

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200943
BOARD DATE: 20130110

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20010915

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (71L10/Administrative Specialist), medically separated for left knee bipartite patella, injured during airborne training, and re-injured while running. 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 also identified and forwarded moderate chronic low back pain (LBP), existed prior to service (EPTS) but permanently service aggravated (PSA), as identified in the rating chart below, as being medically unacceptable. The Physical Evaluation Board (PEB) adjudicated the left knee bipartite patella condition as unfitting, rated 0%, with likely application of the US Army Physical Disability Agency (USAPDA) pain policy, and the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The PEB stated the low back condition was EPTS and not PSA, but also considered it and determined it to be not unfitting and not ratable. The CI made no appeals, and was medically separated.

CI CONTENTION: “Getting Worse. More pain in knees and back.”

SCOPE OF REVIEW: The Board’s scope of review is defined in DoDI 6040.44, Enclosure 3, paragraph 5.e. (2). It is limited to those conditions determined by the PEB to be unfitting for continued military service and those conditions identified but not determined to be unfitting by the PEB when specifically requested by the CI. Ratings for unfitting conditions will be reviewed in all cases. The left knee and low back 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 respective Army Board for Correction of Military Records.

RATING COMPARISON:

Service IPEB – Dated 20010710			VA (21 Mos. Post-Separation) – All Effective Date 20030604*			
Condition	Code	Rating	Condition	Code	Rating	Exam
Lt Knee Condition	5299-5003	0%	Lt Knee Internal Derangement w/ DJD	5010-5257	10%	20030702
Low Back Pain	Not Unfitting		Lumbosacral Strain w/ DJD	5292	0%	20030702
↓No Additional MEB/PEB Entries↓			0% X # / Not Service-Connected x #			
Combined: 0%			Combined: 10%			

*CI’s application for VA Compensation and Pension was received on 20030604; that therefore became the effective date of the ratings because it was more than 12 months post-separation.

ANALYSIS SUMMARY:

Left knee condition. There were three range-of-motion (ROM) evaluations in evidence, one of which was goniometric, 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 (Degrees)	Ortho ~ 6 Mo. Pre-Sep (20010319) p.145	MEB ~ 4.5 Mo. Pre-Sep (20010504) p.24	VA C&P ~ 21 Mo. Post-Sep (20030702) p.47/51
Flexion (140 Normal)	FROM	FAROM	140
Extension (0 Normal)	FROM	FAROM	0
Comment	+Tenderness No instability.	+ Tenderness No instability No locking	Gives way 2/mos. No instability Normal gait
§4.71a Rating	0%	0%	0%

An orthopedic consultation on 19 March 2001, 6 months prior to separation, noted a 3 year history of left knee pain without a specific history of injury, worse with sitting, squatting, and activity. The CI reported he was unable to run more than one half mile. On examination, there was a tender, prominent left superior-lateral patella with full ROM. A magnetic resonance imaging (MRI) scan performed on 19 March 2001 demonstrated a bipartite left patella, a developmental condition. The MRI of the left knee was otherwise normal. A prior bone scan on 16 March 2001 showed intense uptake of the left patella. At the MEB narrative summary (NARSUM) examination, 4 May 2001, 4 months before separation, the CI reported constant knee pain exacerbated by running, jumping, marching, impact activities, and heavy lifting. He declined surgery to repair a bipartite patella. Physical exam revealed full left knee active ROM, prominent superolateral patella with tenderness, and no effusion. At the VA Compensation and Pension exam 21 months after separation, the CI reported left knee pain, giving way every 2 weeks, but no locking. Examination revealed normal gait, and full ROM of the left knee. There was a positive meniscus sign (McMurray's) but no instability and negative patellar tests. The examiner concluded with diagnosis of "internal derangement left knee, bipartite patella."

Contended PEB Condition. The contended condition adjudicated as not unfitting by the PEB was chronic LBP. The Board's first charge with respect to this condition 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 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. The NARSUM noted a history of recurrent chronic LBP associated with weight lifting since prior to entry into service. The chronic LBP had been permanently profiled L3 since 1998 and was implicated in the commander's statement, but was not judged to fail retention standards. The Board's review of this condition disclosed no incapacitating episodes that required physician prescribed bed rest anywhere in the treatment record. The Board noted that the CI had met a MOS Medical Retention Board (MMRB) and was directed to be reclassified in April 1999; there was no performance based evidence in the record that the chronic LBP condition significantly interfered with satisfactory duty performance after the MOS MMRB change and at the time of separation. 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 chronic LBP (EPTS/not PSA) contended condition and so no additional service disability ratings are recommended.

The Board directs attention to its rating recommendation based on the above evidence. There was no limitation of motion or instability to support a compensable rating under the respective codes (5257, 5260, or 5262). There was no torn, dislocated meniscus or post-operative removal of a meniscus for consideration under those codes (5258 and 5259). There was no painful

motion on examinations. The PEB used the USAPDA pain policy to adjudicate a 0% rating coded 5099-5003. The VA rated the left knee 10% (5010-5257; traumatic arthritis and instability) citing the bipartite patella on X-ray and equating it to degenerative joint disease. However, the bipartite patella is not a manifestation of degenerative joint disease (DJD), and MRI and X-rays did not show internal derangements or DJD. Board members agreed, the totality of the evidence more nearly approximated the zero percent rating adjudicated by the PEB. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the left knee pain condition.

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 likely reliance on the USAPDA pain policy for rating the 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 pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended LBP conditions, 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 Condition	5299-5003	0%
	COMBINED	0%

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

XXXXXXXXXX, DAF
 President
 Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXX, AR20130001172 (PD201200943)

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA