

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200550
BOARD DATE: 20121206

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20040115

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated National Guard, SPC/E-4 (71L/Administrative Specialist/63J quartermaster and chemical equipment repairer), medically separated for a right knee condition/retropatellar pain syndrome. The CI did not improve adequately with conservative treatment to meet the physical requirements of her Military Occupational Specialty (MOS), worldwide deployment standards or satisfy physical fitness standards. She was issued a permanent L3 and referred for a Medical Evaluation Board (MEB). Retropatellar pain syndrome was forwarded to the Physical Evaluation Board (PEB) IAW AR 40-501 without specifying if this was a right, left or bilateral knee condition. No other conditions appeared on the MEB's submission. The PEB adjudicated the right knee condition, as unfitting, rated 0%, with application of the US Army Physical Disability Agency (USAPDA) pain policy and was silent to the left knee. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: "I do not know the rating awarded by the service but was give 10% for each knee by the VA. The rating should be changed as there was extensive injury to my knees which have deteriorated my physical & mental. I have requested an increase but all have been denied. My ankles, shins and entire knees have deteriorated and I experience pain every day."

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 condition(s) will be reviewed in all cases. The unfitting right knee condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The Board acknowledges the left knee condition requested for consideration was silent in the PEB decision and not specified in the MEB. However, the Board notes the narrative summary and the service treatment record (STR) supports a bilateral knee condition and therefore agreed the left knee condition, while silent was likely considered not unfitting by the PEB and was requested by the CI, therefore meets the criteria prescribed in the DoDI 6040.44 for Board purview and is also addressed below. The other requested conditions, ankles and shins, 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 20031209			VA (6 Mos. Post-Separation) – All Effective Date 20010715			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Pain Right Knee, due to Retropatellar Pain Syndrome	5099-5003	0%	Chondromalacia, Right Patella (claimed as Retropatellar Pain Syndrome)	5099-5019	10%	20040723
↓No Additional MEB/PEB Entries↓			Chondromalacia, Left Patella (claimed as Retropatellar Pain Syndrome)	5099-5019	10%	20040723
			Not Service-Connected x 1			
Combined: 0%			Combined (w/ BLF): 20%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation.

Retropatellar Pain Syndrome. As documented in the scope of review the Board agreed this condition was a right and left (bilateral) condition. The Board notes the profile identifies bilateral knee pain and commander’s statement documents limitations that cause pain in her knees, connoting a right and left knee condition. Also per the STR, the clinical course and features for each knee were identical; and, all relevant evidence reflects a symmetric bilateral knee condition. Therefore the Board judges that two or more separate ratings are warranted in this case, however, it must satisfy the requirement that each knee condition was unfitting in and of itself. All members agreed that no distinctions between the two joints could be made regarding functional limitations, and that it was reasonable to concede that either knee alone would have resulted in the same fitness consequences.

After the onset of symptoms in 1998, the CI was placed on temporary profiles and responded sufficiently to nonsteroidal medications and physical therapy to perform satisfactorily in her MOS until the expiration of her term of service in July 2001. She entered into the Reserves and was given a new MOS of 71L. She was activated in March 2003 to perform duties as a 63J, her secondary MOS. Upon activation she reported bilateral knee pain, 8 of 10 in intensity, and that she had some pain relief with the daily use of Vioxx, a nonsteroidal medication. A permanent profile was issued with the following limitations; unable to run, jump, march, repetitive squat, or stand for longer than 20 minutes without a 10 minute rest. The commander’s statement corroborated her limitations and additionally documented she physically incapable of reasonably performing her duties as a 63J due to her chronic knee problems. 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.

Knee ROM (Degrees)	MEB ~2 Mo. Pre-Sep		VA C&P ~6 Mo. Post-Sep	
	Left	Right	Left	Right
Flexion (140 Normal)	90	90°	110	110
Extension (0 Normal)	0	0°	10	10
Comment	Stable ligaments, silent on painful motion		Gait normal, ligaments stable, painful motion	
§4.71a Rating	10%	10%	10%	10%

The MEB physical exam documented bilateral; poor quadriceps muscle tone, positive patellofemoral grind, no crepitus, negative testing for ligament or meniscal disease and no joint line tenderness. Bilateral plain X-rays of the knees were within normal limits. At the VA Compensation and Pension (C&P) evaluation after separation, the CI reported bilateral knee pain with popping, increased with all activities and weather changes, avoided squatting and the pain was moderately relieved with daily Celebrex use, a nonsteroidal medication similar to Vioxx. She also reported knee swelling two to three times per week but had not lost time from work as a secretary. The C&P exam demonstrated bilateral painful motion, no edema, effusion, or deformity, squatted with difficulty and no Deluca observations. The VA examiner diagnosed chondromalacia patellae, bilateral.

The Board directs attention to its rating recommendation based on the above evidence. This rating includes consideration of functional loss IAW VASRD §4.10 (functional impairment), §4.40 (functional loss), §4.45 (DeLuca), and §4.59 (painful motion). The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB's DA Form 199 reflected application of the USAPDA pain policy for rating and its 0% determination coded analogous to 5003 (arthritis, degenerative) for the right knee was inconsistent with §4.71a standards. The 5003 code specifies "when however, the limitation of motion of the specific joint or joints involved is non compensable under the appropriate diagnostic codes, a rating of 10% 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". The VA achieved separate 10% ratings coded analogous to 5019 (Bursitis) which defaults to the criteria of code 5003. The Board agreed the evidence supports 10% for each knee under the 5003 code and there is no evidence of incapacitating episodes to support additional or a 20% rating under the 5003 code. There are no viable approaches to a higher rating for the retropatellar pain condition which is countenanced by the VASRD. 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 the right knee retropatellar pain syndrome condition and that the preponderance of the evidence with regard to the functional impairment of left knee favors its recommendation as an additionally unfitting condition for separation rating of 10% for a combined disability rating of 20%.

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. As discussed above, PEB reliance on the USAPDA pain policy for rating retropatellar pain syndrome was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right knee condition, the Board unanimously recommends a disability rating of 10%, coded 5099-5003 IAW VASRD §4.71a. In the matter of the contended left knee condition, the Board unanimously recommends that it be added as an additionally unfitting condition for separation rating; coded 5099-5003 and rated

10% 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 her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Pain Right Knee, due to Retropatellar Pain Syndrome	5099-5003	10%
Chronic Pain Left Knee, due to Retropatellar Pain Syndrome	5099-5003	10%
COMBINED (w/ BLF)		20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120602, 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 / XXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20130000146 (PD201200550)

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