

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200663  
BOARD DATE: 20121221

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20030216

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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 (75H20/Personnel Administration Sergeant), medically separated for Osteochondral defect left knee, lateral femoral condyle condition. The CI did not respond adequately to conservative treatment and was unable to perform within his Military Occupational Specialty (MOS), meet worldwide deployment standards or satisfy physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). Lateral femoral condylar OCD, severe patellofemoral degeneration and chondromalacia patella was forwarded to the Physical Evaluation Board (PEB) IAW AR 40-501. Lateral femoral condylar OCD, severe patellofemoral degeneration and chondromalacia patella, left knee conditions, as identified in the rating chart below, were also forwarded on the MEB submission. The PEB adjudicated the OCD left knee, lateral femoral condyle condition as unfitting, rated 20%, with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining MEB conditions were determined to be not unfitting and therefore not ratable. The CI made no appeals, and was medically separated with a 20% disability rating.

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**CI CONTENTION:** "UNFORTUNATELY MY PAIN LEVELS ARE INCREASING, RANGE OF MOTION HAS DECREASED CANNOT EVER RUN. SWELLING IS CONSTANT AND OVERALL, MY INJURIES ARE GETTING PROGRESSIVELY WORSE. LACK OF CARILAGE (DUE TO). TOO YOUNG FOR KNEE REPAIR. I'M NOT ONE TO COMPLAIN, BUT THERE ISN'T REALLY MUCH TIME INBETWEEN PERIODS OF PAIN. IF I'M SITTING OR LAYING DOWN I'M FINE. I'M A SINGLE FATHER OF TWO YOUNG CHILDREN AND HAVE A ROUGH TIME EVEN STOOPING AND WHAT NOT. RUNNING AND PLAYING BALL (NORMALLY) IS OUT OF THE QUESTION. MY RIGHT KNEE NOW HAS EXACT SAME CONDITION I BELIEVE IS ALSO ATTRIBUTED FROM MY LEFT KNEE. I FEE [SP] LIKE A MAN IN MY 70'S. (NO OFFENSE TO ANYONE)."

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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 conditions left ankle pain and pes cavus and plantar fasciitis; bilateral as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting condition. The other requested conditions [right knee] is 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.

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**RATING COMPARISON:**

Service IPEB – Dated 20021118			VA (~1 Mo. Post-Separation) – All Effective Date 20030217			
Condition	Code	Rating	Condition	Code	Rating	Exam
Osteochondral Defect Left Knee, Lateral Femoral Condyle	5099-5003	20%	Instability of the Left Knee	5257	10%	20030409
			Meniscus Tear, Left Knee	5260	10%	20030409
Pes Cavus and Plantar Faciitis; Bilateral	Not Unfitting		Pes Planus, Bilateral	5276	0%	20030409
Left Ankle Pain	Not Unfitting		Left Ankle Sprain	5271	0%	20030409
↓No Additional MEB/PEB Entries↓			0% X 0 / Not Service-Connected x 0			
<b>Combined: 20%</b>			<b>Combined: 20%</b>			

**ANALYSIS SUMMARY:** The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for 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.

**Left Knee Condition.** The CI had a 5 year history of left knee pain with no direct trauma then injured it while playing organized physical training football. Orthopedics and Sports Medicine evaluated the left knee and diagnosed OCD lesion of the lateral femoral condyle confirmed on magnetic resonance imaging (MRI) exams which was non operable. The profile limitations included no run, jump, road march, and able to perform an alternate physical fitness test. The commander’s statement corroborated his left knee medical condition and noted his duties consisted of constantly stooping and walking stairs, and bending of the knees which he could not perform due to pain and these were normally expected of other soldiers of the same grade and MOS. 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	MEB ~6 Mos. Pre-Sep	VA C&P ~2 Mos. Post-Sep
	Left	Left
Flexion (140° Normal)	135°	110°
Extension (0° Normal)	0°	0°
Comment	Painful motion	No pain
§4.71a Rating	10%	10%

At the MEB exam, the CI reported constant throbbing pain that increased with activity (getting out of a chair, going up and down stairs, kneeling and sometimes prolong standing), rest pain was 2 of 10 in intensity, and active pain was 9 of 10 in intensity. The MEB physical exam demonstrated symmetric leg length, slightly antalgic gait, no tenderness and normal muscle testing of 5/5. The examiner referenced the diagnosis in the rating chart and further opined he had physical findings of a potentially unstable and deranged left knee. At the VA Compensation and Pension (C&P) exam, the CI additionally reported pain on squatting and could only squat partially yet could stand from a partial squat, the knee had not given way or locked or had been red, swollen or hot and he treated a flare-up with rest. The C&P exam after separation demonstrated no tenderness, deformity, edema, effusion or redness, negative ligament laxity,

positive sign for meniscal disease (McMurray), crepitation of the lateral joint line and patella laxity. X-rays revealed moderately narrow patellofemoral compartment which was suggestive of chondromalacia patella. The examiner diagnosed left meniscus tear and chondromalacia patella.

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 Board notes that both the MEB and VA exams were complete, well documented, and compliant with VASRD §4.46 (accurate measurement) and similar in terms of ratable data and therefore the Board assigns both exams equal probative value. The PEB and VA chose different coding options for the condition which had some implications on the rating for the Board to consider and both rated IAW §4.71a—Schedule of ratings—musculoskeletal system. The PEB assigned 20% rating coded 5003 (arthritis, degenerative) for marked/frequent pain which is consistent with the pain policy VASRD code 5003 (arthritis, degenerative) specifies that, in the presence of degenerative arthritis established by X-ray findings, when “the limitation of motion of the specific joint or joints involved is noncompensable 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. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.” There is noncompensable ROM impairment of the left knee, and the Board agreed that there is adequate documentation of painful motion of the joint in the prior to separation data to merit application of a minimal compensable rating under this code. A 20% rating under this code is assigned in the absence of limitation of motion with occasional incapacitating exacerbations. The evidence does not support incapacitating episodes for this higher rating; however the Board's recommendation may not produce a lower rating than that of the PEB. The VA chose to dual code the left knee condition for slight patella subluxation, a 10% rating with code 5257 (Recurrent subluxation or lateral instability), and limitation of motion, a 10% rating with code 5260 (Leg, limitation of flexion of), for a combined rating of 20%. 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. VASRD code 5257 for knee instability confers 10% for ‘slight’ instability, 20% for ‘moderate’, and 30% for ‘severe’. The VASRD is not specific with delineating the criteria which satisfies the descriptors of ‘slight’, ‘moderate’ or ‘severe’ thus allowing the evaluator some latitude in applying these ratings. Members agreed the evidence does not support ‘moderate’ instability. The 5260 code, designates that flexion be limited to at least 60 degrees to achieve a 0% rating; and thus, even if §4.59 is applied, a higher 10% rating is not supported by the parameters of the code. Therefore, while the Board agreed with the application of dual ratings by the VA, the Board further agreed the evidence does not support a higher combined rating. 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 left knee condition.

Contended PEB Conditions. The conditions adjudicated as not unfitting by the PEB were left ankle pain and pes cavus and plantar faciitis; bilateral. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. None of these conditions were permanently profiled and none were implicated in the commander’s statement. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. 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 left ankle and left foot contended PEB conditions and, therefore, no additional disability ratings can be recommended.

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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. 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 likely reliance on the USAPDA pain policy for rating left knee condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended left ankle pain and pes cavus and plantar fasciitis; bilateral conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

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

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Osteochondral Defect Left Knee, Lateral Femoral Condyle	5099-5003	20%
	<b>COMBINED</b>	<b>20%</b>

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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

XXXXXXXXXXXXXXXXXXXX, DAF  
President  
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency  
(TAPD-ZB / XXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for  
XXXXXXXXXXXXXXXXXXXX, AR20130000828 (PD201200663)

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

XXXXXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
 DoD PDBR  
 DVA