RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX
CASE NUMBER: PD12000597
BOARD DATE: 20121214

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030820

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (88H/Transportation Cargo Specialist), medically separated for asthma and chronic right shoulder and left knee pain. Asthma began in approximately 1999. Right shoulder pain began as a consequence of repeated lifting in 2000 and required two surgical interventions. Left knee pain due to a fall in 1996 also required surgery twice. None of the conditions responded adequately to treatment and she was unable to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent P3U3L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic left knee pain secondary to saphenous nerve neuritis, chronic right shoulder pain secondary to degenerative joint disease (DJD) and asthma to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Three other conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The PEB adjudicated asthma, exercise induced, as unfitting, rated 10% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD); and chronic right shoulder and left knee pain as a single unfitting condition, rated 0% with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "My asthma is now chronic and the tendons and ligaments in my shoulder have degenerated which gives me limited motion."

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 the conditions which were determined by the PEB to be specifically unfitting for continued military service or when requested by the CI, the condition(s) "identified but not determined to be unfitting by the PEB." The ratings for unfitting conditions are 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:

Service IPEB – Dated 20030602		
Condition	**Code**	**Rating**
Asthma	6602	10%
Chronic Right Shoulder and Left Knee Pain	5099-5003	0%
Fibroid Uterus	Not Unfitting	
Chronic Pelvic Pain		
Hysterectomy		
↓No Additional MEB/PEB Entries↓		
Combined: 10%		

VA (2 Mos. Post-Separation) – All Effective Date 20030821			
Condition	**Code**	**Rating**	**Exam**
Restrictive Airway Disease	6699-6602	30%[1]	20031004
Right Shoulder Impingement	5203-5201	20%[2]	20031004
Left Knee	5259	10%[3]	20031004
NO VA ENTRY			
Total Abdominal Hysterectomy	7618	30%	20031004
Left Wrist Disability	5215-5024	10%	20031004
0% X 4 / Not Service-Connected x 4			20031004
Combined: 70%			

[1]Initial VA decision rated at 10%, increased to 30% on 27 January 2005 based on service treatment record, effective 20030821
[2]VA decision 20050917 increased to 30% effective 20050215
[3]VA decision 20050917 added second knee code 5259-5260 at 10%, effective 20050215; combined 80%

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment and worsening severity with which her service-incurred condition continues to burden her. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans' Affairs (DVA). 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 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Asthma Condition. During the 2 years prior to separation, the CI was treated with multiple medication regimens without good relief of asthma symptoms. A permanent profile for no running was required due to exercise-induced bronchoconstriction. In 2001 she required three courses of systemic steroids. At the narrative summary (NARSUM) addendum exam 4 months prior to separation, the CI reported the need for rescue medication 3-4 days per week despite use of maintenance inhaled steroid medication. It was noted that the condition did not prohibit her from managing activities of daily living, but running or excessive physical activity caused fatigue or mild to moderate respiratory distress. Information on the use of systemic steroids within the preceding year was not provided, nor were there pulmonary function test (PFT) results within the prior 2 years. The assessment was: "Her asthma will require chronic long-term therapy for her to be able to function." At the VA Compensation and Pension (C&P) exam 6 weeks after separation, the CI reported asthma attacks approximately every 3 months. She was unable to run or walk long distances due to shortness of breath. Use of any asthma medication was not specified. PFT results showed an FEV1 of 79% of predicted and an FEV1/FVC calculated ratio of 66%.

The Board directs attention to its rating recommendation based on the above evidence. A compensable rating for asthma is predicated on the frequency of bronchodilator use, on the use of systemic or inhaled steroids, or on PFT results. In this case there was no history of respiratory failure or of daily systemic steroid or immunosuppressive medication requirement; nor was there documented use of intermittent systemic steroids (at least 3 times per year) or monthly visits for exacerbations during the 2 year period prior to separation. Therefore the higher 60% or 100% ratings IAW 6602 criteria are not supported. The 10% rating requires intermittent inhalational or oral bronchodilator therapy; the 30% rating requires daily inhalational or oral bronchodilator therapy or inhalational anti-inflammatory medication. The PEB's 10% rating was premised on intermittent requirement. Although the VA initially assigned a 10% rating based on PFT interpretation, this was increased to 30% once review of the service treatment record (STR) confirmed treatment with inhaled steroids. The STR indicated that inhaled steroids were to be used on a daily basis. Board members agreed that the 30% rating was not only justified by the use of inhaled steroids, but also by the FEV1/FVC ratio of 66% calculated from the VA exam. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 30% for the asthma condition.

Chronic Right Shoulder and Left Knee Pain Condition. The PEB combined right shoulder and left knee pain as a single unfitting condition, coded 5099-5003. Although this approach complies with AR 635.40 (B.24f.) the Board must apply separate codes and ratings in its recommendations, if compensable ratings for each condition 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. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting and that there was no need for separate fitness adjudications, not a judgment

that each condition was independently unfitting. Thus the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB.

Right shoulder pain was determined to be a result of rotator cuff impingement and partial tear. Despite surgery on her right dominant shoulder in July 2001 and in March 2002, ongoing physical therapy and repeated shoulder injections, she continued to suffer from shoulder pain. There were three 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 Shoulder ROM in degrees	NARSUM ~4 Mos. Pre-Sep	Ortho ~3.5 Mos. Pre-Sep	VA C&P ~6 Wks Post-Sep
Flexion (0-180^o)	90	140	120
Abduction (0-180^o)	90	130	95
Comments	+Painful motion	+Painful motion, tenderness	+Painful motion
§4.71a Rating	20%	10%	10% or 20% (VA 20%)

The narrative summary (NARSUM) examination noted positive impingement sign testing. Although trapezius muscle tenderness was present, shoulder joint tenderness was not. There was no evidence of shoulder instability. Passive ROM testing showed flexion and abduction of 180 degrees. X-rays revealed post-surgical and degenerative changes. An orthopedic examination on 1 May 2003 (3 months prior to separation) noted no shoulder laxity. At the C&P exam 6 weeks after separation, the CI reported difficulty doing any overhead lifting due to shoulder pain. Examination revealed restricted ROM due to pain only.

The Board directs attention to its rating recommendation based on the above evidence. The PEB cited normal passive ROM in their 0% rating decision under an analogous 5003 code (degenerative arthritis). The VA assigned a 20% rating, stating it most closely approximated the overall picture. Regarding the right shoulder condition, there was a preponderance of evidence that it was unfitting. Board members agreed that a 10% rating was easily supported based on painful use (§4.40) or painful motion (§4.59), but considered a rating under the 5201 code. The VASRD §4.71a threshold for compensable ROM impairment is "shoulder level," i.e., 90 degrees. The NARSUM exam documented that degree of limitation, but the orthopedic examiner 2 weeks later demonstrated motion clearly above this level. Meanwhile the VA examination noted abduction just above the 90 degree plane, but better flexion. The Board debated this evidence, and agreed that the clinical picture was more accurately depicted by the 10% rating. 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 chronic right shoulder pain condition.

Next, the Board turned its attention to the left knee. As previously elaborated, the Board must first consider whether the chronic left knee pain remains separately unfitting, having de-coupled it from a combined PEB adjudication. In analyzing the intrinsic impairment for appropriately coding and rating the left knee condition, the Board is left with a questionable basis for arguing that left knee pain was indeed independently unfitting. The clinical record offered little information about it during the year prior to separation. Although the CI complained of knee pain after arthroscopic surgery for a meniscal tear, subsequent notes gave conflicting information about the specific location and cause of pain; some referred to joint line pain while others referred to pain below the level of the knee joint. X-rays showed no evidence of arthritis. The C&P examiner noted non-painful, full ROM and a normal gait. It was noted that the left knee was not specified in the commander's statement, while aerobic exercise restrictions on the physical profile were due to asthma. After due deliberation, the Board

agreed that the evidence does not support a conclusion that left knee pain, as an isolated condition, would have rendered the CI incapable of continued service within her MOS and accordingly cannot recommend a separate rating for it.

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 right shoulder pain and left knee pain was operant in this case and the conditions were adjudicated independently of that policy by the Board. In the matter of the asthma condition, the Board unanimously recommends a disability rating of 30%, coded 6602 IAW VASRD §4.97. In the matter of the chronic right shoulder and left knee pain conditions, the Board unanimously recommends that they be adjudicated as two separate conditions. In the matter of the right shoulder pain condition, the Board unanimously recommends a disability rating of 10%, coded 5099-5003. In the matter of the left knee pain condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional disability rating. 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 her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Asthma	6602	30%
Chronic Right Shoulder Pain	5099-5003	10%
	COMBINED	**40%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120605, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXX, 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 XXXXXXXXXXXXX, AR20130000105 (PD201200597)

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 40% 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 40% 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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA