

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXX
CASE NUMBER: PD1200364
BOARD DATE: 20121128

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20071013

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (62B20 /Construction Equipment Repairer), medically separated for right knee arthritis after direct injury to the knee in 2002 from a fall on the ice. The CI had two arthroscopic procedures including micro-fracture debridement and partial meniscectomy initially and a later plica excision. However, in 2006 his pain increased and did not improve adequately with treatment and the CI was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded osteoarthritis, right knee, mild moderate to the Physical Evaluation Board (PEB) for adjudication. The MEB forwarded no other conditions. The PEB adjudicated the right knee arthritis condition as unfitting, rated 0%, with possible application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals and was medically separated with a 0% disability rating.

CI CONTENTION: "I feel the rating was unfair from the Service considering the rating I have received from VA."

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 unfitting right knee arthritis condition meets the criteria prescribed in DoDI 6040.44 for Board purview and is accordingly addressed below. The remaining conditions rated by the VA at separation and listed on the DD Form 294 application 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 20070712 | | | VA (4 Mos. Post-Separation) – All Effective Date 20071013 | | | |
|---------------------------------|------|--------|---|------|--------|----------|
| Condition | Code | Rating | Condition | Code | Rating | Exam |
| Right Knee Arthritis | 5003 | 0% | Chondromalacia Right Knee Status Post Meniscus Repair X 2 | 5259 | 10% | 20080222 |
| ↓No Additional MEB/PEB Entries↓ | | | Right Shoulder Arthritis with Partial Thickness Tear of Supraspinatus Tendon | 5003 | 20% | 20080813 |
| | | | Lumbar Degenerative Disc Disease with Sciatic Radiculopathy and History of Strain | 5243 | 10% | 20080222 |
| | | | Bilateral Tinnitus | 6260 | 10% | 20080813 |
| | | | 0% X 4 / Not Service-Connected x 4 | | | |
| Combined: 0% | | | Combined: 40%* | | | |

*Increased to 70% effective 20101019 after addition of 9411 PTSD at 50% effective 20101019 and 5017 Gout, Right Great Toe at 0% effective 20090623.

ANALYSIS SUMMARY: 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 disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. 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.

Right Knee Arthritis Condition. There were two goniometric 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 | MEB NARSUM ~ 4.5 Mos. Pre-Separation | PT ~3.5 Mos. Pre-Separation | VA C&P ~4 Mos. Post-Separation |
|-----------------------|---|--|---|
| Flexion (140° Normal) | Not measured | 135° (135, 135, 135) | 120° |
| Extension (0° Normal) | Not measured | -5° (-5, -5, -5) | 0° |
| Comment | Diffuse tenderness throughout medial and lateral aspects with anterior somewhat more tender than posterior; no effusion; negative anterior drawer; MCL and LCL were stable; Lachman's test negative; McMurray's test negative; negative apprehension sign; minimal patellofemoral crepitus. | Active measurements made with a goniometer. Negative Lachman's test. | Slight pain with locking and full extension; decreased flexion due to body habitus; negative Lachman's anterior and posterior drawer and McMurray tests; normal gait; no assistive devices; normal neurologic examination |
| §4.71a Rating | 10% | | 10% |

The MEB narrative summary (NARSUM) was completed approximately 4.5 months prior to separation. The CI originally injured his right knee in early 2002 when he suffered a direct blow after falling on the ice. His pain failed to resolve and he underwent an arthroscopy by a local German physician in May 2002 with microfracture debridement of medial femoral condyle, excision of a mediopatellar plica, and a partial meniscectomy. Magnetic resonance imaging (MRI) from August 2002 was normal. He underwent a second arthroscopy with debridement in October 2002. In January 2003, the CI had an antalgic gait but full active ROM. His knee pain never completely resolved and it increased after he started running again about a year after the second surgery. In January 2004, a permanent L2 profile was written for degenerative joint disease (DJD) of the right knee and avoidance of all running was recommended. In April 2006, a permanent L3 profile was written for lower back pain with degenerative disc disease (DDD) and this recommended avoidance of running. Repeat right knee MRI in April 2007 was normal. Pertinent examination findings are noted in the chart above. The MEB NARSUM examiner opined the right knee arthritis was mild to moderate. A VA Compensation and Pension (C&P) exam was completed approximately 4 months after separation and it noted a similar clinical history of the right knee condition. Additionally, the CI reported knee subluxation occurring 4 times per day, especially with lifting or carrying something heavy. He also reported occasional

weakness and constant stiffness and swelling. He was wearing a neoprene sleeve at the examination. His pain occurred daily and was worse in the morning. Pertinent examination findings are in the chart.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated right knee arthritis at 0% for arthritis of one major joint, stating passive ROM was 7 to 140 degrees and this was not independently ratable. It is possible that the PEB applied the USAPDA pain policy although this is not specifically stated. The VA rated right knee chondromalacia, status post meniscal repair and applied a 10% disability rating using VASRD 5259. The 10% rating is based on the presence of symptoms after meniscal repair. The rating criteria for 5003 states: "When however, the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10 pct [*sic*] is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5003." Based on the limitation of active flexion to 135 degrees, a 10% disability rating is warranted. The VA rating scheme, while equally valid, offers not advantage to the CI. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and VASRD §4.59 (painful motion), the Board recommends a disability rating of 10% for the right knee arthritis 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 right knee arthritis condition was potentially operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right knee arthritis condition, the Board unanimously recommends a disability rating of 10%, coded 5003 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:

| UNFITTING CONDITION | VASRD CODE | RATING |
|----------------------------|-------------------|---------------|
| Right Knee Arthritis | 5003 | 10% |
| | COMBINED | 10% |

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120414, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXX, DAF
President
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, AR20120022690 (PD201200364)

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDDBR
() DVA