

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200507
BOARD DATE: 20121205

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20031028

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (31R/Communications) medically separated for right shoulder and right knee pain. He was treated, but did not improve adequately to fully perform his military duties, or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). The MEB found his right shoulder and right knee pain medically unacceptable IAW AR 40-501, and referred him to a Physical Evaluation Board (PEB). No other conditions were listed on DA Form 3947. The PEB combined the two MEB conditions into a single unfitting condition and rated it 0%; IAW the US Army Physical Disability Agency (USAPDA) Pain Policy. The CI accepted the PEB findings, and was medically separated with 0% disability.

CI's CONTENTION: "Had surgery to correct Right Knee in 2010 but with no success. I don't believe it was a fair review. I'm in continuous pain that doesn't leave."

SCOPE OF REVIEW: The Board's scope of review as defined in DoDI 6040.44, 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 unfitting condition (right shoulder and right knee pain) meets the criteria prescribed in DoDI 6040.44, and is accordingly addressed below. No other condition is within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

| Army PEB – dated 20030904 | | | VA (4 mos. Pre-Separation) – All Effective 20031029 | | | |
|----------------------------------|-----------|--------|---|-----------|--------|----------|
| Condition | Code | Rating | Condition | Code | Rating | Exam |
| Right Shoulder & Right Knee Pain | 5099-5003 | 0% | Right Shoulder Strain | 5099-5024 | 10% | 20030609 |
| No Additional MEB/PEB Entries | | | Right Knee Pain | 5099-5024 | 10% | 20030609 |
| Combined: 0% | | | Combined: 20% | | | |

ANALYSIS SUMMARY:

Right Knee Condition. The CI has had a long history of right knee pain. He injured his right knee during basic training in 1998, and that knee has bothered him ever since. In March 2001, he had a Formal PEB (FPEB) at Fort Lewis and was found Fit for Duty (FFD). However, the right knee continued to give him problems, and in 2003 an MEB was initiated. His MEB clinical evaluation was done on 5 May 2003 at Fort Gordon, GA. At that time, he reported pain and stiffness with prolonged walking or standing. The pain waxed and waned, did not wake him from sleep, and he was on no medications. On examination of the right knee, there was no

swelling or redness. There was some mild patellar crepitus and mild joint line tenderness, but otherwise the physical exam was normal. Range-of-motion (ROM) of the right knee was “full.”

A month later, on 9 June 2003, the CI had a VA Compensation and Pension (C&P) exam. Gait and posture were normal. Gross appearance of the right knee and ROM were both normal. There was some tenderness of the knee, but no incoordination, subluxation, joint effusion, locking pain, crepitus, or limitation of motion. Drawer test and McMurray test were both negative. The right knee condition was categorized as retropatellar pain syndrome (RPPS). Right knee ROM is summarized in the chart below.

| Right Knee ROM | MEB – 5½ mos. Pre-Sep (20030505) | VA C&P – 4½ mos. Pre-Sep (20030609) |
|--------------------------|-------------------------------------|--|
| Flexion (140° is Normal) | 125° | 140° |
| Extension (0° is Normal) | 0° | 0° |
| Comment | No mention of painful motion | Painful motion |
| §4.71a Rating | 0% | 10%* |

*10% based on VASRD §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

Right Shoulder Condition. The CI’s right shoulder began to bother him back in 1998-1999, while at Fort Bliss. He dislocated the right shoulder, but was able to self-reduce it. This was followed by more dislocations. Magnetic resonance imaging (MRI) showed a possible labral tear. The CI was seen by orthopedic surgeons at Fort Gordon, and they recommended conservative treatment because there appeared to be no obvious instability of the joint.

At the MEB evaluation on 5 May 2003, the right shoulder showed no muscle atrophy. Right arm grip strength and ROM was normal (see chart below). A month later, at his June 2003 C&P exam, the gross general appearance of the right shoulder was normal. ROM was measured, and is summarized in the chart below.

| Right Shoulder ROM | MEB – 5½ mos. Pre-Sep (20030505) | VA C&P – 4½ mos. Pre-Sep (20030609) |
|----------------------------|-------------------------------------|--|
| Flexion (180° is normal) | 180° | 180° |
| Abduction (180° is normal) | 180° | 180° |
| Comments | Pain with overhead use | Painful motion |
| §4.71a Rating | 10%* | 10%* |

*10% based on VASRD §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all evidentiary information available. The Army PEB combined the two painful joint conditions into a single unfitting condition: “Right shoulder and right knee pain.” The condition was coded 5099-5003 and rated at 0%. In contrast, the VA unbundled the two conditions, and rated each one at 10% for painful motion. The Board evaluated whether or not it was appropriate for the two joints to be “bundled” together. The Board must determine if the PEB’s approach of combining the conditions under a single rating was justified in lieu of separate ratings. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW the Veteran’s Administration Schedule for Rating Disabilities (VASRD) §4.71a. If the Board judges that two or more separate ratings are warranted, however, it must satisfy the requirement that each ‘unbundled’ condition was separately unfitting. After due deliberation, the Board agreed that the evidence supports a conclusion that the chronic painful condition in each joint, separately, would have rendered the CI unable to perform his required military duties. Accordingly, the Board recommends a separate disability rating for each joint.

The Board directs attention to its rating recommendations based on the above evidence. The limitation of motion for both joints was essentially non-compensable based on the VASRD

§4.71a diagnostic codes for loss of knee motion (5260 and 5261) and loss of shoulder/arm motion (5200 and 5201). However; IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. There was no path to a rating higher than 10% for the right knee since there was no evidence of ligamentous instability, subluxation, locking, or other significant joint abnormality. There was no path to a rating higher than 10% for the right shoulder since there was no documented, objective evidence of guarding of movement at shoulder level. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for chronic right knee pain, due to RPPS. In like manner, the Board recommends a rating of 10% for the chronic right shoulder 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 was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic right knee pain, the Board unanimously recommends a disability rating of 10%, coded 5299-5260 IAW VASRD §4.40, §4.45, §4.59, and §4.71a. In the matter of the chronic right shoulder pain, the Board unanimously recommends a disability rating of 10%, coded 5299-5201 IAW VASRD §4.40, §4.45, §4.59, and §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 |
|-----------------------------|-------------------|---------------|
| Chronic Right Knee Pain | 5299-5260 | 10% |
| Chronic Right Shoulder Pain | 5299-5201 | 10% |
| | COMBINED | 20% |

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120601, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXX, 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, AR20120022744 (PD201200507)

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 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

XXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PD BR
() DVA