

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200646
BOARD DATE: 20121213

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030906

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (91W/Medical Specialist), medically separated for a low back and a right knee condition. The CI did not improve adequately with surgical treatment and post-rehabilitative treatment for the right knee condition and conservative treatment for the low back condition and was unable to perform within her Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. She was issued a permanent L3 profile referred for a Medical Evaluation Board (MEB). The Physical Evaluation Board (PEB) adjudicated the back and right knee conditions as unfitting, rated 10% and 10%, respectively, with Department of Defense Instruction (DoDI) 1332.39, AR 635-40 and the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a combined 20% disability rating.

CI CONTENTION: “There is substantial evidence on recorded by an MRI for Knee condition worsening. There are more frequent back spasms/pain since leaving Army. Therefore I am currently on medication for constant back pain & severe muscle spasms in back. It was affected me to where it is difficult to maintain a job due to pain that I have.”

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. 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 20030512			VA (1 Mos. Post-Separation) – All Effective Date 20030907			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Pain, Right Knee, Status Post Anterior Cruciate Ligament Reconstruction	5099-5003	10%	Status Post Anterior Cruciate Ligament Repair, Right Knee Strain	5260	10%	20031006
Chronic Low Back Pain, due to Degenerative Disk Disease without Neurologic Abnormality	5299-5295	10%	Degenerative Joint and Disc Disease with Scoliotic Deformity, Lumbar Spine	5292	10%	20031006
↓No Additional MEB/PEB Entries↓			Bipolar Type 1 Disorder	9432	10%	20031004
Combined: 20%			0% X 0 / Not Service-Connected x 1 Combined: 30%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred conditions continue 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. 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. The DVA, however, is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time.

Right Knee and Low Back Condition. The CI received an orthopedic waiver for her right knee status post (s/p) anterior cruciate ligament (ACL) reconstructive surgery in 1994 to enlist in the Army in May 2000. Six months into training she was diagnosed and treated for stress fractures of the bilateral tibias (lower leg), right knee pain, low back pain and limb length discrepancy (LLD) with the right leg longer than the left. The stress fractures resolved 6 months later which was confirmed by a bone scan and the limb length was treated with a left heel lift. The right knee and low back pain, however, persisted despite conservative treatment resulting in continuation of profiles for over a year in service. A subsequent orthopedics evaluation diagnosed patellar tendonitis and LLD and recommended a P2 profile in October 2001. This was not in evidence for review. A year lapsed with one service treatment record (STR) entry for magnetic resonance imaging (MRI) exam of the low back while in Kuwait in April 2002. There was also one entry for care of the right knee in May 2002, stateside. The evidence then reflected an orthopedic STR entry in January 2003 who diagnosed DDD and DJD of the low back, referred her to physical therapy and noted she had to return stateside one month earlier from deployment due to this condition. Pain management also evaluated the low back and treated with injection therapy with mild relief. She underwent right knee surgery for symptomatic hardware removal, debridement of scar and notch impingement tissue, and partial lateral meniscectomy and had additional operative findings of chondromalacia. The treating orthopedic surgeon documented 6 weeks into rehabilitation that she was doing well but still had persistent knee and back pain and after maximizing her chances of returning to duty and was still unable to function at the level required of her MOS. The surgeon further opined her right knee condition was "somewhat stable and I think there is a potential it could decline in the future, but this is only speculation" and thus dictated her MEB for chronic right knee and low back pain. The permanent profile identified both conditions with the following limitations; no running, jumping, rucking, or standing greater than 30 minutes. The profile allowed a push-up only physical training test, marching up to 1 mile and lifting up to 40 pounds. The commander's statement corroborated the medical conditions and profile limitations. Additionally, the commander documented she had to be returned early from a Qatar deployment and did not currently deploy with the unit to the Middle East as she was unable to perform critical field duties.

There were two goniometric range-of-motion (ROM) evaluations in evidence for the right knee, 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 ~5 Mo. Pre-Sep	VA C&P ~1 Mo. Post-Sep
Flexion (140° Normal)	140°	130°
Extension (0° Normal)	#°	0°
Comment	Quad atrophy from surgery, silent to painful motion	Valgus stress produced pain, stable knee
§4.71a Rating	10%	10%

The MEB physical exam demonstrated a well healed incision and two new arthroscopy incisions on the right knee and obvious quadriceps atrophy. Postoperative X-rays revealed removal of the screw on the tibial side, otherwise unremarkable. At the VA Compensation and Pension (C&P) exam after separation, the CI reported swelling of the right knee if she walked for more than 1.5-2 hours and a constant ache which was relieved with local analgesic creams and nonsteroidal medications. The C&P exam demonstrated an 8 x 0.5 cm vertical scar that was hypopigmented and nontender, pain of the medial collateral ligament otherwise noted a stable knee, no effusion and no Deluca observations.

The Board directs attention to its rating recommendation based on the above evidence. The PEB's 10% rating reflected application of the USAPDA pain policy for rating, but was consistent with §4.71a standards; for conceding either VASRD §4.59 (painful motion) or VASRD §4.10 (functional impairment) or less likely §4.40 (functional loss) with their chosen code and also meets a 10% rating under the 5259 code for continued pain after meniscectomy. The VA's 10% rating invoked criteria §4.59 and coded 5260 for non compensable limitation of flexion. Members considered a 20% rating under the 5258 code (cartilage, semilunar, dislocated with frequent episodes of "locking, pain, and effusion into the joint) or the 5257 code for (recurrent subluxation of the knee) and agreed this rating could be not supported by the evidence. Members also agreed there was no evidence of incapacitating episodes to support additional or a 20% rating under the 5003 code. The Board deliberated the application of dual ratings based on separate ratings for instability and limitation of motion (or painful motion) as established by VA policy in effect at the time of separation (General Counsel Opinion of July 1, 1997 and Fast Letter 04-22 of October 1, 2004). By internal policy and precedent, the Board adheres to this guidance. Members agreed the evidence does not support any evidence of instability. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the right knee condition.

There were two goniometric ROM evaluations in evidence for the low back, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Thoracolumbar ROM	MEB ~5 Mo. Pre-Sep	VA C&P ~1 Mo. Post-Sep
Flexion (90° Normal)	90°	90°
Ext (0-30)	15°	30°
R Lat Flex (0-30)	25°	30°
L Lat Flex 0-30)	25°	30°
R Rotation (0-30)	#°	30°
L Rotation (0-30)	#°	30°
Combined (240°)	215	240°
Comment	Silent to painful motion	painful motion with flexion repetition
§4.71a Rating	10%	0%

The MEB physical exam demonstrated normal neuromuscular findings and no signs of disc herniation. The MRI of the lumbar spine revealed spondylolytic changes affecting L4 to S1 and at L5-S1 consistent with lumbar spondylosis. At the C&P exam after separation, the CI reported

low back pain worse with lying flat or on a soft bed and bending forward. She denied radiation of pain, numbness, tingling or urinary or bowel symptoms. The C&P exam demonstrated tenderness in the L5-S1 and normal neuromuscular findings of the lower extremity. X-ray revealed a scoliotic deformity with degenerative disk changes involving the lower lumbar spine.

The Board directs attention to its rating recommendation based on the above evidence. The 2002 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were modified on 23 September 2002 to add incapacitating episodes (5293, Intervertebral disc syndrome), and then changed to the current §4.71a rating standards on 26 September 2003. The 2002 standards for rating based on ROM impairment were subject to the rater's opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. For the reader's convenience, the 2002 rating codes under discussion in this case are excerpted below. The three potentially applicable codes from the 2002 VASRD are excerpted below:

5292 Spine, limitation of motion of, lumbar:	
Severe	40
Moderate	20
Slight	10
5295 Lumbosacral strain:	
Severe; with listing of whole' spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion	40
With muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing' position	20
With characteristic pain on motion	10
With slight subjective symptoms only	0
5293 Intervertebral disc syndrome:	
Pronounced; with persistent symptoms compatible with: sciatic neuropathy with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief	60
Severe; recurring attacks, with intermittent relief	40
Moderate; recurring attacks	20
Mild	10
Postoperative, cured	0

The PEB assigned a 10% rating coded 5295 for characteristic pain on motion. Members agreed the NARSUM is silent to painful motion however noted if one is to speculate the rotation ROMs are normal then the combined ROM supports a slight limitation of motion to meet the 10% rating for code 5292, the VA chosen code. The 20% rating for 5295 is fairly specifically defined as noted above. The CI's condition clearly did not meet the criteria for the 20% under the 5295 code based on either the MEB or the VA examinations. The VA assigned a 10% rating coded analogous to 5292 for slight limited motion, no evidence of moderate limitation or incapacitation over 2 weeks or other neurological disability. Members considered the 5293 code and agreed the evidence does not support moderate; recurring attacks for the 20% higher rating. There is no evidence of documentation of incapacitating episodes which would provide for additional or higher rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there is insufficient cause

to recommend a change in the PEB adjudication for the low back condition. Since an alternative VASRD code confers no rating benefit, no change is recommended.

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 DoDI 1332.39, AR 635-40 and the USAPDA pain policy for rating right knee and low back condition was operant in this case and the conditions were adjudicated independently of that policy by the Board. In the matter of the right knee and low back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Pain, Right Knee, Status Post Anterior Cruciate Ligament Reconstruction	5099-5003	10%
Chronic Low Back Pain, due to Degenerative Disk Disease without Neurologic Abnormality	5299-5295	10%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120606, 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 / XXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXX, AR2013000091 (PD201200646)

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 and hereby deny the individual's application. This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA