

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1200934
BOARD DATE: 20130109

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020716

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (91D20/Operating Room Specialist), medically separated for left knee and lower leg pain. The condition began following mid-shaft fractures of the tibia and fibula due to a fall while rappelling in 1997. After intramedullary nailing, the fractures healed but he experienced increasing knee pain. Despite conservative therapy, the CI could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded left knee pain status post (s/p) left tibia intramedullary nail procedure and left tibia fracture to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. A low back pain (LBP) condition was also identified and forwarded by the MEB. The PEB adjudicated the left knee and lower leg pain condition as one unfitting condition, rated 10% with application of the US Army Physical Disability Agency (USAPDA) pain policy. The LBP condition was determined to be not unfitting and therefore not ratable. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "The Medical Evaluation Board, as noted on DA 3947, listed left knee pain, left tibia fracture, and low back pain as findings which warrant referral to a Physical Evaluation Board. After reading DA 199, the Physical Evaluation Board gave a rating for the left knee pain, but gave no rating for the tibia fracture or the low back pain. I feel that these two items, which were not rated, are just as significant as the knee pain. Additionally, I feel as if the knee pain and back pain should have been given a higher rating, because there are times when the pain is completely debilitating. Also, the findings of the VA medical examination show that the back pain is a result of lumbar spondylosis with multilevel degenerative disc narrowing."

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 left knee pain, left tibia fracture and LBP conditions, as requested for consideration, meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. 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 20020312			VA (13 Mos. Post-Separation) – All Effective Date 20020717			
Condition	Code	Rating	Condition	Code	Rating	Exam
Left Knee and Lower Leg Pain	5099-5003	10%	S/P Fx Lt Tibia/Fibula Intramedullary Nailing w/ Muscular Deformity to Incl Osteoarthritis Lt Knee	5010-5260	10%	20030819
			Shortening Lt Lower Extremity Assoc w/ S/P Fx Lt Tibia/Fibula Intramedullary Nailing w/ Muscular Deformity to Incl Osteoarthritis Lt Knee	5275	0%	20030819
Low Back Pain	Not Unfitting		Lumbar Spondylosis w/ Multi- level Degenerative Disc Narrowing	5243-5237	10%*	20030819
↓No Additional MEB/PEB Entries↓			0% X 4 / Not Service-Connected x 1			20030819
Combined: 10%			Combined: 20%			

*VA decision 20081021 increased to 40% based on later exam, effective 20080929; combined 50%

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 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. The Board further acknowledges the CI’s contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. While the DES considers all of the service 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 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.

Left Knee and Lower Leg Pain Condition. The PEB combined left knee pain and lower leg pain as the single unfitting and solely rated condition, coded 5099-5003. Although this approach complies with the USAPDA pain policy and AR 635.40 (B.24 f.), 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 may 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.

There were two 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.

Left Knee ROM	NARSUM ~6 Mo. Pre-Sep	VA C&P ~13 Mo. Post-Sep
Flexion (140° Normal)	120°	140°
Extension (0° Normal)	0°	0°
Comment	Tenderness; mild crepitus	Painful motion
§4.71a Rating	10%	10%

The narrative summary (NARSUM) examiner reported that the left tibia fracture healed approximately one centimeter (approximately 0.4 inches) short. Severe left knee pain was exacerbated by running, rucking, walking and prolonged standing. Examination revealed well healed surgical scars of the medial aspect of the knee and medial aspect of the proximal ankle. There was mild tenderness of the mid-tibia at the site of significant callus formation. Tenderness of the lateral knee joint line and significant tenderness of the infrapatellar tendon and the entry site for the tibial nail were also present. Tests for knee instability were negative. At the MEB exam, 6 months prior to separation, the CI documented that he could not run or stand for long periods of time due to knee pain. The MEB physical exam noted mild tenderness over the area of callus formation of the tibia as well as knee tenderness. Light touch sensation below the patella was mildly decreased. The commander’s statement indicated that knee pain was the chief complaint, and interfered with his MOS duties and PT. At the VA Compensation and Pension (C&P) exam performed 13 months after separation, the CI reported left knee and anterior left leg pain exacerbated by standing, walking or intense physical activity. Symptoms were intermittent as often as 3-4 times per week lasting for several hours. Physical examination revealed a normal gait. Leg length was one centimeter shorter on the left. A mild muscle bulge was noted on the left anterior leg. Examination of the left tibial and fibula was considered normal. There were no findings of knee instability or meniscal pathology. X-rays showed healed fracture with good position of the intramedullary rod. Minimal arthritic changes of the knee were noted. Muscle strength and deep tendon reflexes were normal.

The Board directs attention to its rating recommendation based on the above evidence. First the Board considered if the unfitting condition as described by the PEB should be unbundled. Knee pain appeared to be related, at least in part, to the presence of surgical hardware used to treat the tibia fracture, while leg pain was due to the presence of a healed tibial fracture. In this deliberation, it was noted that the VA assigned a separate 0% rating for a leg length discrepancy of one centimeter (5275 code). Board members agreed however that leg length discrepancy was not an unfitting condition and therefore this pathway provided no additional benefit to the CI. The only other code encompassing leg pathology under §4.71a (5262; Tibia and fibula, impairment of) also incorporates a knee rating. Thus there is no useful avenue to unbundling under §4.71a. Consideration was finally given to application of a muscle code. Board members agreed however that such an approach in this case is poorly supported by the clinical pathology and the applicable rating guidelines under §4.56. The Board therefore concluded that unbundling the left knee and leg condition was not appropriate in this case. The PEB and the VA assigned ratings under an analogous 5003 code (degenerative arthritis) and a 5010-5260 (traumatic arthritis, limitation of flexion). The respective 10% ratings were appropriate for an arthritic knee with non-compensable limitation of motion, and were also supported by §4.40 (functional loss) and §4.59 (painful motion). The Board debated a higher rating under the 5262 code, but agreed the “slight” descriptor most accurately depicted the clinical condition. Therefore a 10% rating was justified under this code. 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 and lower leg pain condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was LBP. The Board's first charge with respect to this condition is an assessment of the appropriateness of the PEB's fitness adjudication. 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. This condition was not profiled and was not implicated in the commander's statement. It was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition 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 LBP condition; and, therefore, no additional disability rating can be 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. As discussed above, PEB reliance on the USAPDA pain policy for rating left knee and lower leg pain was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left knee and lower leg pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended LBP condition, the Board unanimously recommends no change from the PEB determination as not unfitting. 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
Left Knee and Lower Leg Pain	5099-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120622, 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 / XXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXX, AR20130000738 (PD201200934)

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

XXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA