RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX
CASE NUMBER: PD1200049
BOARD DATE: 20121106

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20070122

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SGT/E-5 (52D/Generator Mechanic), medically separated for left knee pain and arthritis. The CI had a motorcycle accident in 1991 and underwent left knee surgery, with a re-injury and second surgery in 1992 (anterior cruciate ligament (ACL) repairs) which were not service-connected. In 2003 while in Kuwait he re-injured his left knee while running to a shelter. He was diagnosed with ligament tears (ACL and MCL), meniscus tears and osteoarthritis and underwent two more surgical repairs in May and November 2004. A planned third left knee surgery was considered in 2006, but was not performed (prior to the Physical Evaluation Board (PEB)) due to poor prognoses; however, the possibility of later knee replacement was indicated by orthopedic specialists. The CI's left knee pain and arthritis condition 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 P2, L3 profile and referred for a Medical Evaluation Board (MEB). Eleven other conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The PEB adjudicated the left knee pain and arthritis condition as unfitting, rated 0%, with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI appealed to the USAPDA, which affirmed the PEB findings; and was then medically separated with a 0% disability rating.

CI CONTENTION: "PTSD, Mild TBI, Left Leg, broken neck, bad back, poor hearing and tinnitus, left hip, left ankle, right knee, flat feet or fallen arches, migraines, sleep apnea, no night vision, incontinence, acid reflux, problems urinating, high blood pressure, erectile dysfunction. I was discharged with just under 18 years in service. I had my letter;" and continues in block 13 with "My medical hold unit took the one thing that could put me out of the service and didn't take (any other service connected injury's into account. CBHCO in Rock Island, Ill. Handled my med board and did a sloppy job. I was told at Fort McCoy, Wis. If I didn't sign my DD214 to separate me they would put the paperwork in as soldier wasn't present to sign, also before I could receive full benefits from the VA I had to pay back all of my severance.)" {sic; and difficult to read}

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 migraine, posttraumatic stress disorder (PTSD), right shoulder impingement, and lower left extremity (LLE) tarsal tunnel syndrome (including left foot) 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 left knee condition. The other requested conditions are 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 the Correction of Military Records.

RATING COMPARISON:

Service PEB – Dated 20061109			VA (9+ Mos. Post-Separation) – All Effective Date 20070123			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Left Knee Pain and Arthritis	5003	0%	Left Knee Instability	5257	20%	20071024
			Arthritis, Left Knee w/Limited Flexion	5003-5260	20%	20071024
			Left knee, Limitation of Extension	5261	10%	20071024
Migraine Cephalgia	Not Unfitting		Migraine Headaches	8100	30%	20071108
Hyperglycemia	Not Unfitting		No VA Entry			
Impingement R/Shoulder	Not Unfitting		R/Shoulder Impingement Syndrome	5299-5201	20%	20071024
PTSD	Not Unfitting		PTSD	9411	50%*	20071211
GERD	Not Unfitting		GERD	7346	10%	20071024
Chronic Sinusitis	Not Unfitting		Sinusitis	6510	10%	20071024
Hyperlipidemia	Not Unfitting		No VA Entry			
Hypertension	Not Unfitting		High Blood Pressure	7101	0%	20071024
Tinnitus	Not Unfitting		Tinnitus	6260	10%	20071108
LLE Tarsal Tunnel Syndrome	Not Unfitting		No VA Entry			
Obesity	Not Unfitting		No VA Entry			
↓No Additional MEB/PEB Entries↓			R/Hip Strain Associated w/Arthritis, L/Knee w/Limited Flexion	5099-5003	10%	20071024
			DDD L4-5 and L5-S1 Lumbar Spine	5242	20%	20071024
			Patellofemoral Syndrome R/Knee	4299-5003	10%	20071024
			2% X 0 / Not Service-Connected x 1/ Deferred X 5			20071024
Combined: 0%			**Combined: 90%**			

* PTSD decreased to 30% effective 20100511 based on exam of 20100511.

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation, some of which were evaluated and determined not to be individually unfitting for continued service. The Board also acknowledges the CI's assertions that there were potential irregularities in his disability processing. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI's statements in the application regarding suspected improprieties in the processing of his case. 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 is responsible for maintaining a fit and vital fighting force. 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 service member's career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans' Affairs , operating under a different set of laws (Title 38, United States Code), 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. The Board is empowered to evaluate the fairness of fitness determinations, and to make recommendations for rating of conditions which it concludes would have independently prevented the performance of required duties (at the time of separation). The Board's threshold for countering DES 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.

Left Knee Condition. The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Left Knee ROM	PT ~6 Mo. Pre-Sep	MEB ~5 Mo. Pre-Sep	VA C&P ~9 Mo. Post-Sep
Flexion (140° Normal)	122°, 120°, 121°	110°	110°
Extension (0° Normal)	-6°, -5°, -5°	-	10° (lacking)
Comment; Surgery 20061026	Significant quad weakness on left 50%	Normal gait; Ext 115°; sig quad weakness; orthotics bilaterally (see text)	Pronounced limp with cane; swollen, tender and grossly unstable; painful motion; 4-5/10 strength (see text)
§4.71a Rating	20% (see text)	20% (PEB 0%)	30% (VA 20% + 20% +10%)

At the MEB exam, 5 months prior to separation, the CI reported some instability, swelling, and pain of the left knee with unable to run or do two mile walk. He had chronic pain with difficulty walking or standing for long periods of time. The MEB physical exam noted significant thigh weakness and limited flexion with ROMs from the PT evaluation as summarized above. There were no tests for instability. Civilian orthopedic evaluation the same month as the narrative summary (NARSUM) indicated bone on bone degenerative changes and recommendation for tennis shoes versus boots to decrease knee pain. The CI was on narcotic pain medication and provided quarters (24 hrs) for knee pain. The CI was seen September 2006, 4 months prior to separation with objective findings of "Left knee is really unstable. He really needs to be wearing a brace," and he was referred for re-evaluation of his brace. The CI was seen "for pain to L knee secondary to fall from unstable L knee. (CI) in quarters for 3 days due to L knee joint instability and high risk of fall." Radiographs indicated multiple surgical devices including plates which were in place and sclerotic changes with "some lateral subluxation of the tibia with respect to the femur which is more pronounced than seen on the 3/16 exam." The record indicates the CI was approved for, and underwent, arthroscopic surgery on 26 October 2006 (3 months prior to separation,), with decrease in knee pain. He was still wearing a brace for support and his knee was swollen per "MHO report" dated 20 November 2006.

At the VA Compensation and Pension (C&P) exam, performed 9 months after separation, the CI reported no post-separation re-injury. He had continued pain with swelling. History indicated an arthroscopic surgery in 2006 for cleaning out the knee which provided transient relief. There was continued pain requiring narcotic pain medication, and the CI was using a scooter at work. The exam findings are summarized above.

The Board directs attention to its rating recommendation based on the above evidence. The CI's primary injury and pathology was to the ligaments and meniscus of the knee with bone on bone arthritis causing knee pain. The service exams were very scant for any objective testing of knee instability. The VA exam was more detailed, but was 9 months remote from separation and presented a worsened picture with swelling and a limp. It is obvious that there is a clear disparity between these examinations, with very significant implications regarding the Board's rating recommendation. The Board thus carefully deliberated its probative value assignment to these conflicting evaluations, and carefully reviewed the file for corroborating evidence in the 12-month period prior to separation. Treatment notes indicated complaints of instability, prescription of a knee brace, and instability on exam. The PEB rating was for limited flexion and arthritis and did not apply or did not concede painful motion IAW VASRD §4.59 (painful motion) or §4.40 (functional loss). The PEB determination was also within 2 weeks of arthroscopic surgery and NARSUM information was prior to surgery. The VA provided three left knee ratings: flexion limited to 110° (10%) and weakness (10%) for 20% for limited flexion; knee instability 20%; and limited extension to 10° for a 10% rating.

The Board deliberated on the left knee evaluations including the totality of the record and determined that there was moderate left knee instability at the time of separation as well as painful motion with functional loss. There was not sufficient evidence of both limited flexion and limited extension on any examination for compensable ratings under both of the specific ROM-limited knee codes. After due deliberation, considering all of the evidence and mindful of

VASRD §4.3 (reasonable doubt), the Board recommends disability ratings of 20% for the left knee condition for instability, coded 5257 and 10% for the left knee for painful motion coded 5003-5260, without any other disability coding.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were migraine cephalgia, impingement R/shoulder, PTSD, gastro esophageal reflux disease (GERD), hypertension, tinnitus and LLE tarsal tunnel syndrome (foot/ankle). 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.

Aside from the unfitting left knee condition, only migraine cephalgia was judged to fail retention standards by the MEB. The CI had a P2 profile that listed migraine cephalgia with no headache-specific duty limitations. The commander's statement implicated only injury impairments preventing climbing and kneeling, and indicated the CI "has been a model soldier and NCO." However, the commander indicated the CI had not returned to his unit since his injury and had "been assigned to the Community Based Health Clinic Organization (CBHCO) since returning from Iraq. It is my understanding that he is limited to light duty only."

Migraine cephalgia began while the CI was in Iraq, with headache frequency diminished to 1 episode per month following return from theater. Migraine syndrome was diagnosed by a neurologist and magnetic resonance imaging (MRI) was normal. In February 2006, headaches increased to 2 per week and the CI complained of "increased headaches and severity which has caused him to be unable to attend assigned duty site." Medication (Maxalt) provided some relief. The NARSUM (August 2006) indicated the benign migraine syndrome was considered "currently unstable. (CI) states he is unable to perform basic soldier skills and MOS duties of a light wheel mechanic because of persistent migraines." There had been two episodes of quarters for migraine headache pain or grogginess due to migraine medication use prior to the MEB, and there were three more similar episodes of quarters between the NARSUM and PEB. The PEB addressed migraine cephalgia with a specific determination as not being unfitting.

The CI had right shoulder impingement with arthroscopic repair in April 2006. Follow-up evaluations indicated normal ROM and strength although formal ROMs were slightly below the VA normal ROMs.

PTSD was noted as "mild, resolved with meds and psychotherapy." VA examination and rating indicated post-separation worsening of mental health symptoms with diagnoses of PTSD, major depression, obsessive compulsive disorder, and panic attacks without agoraphobia. GERD was noted as being well controlled on medication. The CI had hypertension with metabolic syndrome and was being treated with medications. Tinnitus had subjective complaints of interfering with speech discrimination in noisy and crowded environments, with speech discrimination testing 100%/96% with no impact on performing MOS and soldier tasks. It is possible that the impairments from the unfitting left knee overshadowed the impairments from the left ankle/foot condition (LLE tarsal tunnel syndrome); however, the NARSUM indicated resolution of complaints following orthotics.

All contended conditions 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 any of the contended conditions; and, therefore, no additional disability ratings 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 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 and arthritis condition, the Board unanimously recommends disability ratings of 20% for the left knee condition for instability, coded 5257 and 10% for the left knee for painful motion coded 5003-5260, both IAW VASRD §4.71a. In the matter of the contended migraine cephalgia, impingement R/shoulder, PTSD, GERD, hypertension, tinnitus and LLE tarsal tunnel syndrome (foot/ankle) 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.

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 his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Left Knee Instability following Surgery	5257	20%
Left Knee Pain and Arthritis	5003-5260	10%
	COMBINED	**30%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120107, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXX
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
For XXXXXXXXXXXXXXXXXXXXXXX, AR20120021428 (PD201200049)

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 30% 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 30% 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

XXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA