-5003	10%	Osteoarthritis, Right Knee	5019*	10%	20080530
Post-Traumatic Stress Disorder	Not Unfitting		Post-Traumatic Stress Disorder	9411**	Not Service Connected	
Hypercholesterolemia	Not Unfitting		No VA Entry			
Nasoseptal abnormality, status post septoplasty	Not Unfitting					
↓No Additional MEB/PEB Entries↓			Tinnitus	6260	10%	20080619
			Left Knee Condition	5099-5019	10%	20080530
			Migraine Headaches	8100	30%	20080530
			Obstructive Sleep Apnea	6847	50%	20080530
			0% X 2 / Not Service-Connected x 2 others			
Combined: 20%			**Combined: 90% (Bilateral Factor 1.9%)**			

*Changed to 5019-5261 and increased to 100% effective 20120523; decreased to 10% effective 20120901.
**PTSD added at 30% effective 20100506.

ANALYSIS SUMMARY: The Board's authority as defined in DoDI 6040.44, resides in evaluating the fairness of Disability Evaluation System (DES) fitness determinations and rating decisions for disability at the time of separation. The Board utilizes VA 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. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Thoracolumbar Back Pain with T11 Compression Fracture. 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.

Thoracolumbar ROM	PT ~3.5 Months Pre-Separation	MEB ~3 Months Pre-Separation	MEB re-evaluation ~2 Months Pre-Separation	VA C&P ~4 Months Post-Separation
Flexion (90º Normal)	35°	Approximately 45º	60º	25º
Ext (0-30)	10°		10° (8)	15º
R Lat Flex (0-30)	20° (22)		15º (17)	10º (12)
L Lat Flex 0-30)	20° (21)		20º	10º (12)
R Rotation (0-30)	30° (29)		25° (27)	30º (35)
L Rotation (0-30)	30°		30º	20º
Combined (240º)	145°		160º	115º
Comment	Measured with bubble inclinometer with values average of 3 trials. Three of 5 types (3/11 signs) of Waddell signs present: superficial tenderness, pain with axial loading, dramatic facial grimacing. Motor 4-/5 in thoracolumbar paraspinal, right quad, adduction, and	Examiner refers to formal range of motion chart with 3 of 7 positive Waddell signs, possibly referring to the PT exam in column 1. Tenderness of lumbar spine; no spasm or guarding; painful motion. No	Measured with a baseline stainless goniometer, limitations due to pain; 2 out of 8 Waddell signs positive: axial loading and simulated rotation. Antalgic gait favoring right	Increased pain with repetition but no additional decrease in ROM; Straight leg raise lead to back pain at 25 degrees on the right and 35 degrees on the left; mild tenderness to palpation at T6 T10-11, and L4 to S1; no paraspinal muscle spasm or tenderness; gait initially normal with knee brace, then slightly antalgic favoring right knee; neurologic examination normal sensation, motor, and reflexes.

	hamstring.	neurologic examination.	knee.	No mention of Waddell signs.
§4.71a Rating	20%	20%	20%	40%

The MEB narrative summary (NARSUM) was completed in November 2007, approximately 3 months prior to separation. It reports the CI was injured while deployed to Iraq in September 2005 when a transmission swung and hit him in the back, knocking him down. A thoracic compression fracture at T11 was documented on X-rays. The CI completed his tour but continued to have back pain. Magnetic resonance imaging (MRI) of the thoracic spine noted the previous fracture and early spondylosis of the thoracic spine. An MRI of the lumbar spine noted a minor posterior disc bulge at L4-5 and L5-S1 without evidence of disc herniation and mild stenosis. Evaluation by neurosurgery in July 2007 stated that surgery was not indicated and a neurologic evaluation noted a normal EMG and nerve conduction study in May 2007. The NARSUM does not contain a full set of ROM measurements and the examiner refers to a formal ROM report with three of seven positive Waddell signs. The outpatient note from October 2007 that includes the physical therapy (PT) ROM measurements is labeled as an MEB evaluation. It includes the measurements above and states the reported values are each an average of three measurements and were measured with a bubble inclinometer. This note also reports one positive Waddell sign in three of the five types of Waddell signs. Each of the five types has one to four possible signs and a total of eleven signs to evaluate are noted. It is possible that the MEB NARSUM examiner was attempting to predict what the flexion would be if a goniometer had been used as is required by the VASRD. This would explain why he noted flexion of "approximately 45 degrees." This examiner reported his own MEB re-evaluation ROM measurements made with a goniometer in an email in December 2007 and these are included in the third column above. An MEB history and physical examination was completed in September 2007 by this same MEB NARSUM examiner and it reported spinal flexion of 40 degrees. However, it also stated, "see formal ROM," and did not specify if this measurement was made with a goniometer.

A VA Compensation and Pension (C&P) exam was completed 4 months after separation and it reported a similar clinical history as the NARSUM. At the time of this examination, the CI had already enrolled at the VA and was receiving treatment for his back pain. The pertinent physical findings are reported in the chart above. The examiner noted subjective evidence consistent with a radiculopathy of the right lower extremity with pain as the only finding. Although a later C&P examination performed in August 2010 noted decreased limitations of ROM with flexion at 60 degrees, the VA continued the 40% through the latest VA rating decision available for review dated 8 August 2012 because sustained improvement was not established. However, no C&P examination warranted a rating less than 20%.

The Board directs attention to its rating recommendation based on the above evidence. In December 2007, a PEB rated the back pain at 10% for pain-limited range of motion. However, as described above, the findings were later reviewed by the USAPDA due to new requirements directed by National Defense Authorization Act (NDAA) of 2008. In September 2008, the USAPDA notified the CI that they recommended placing him in a TDRL status. The review had determined a rating of 20% rating for the back pain and 10% for the knee condition discussed below as well as finding the injury occurred in a combat zone (10d). The CI's concurrence was required to do this. The CI was contacted regarding this change and he was given 3 weeks to make a decision. He failed to respond and the USAPDA was then unsuccessful in contacting him. The revised PEB proceedings recorded on a DA form 18 was completed in June 2009. While the text in block 8b specifically stated the chronic thoracolumbar back condition was rated at 20% for flexion of 45 degrees, a 10% rating was recorded in block 8g and a combined rating of 20% was recorded in block 9. This form also stated, "This Admin correction reflects changes in item 8b, and the addition of item 10d and supersedes DA form 199 pertaining to your 7 Dec 07 informal PEB." Thoracolumbar spine flexion greater than 30 degrees but not

greater than 60 degrees as measured by a goniometer warrants a 20% rating IAW the VASRD General Rating Formula for Diseases and Injuries of the Spine. It appears there was an administrative error made by the USAPDA when revising the proposed modification back to an administrative correction when the CI did not respond. Without concurrence from the CI, the USAPDA had to change the proposed rating from 20% back to 10%, but apparently did not change the wording to correspond with the 10% rating as originally determined by the IPEB. The VA rated the condition at 40% based the more significantly limited thoracolumbar flexion of 25 degrees reported at the C&P examination. While the VA examination does support a rating higher than 20%, this examination is inconsistent with all other examinations in the record and appears to be a worsening of the condition over time. The Board was unable to determine if the CI's flexion became less than 30 degrees prior to separation without resorting to speculation. At the VA examination occurred 4 months after separation and all the other examinations occurred prior to separation, greater probative value is given to the service examinations completed prior to separation. Upon review of the examinations, the Board determined the ROM measurements from physical therapy in October 2007 cannot be used to rate the CI's condition. They were made using an inclinometer and estimates of goniometric measurements cannot be estimated without further information about how these measurements were obtained. The NARSUM examiner reported he used a goniometer to obtain the measurements from MEB re-evaluation 2 months prior to separation in December 2007. The Board places greater probative value on this examination as it is the examination most proximate to the day of separation that includes measurements made with a goniometer. It includes thoracolumbar flexion of 60 degrees. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the chronic thoracolumbar back pain condition.

Chronic Right Knee Pain due to Meniscus Degeneration and status post Meniscus Repair. There were two 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.

Knee ROM	PT ~3.5 Months Pre-Separation	MEB ~3 Months Pre-Separation	MEB re-evaluation ~2 Months Pre-Separation		VA C&P ~4 Months Post-Separation	
	Right	Right	Left	Right	Left	Right
Flexion (140° Normal)	130°	130°	140+°	130+°	125°	125° (pain at 85°)
Extension (0° Normal)	0°	0°	0°	10°	5°	5°
Comment	Bubble Inclinometer used.	Limited by mechanical endpoint		Goniometer used. Extension limited by mechanical endpoint; pain with flexion and extension; antalgic gait favoring right knee; positive McMurray.	No pain	Pain with flexion and extension, increased pain with repetition; no changes in ROM with repeat testing.
§4.71a Rating		10%		10%		10%

The MEB NARSUM was completed in November 2007, approximately 3 months prior to separation. The CI injured his right knee in basic training and an MRI in May 2004 documented a tear in the posterior horn of the lateral meniscus as well as osteoarthritis. After arthroscopic meniscal repair in May or June 2004 (operative report is not available but there was a pre-op visit on 12 May and a post-op visit on 16 June 2004), the CI returned to duty but his symptoms continued. He underwent a second arthroscopic surgery in June 2006 with chondroplasty of the defects in both the lateral femoral condyle and a second area in the patellofemoral joint. No meniscal tear was noted during this surgery or on a right knee arthrogram from October

2007. This arthrogram did note the previous partial lateral meniscectomy. The CI continued to have right knee pain and this condition was included in the MEB evaluation. As described above for the back ROM examinations, the NARSUM does not contain full ROM measurements and refers to a formal report of ROM, presumable the exam by physical therapy. The outpatient note from October 2007 that includes the physical therapy (PT) ROM measurements is labeled as an MEB evaluation. It includes the measurements above and states the reported values are each an average of three measurements and were measured with a bubble inclinometer. An MEB history and physical examination was completed in September 2007 by this same MEB NARSUM examiner and it reported right knee popping and grinding with flexion and a ROM from 0 to 135 degrees.

The C&P exam completed 4 months after separation and it reported a similar clinical history as the NARSUM. Additionally it notes several outpatient visits for right knee sprains and falls. An injury in October 2007 was treated in the ER with crutches and a brace and an abnormal examination was noted in orthopedics on 29 October 2007. This examiner noted tenderness on palpation and an X-ray showed mild joint fluid but no instability was present. The pertinent VA examination findings are in the chart above. A VA orthopedic evaluation of the right knee in December 2008, approximately 10 months after separation noted motion limited to 0 degrees to 120 degrees with crepitus at the extremes of motion and pain with palpation of the medial and lateral joint lines. No instability was noted and neurologic examination was normal. The CI did later have a third surgery to his right knee but this did not occur until May 2012, more than 4 years after separation.

The Board directs attention to its rating recommendation based on the above evidence. Although the PEB and the VA used different VASRD codes, both rated the right knee at 10% for loss of motion at the noncompensable level. Although an inclinometer was used to measure the right knee ROM in the PT exam, the difference in values of ROM measurements for the knee as compared to measurements made using a goniometer would be much less than for the back ROM. The Board notes that all examinations, including both the PT exam using the inclinometer and the VA exam 4 months after separation are relatively similar and each exam would result in the same 10% rating. Additionally although multiple rating schemes could be appropriately used, none results in a rating greater than 10%. 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 chronic right knee pain 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. 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 chronic thoracolumbar back pain condition, the Board unanimously recommends a disability rating of 20%, coded 5299-5235 IAW VASRD §4.71a. In the matter of the chronic right knee pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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 Thoracolumbar Back Pain	5299-5235	20%
Chronic Right Knee Pain	5099-5003	10%
	COMBINED	30%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120502, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB / XXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXX, AR20130000025 (PD201200322)

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA