

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200382  
BOARD DATE: 20121214

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20050218

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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 (11B20/Infantry), medically separated for chronic left knee and ankle pain. The CI fractured his left tibia and fibula during parachute landing in October 2001 and underwent open reduction and internal fixation (ORIF) with a left tibial intramedullary rod and screws. His retained hardware of intramedullary nail and interlocking screws was causing discomfort and it was removed in June 2003. He was deployed to Iraq from August 2003 to February 2004 and experienced constant pain of the left lower extremity that interfered with his ability to perform tasks required of his MOS. In July 2004, he was cleared to perform airborne operations. However, after a jump in November 2004, the CI experienced severe pain and protracted limping. Despite treatment, he continued to have significant pain in his left knee and ankle and was unable to run or perform multiple tasks required of his MOS. The CI remained 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 no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated a combined chronic knee pain, left knee and left ankle condition as unfitting, rated 10% with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and he was medically separated with a 10% disability rating.

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**CI CONTENTION:** "I am requesting a review of my medical records in order to receive a Medical Retirement. Upon my separation from Army in 2005, I was suffering from PTSD which resulted from my deployment to Iraq in 2003/2004, but I was not evaluated for this condition prior to being separated. I was honorably discharged with a 10% disability rating with severance, that resulted as a direct result of armed conflict or instrument of war. Cont--- I was never evaluated for my chronic low back pain, which also resulted from multiple simulated combat parachutist jumps and in combination with a motorcycle accident I suffered while stationed in Vicenza, Italy with 173rd Abn Bdg." He additionally lists all of his VA conditions and ratings as per the rating chart below.

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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 other requested conditions (posttraumatic stress disorder [PTSD] and chronic low back pain) are not within the Board's purview. The remaining conditions rated by the VA at separation and listed on the DA 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 the Correction of Military Records.

**RATING COMPARISON:**

| Service IPEB – Dated 20050113               |           |        | VA (~2 Months Post-Separation) – All Effective Date 20050219             |           |        |          |
|---|-----------|--------|--|-----------|--------|----------|
| Condition                                   | Code      | Rating | Condition  | Code      | Rating | Exam     |
| Chronic Knee Pain, Left Knee and Left Ankle | 5099-5003 | 10%    | Residual of Fracture of Left Tibia and Fibula w/Residual Knee Disability | 5262      | 20%*   | 20050405 |
|   |           |        | Tender Scar, Left Ankle  | 7804      | 10%*   | 20050405 |
|   |           |        | Tender Scar, Right Ankle   | 7804      | 10%*   | 20050405 |
|   |           |        | Left Ankle Strain  | 5299-5271 | 0%*    | 20050405 |
|   |           |        | Cervical Strain  | 5237      | 10%    | 20050405 |
|   |           |        | Chronic Low Back Pain  | 5237      | 10%    | 20050405 |
|   |           |        | Tinnitus   | 6260      | 10%    | 20050404 |
|   |           |        | 0% X 6 (Includes above) / Not Service-Connected x 7                      |           |        | 20050405 |
| ↓No Additional MEB/PEB Entries↓             |           |        |  |           |        |          |
| <b>Combined: 10%</b>                        |           |        | <b>Combined: 50%**</b>   |           |        |          |

\*No change to rating in subsequent VARDs

\*\*Increased to 60% effective 20060217 with Lumbar spine 5237 increased to 20%; increased to 70% effective 20081008 with addition of 9411 PTSD; increased to 80% effective 20100507 when 9411 increased to 50%.

**ANALYSIS SUMMARY:** The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions (PTSD and chronic low back pain). The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of Disability Evaluation System (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. The Board utilizes the Department of Veterans Affairs (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. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

The PEB rated chronic left knee pain and chronic left ankle pain under the single analogous 5003 (degenerative arthritis) code. This coding approach is countenanced by AR 635-40 (B.24 f.), but IAW DoDI 6040.44 the Board must apply only VASRD guidance to its recommendation. The Board must therefore apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. Either condition alone would have resulted in the CI’s inability to perform the functions required of his MOS as an infantryman, a very physically demanding MOS. Some of the physical requirements are noted in the Commander’s letter. Therefore, the Board is pursuing separate rating as follows.

**Chronic Left Knee Pain.** All members agreed that chronic left knee pain, as an isolated condition, would have rendered the CI incapable of continued service within his MOS, and accordingly merits a separate rating.

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.

| Left Knee ROM         | NARSUM ~2 Months Pre-Separation  | VA C&P ~1.5 Months Post-Separation  |
|-----------------------|--|---|
| Flexion (140° Normal) | 125° (0/10 pain)   | 130° pain when repeated   |
| Extension (0° Normal) | -2°  | 0° pain when repeated   |
| Comment               | No mention of goniometer. No muscle atrophy; Mild patellar crepitation; 2-3/10 tenderness over medial joint line and tibial plateau; No hyperemia, erythema or effusion; Negative anterior and posterior Drawer; Lateral and collateral ligaments intact; No skin texture changes, induration, or red streaking; Healed surgical scars present on anterior and left medial knee; no focal motor or sensory deficits; normal reflexes. Repetitive motion testing not performed. | Normal gait; able to tandem walk; Tenderness on anterior aspect; negative drawer test, Lachman's, and McMurray's; No ligament laxity or valgus and varus stress; No heat, swelling, or masses; Normal sensory exam with monofilament and reflexes 1+ and symmetric. Anterior knee scar healed, hyperpigmented, nondepressed, and nonadherent but tender to palpation and measuring 8cm by 2 cm. Medial knee scar nontender. |
| §4.71a Rating         |  |   |
| 5260                  | 10%  | 10%   |
| 5262                  | 20%  | 20%   |

The MEB narrative summary (NARSUM) was completed approximately 2 months prior to separation. Despite multiple treatments and removal of hardware as summarized above, the CI was not able to return to full duty including airborne operations. Physical exam findings are summarized in the chart above. Although no pain was noted with knee flexion, the examiner did not perform repetitive motion testing as required. No laxity was noted. X-rays documented narrowing of the patellofemoral joint space and abnormalities of the proximal tibia most likely secondary to previous trauma and surgical intervention. The MEB physical examination was completed by the same provider on the same day. It also noted decreased ROM and patellar crepitus. However, it noted 7/10 tenderness over the medial tibial plateau.

A VA compensation and Pension (C&P) examination was completed approximately 1.5 months after separation and it noted similar clinical history as previously described. At the time of that examination, the CI reported daily pain in his left knee and pain with repetitive motion. At rest, the pain was rate at 3 to 5 out of 10. No knee brace was used. He reported he could walk a mile without symptoms but would have knee pain after seven holes of golf. He also noted that after yard work for a full day, he had residual pain that lasted for hours. Physical exam findings are noted in the chart above. The examiner specifically states repetitive knee flexion and extension cause pain. The examiner opined the left leg and left knee joint function was limited by pain, fatigability, and lack of endurance along with occasional lack of coordination in the left knee. VA X-rays noted mild posttraumatic and/or degenerative changes involving the tibial tubercle.

The Board directs attention to its rating recommendation based on the above evidence. As discussed above the PEB combined chronic left knee pain and chronic left ankle pain conditions and assigned an overall 10% rating IAW the USAPDA pain policy. The VA rated the chronic left knee pain at 20% using VASRD code 5262 Tibia and fibula, impairment of, malunion with moderate knee disability. The CI did have proximal tibial abnormalities that resulted from his fracture noted on service and VA X-Rays. While the C&P examination appears to be more complete, both exams support the same level of disability. While either examination could be characterized as 10% using 5260 and based on noncompensable levels of limitation of motion, both examinations also support a 20% rating using 5262, Tibia and fibula, impairment of with moderate knee or ankle disability. This code better describes the clinical condition and disability picture that resulted from the significant trauma sustained with the original injury. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that chronic left knee pain was separately unfitting and considering all of the

evidence and mindful of VASRD §4.3 (reasonable doubt), recommends a disability rating of 20% coded 5262 IAW VASRD §4.71a.

Chronic Left Ankle Pain. As previously elaborated, the Board must first consider whether chronic left ankle pain remains separately unfitting, having de-coupled it from a combined PEB adjudication. In analyzing the intrinsic impairment for appropriately coding and rating the chronic left ankle pain condition, the Board is left with a questionable basis for arguing that it was indeed independently unfitting. The CI suffered a significant fracture to his left tibia and fibula and had residual pain and disability in both his left knee and left ankle. However, VASRD code 5262 more accurately describes his total disability picture as described above and no separate impairment remains. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the chronic left ankle condition. The Board concluded therefore that no separate disability rating could be recommended for this condition.

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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 was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the bundled chronic left knee pain condition, the Board unanimously agrees that it was separately unfitting and unanimously recommends a disability rating of 20%, coded 5262 IAW VASRD §4.71a. In the matter of the bundled chronic left ankle pain condition, the Board unanimously agrees that it was not separately unfitting and therefore, no separate disability rating is recommended. There were no other conditions within the Board’s scope of review for consideration.

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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> |
|----------------------------------|-------------------|---------------|
| Chronic Left Knee and Ankle Pain | 5262              | 20%           |
|                                  | <b>COMBINED</b>   | <b>20%</b>    |

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20050218, 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 / XXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for XXXXXXXXXXXXXXXX, AR20130000109 (PD201200382)

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 20% 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

XXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
( ) DoD PDDBR  
( ) DVA