RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200065 SEPARATION DATE: 20050413

BOARD DATE: 20121030

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (31R30/Multi-Channel Signal Systems Operator/Maintainer), medically separated for chronic left knee pain, status post (S/P) meniscal repair and repair of partial tear of patellar tendon. The CI injured his left knee while on a platoon run at Ft. Gordon, GA and continued with swelling and aching. Despite undergoing two left knee diagnostic arthroscopies, physical therapy (PT), using crutches, wearing a hinged knee brace; a series of four steroid injections and taking medications, the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. The CI was issued a permanent U2/L3 profile and referred for a Medical Evaluation Board (MEB). Chronic pain in the left hand and left wrist S/P incision and drainage (I and D) of infection of the left wrist and hand and fractures of left wrist bones were also identified and forwarded by the MEB as a single medically acceptable condition to the Physical Evaluation Board (PEB). The PEB adjudicated the chronic left knee pain S/P meniscal repair and repair of partial tear of patellar tendon condition as unfitting, rated 10%, with specified application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining left wrist and hand and fracture of left wrist bones condition was determined to be not unfitting and not ratable. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “Since being released from the military with a 10% rating for my left knee other conditions that had happened on Active Duty have caused me to have further surgery’s (sic) and placed on pain medications and Psych medication. At the time of my medical discharge their (sic) was no such thing as the WTU. I was only evaluated for my left knee nothing else was taken into consideration. I have been granted the full 100% from the VA and I am also 100% through Social Security. Social Security also used my medical records from the VA for their findings.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 chronic pain in the left hand and left wrist condition requested for consideration and the unfitting chronic left knee pain, status post meniscal repair and repair of partial tear of patellar tendon condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested conditions (the remaining conditions rated by the VA at separation) 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 Correction of Military Records.

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RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20050113** | **VA (~4 Mos. Post-Separation) – All Effective Date 20050414** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Left Knee Pain . . . . . | 5099-5003 | 10% | Residuals of Arthroscopic Surgery, Left Knee | 5299-5261 | 10% | 20050803 |
| Chronic Pain Left Hand & Left Wrist . . . . . | Not Unfitting | DJD Left Wrist & Residuals of Left Hand & Wrist Surgeries | 5010-5215 | 10% | 20050803 |
| Scar, Left Hand & Wrist, Post-Op | 7804 | 10% | 20050803 |
| ↓No Additional MEB/PEB Entries↓ | Right Shoulder Tendinitis | 5099-5019 | 10% | 20050803 |
| DJD L-Spine | 5003-5242 | 10% | 20050803 |
| Photophobia, Left Eye | 6099-6009 | 10% | 20050803 |
| Bronchial Asthma | 6602 | 10% | 20050803 |
| HTN | 7101 | 10% | 20050803 |
| 0% X 1 / Not Service-Connected x 0 |  |
| **Combined: 10%** | **Combined: 60%\*\*** |

\*VARD 20070202 added PTSD @ 10% & OSA @ 0% effective 20060713. Combined rating remained 60%.

\*\*VARD 20080117 raised OSA to 50% retroactive to 20050414 and raised PTSD to 50% effective 20060713. Combined rating was raised to 80% effective retroactive to 20050414, and to 90% effective 20060713.

\*\*\* VARD 20091015 awarded a temporary 100% rating based on surgical or other treatment necessitating convalescence, effective 20090916 to 20100101. VARD 20100511 extended the 100% rating through 20100430.

\*\*\*\*VARD 20110914 (DRO Decision) reinstated a temporary 100% rating, again for surgical or other treatment necessitating

 convalescence, from 20100923 to 20101130. This VARD also raised the rating for DJD L-Spine to 40% effective 20110831, and the permanent combined rating to 100% effective 20110831.

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that he was only evaluated for the left knee condition and that nothing else was taken into consideration. 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’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. However the Department of Veterans’ Affairs, operating under a different set of laws (Title 38, United States Code), 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.

Chronic Left Knee Pain, S/P Meniscal Repair and Repair of Partial Tear of Patellar Tendon Condition. 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.

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| Left Knee ROM | MEB ~5 Mo. Pre-Sep | VA C&P ~3.5 Mo. Post-Sep |
| Flexion (140⁰ Normal) | 80⁰ | “normal” |
| Extension (0⁰ Normal) | 3⁰ | “lacking 10⁰” |
| Comment: 2001 x-ray bone spur on patella2005-MRI-tear medial meniscus posterior horn | Normal gait; passive flexion 110⁰; painful motion; Positive McMurrays and Apley’s signs; tenderness on palpation (TTP) marked along left patellar tendon; Velcro knee splint  | Tenderness medial/inferior aspect left knee; antalgic gait; no instability; “pain 10/10” |
| §4.71a Rating | 10% | 10% |

The left knee condition is well documented in the numerous notes in the service treatment record (STR) from October 2000 to February 2005. The CI underwent a left knee arthroscopy with a partial medial meniscectomy in January 2002; however, the pain continued and a second arthroscopy was performed a month later. The MEB examination performed 5 months prior to separation indicated chronic left knee swelling and tenderness. The MEB exam findings are summarized in the chart above. The commander statements in both August and November 2004 indicated that the CI’s movements were “very slow and deliberate” and that the CI was “physically incapable of performing his duties” within his MOS. The VA Compensation & Pension (C&P) examination performed 3 months after separation noted intermittent swelling, pain and increased weakness with repetitive activity. The C&P exam findings are noted in the chart above.

The Board directs attention to its rating recommendation based on the above evidence. The PEB determination for the left knee condition was coded analogously to arthritis (5299-5003) at 10%. The VA coded the left knee condition as 5261 (Leg, limitation of extension of) at 10% (lacking 10 degrees). The PEB and the VA chose different coding options but this did not bear on rating. The VA exam had ratable limitation of extension which was not present at the MEB exam, and meniscal signs present at the MEB exam were not noted at the VA exam. The PEB exam abnormal meniscus testing led the Board to explore alternate coding under semilunar cartilage (meniscus) codes of 5258 or 5259. The evidence did not indicate sufficient episodes of “locking,” pain, and effusion into the joint to support alternative 20% coding under 5285 (meniscus code), and alternative coding at 10% under code 5259 did not provide any higher benefit to the CI as it includes painful motion. There was insufficient evidence of instability for rating under code 5257.

The knee was tender and both exams demonstrated painful motion. The knee could not be reasonably rated higher than 10% using any exam proximate to separation or any alternate coding schema. 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 chronic left knee pain, s/p meniscal repair and repair of partial tear of patellar tendon condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was chronic pain in the left hand and left wrist s/p I and D of infection of the left wrist and hand and fractures of left wrist bones. 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.

The Board discussed the findings of the left hand/wrist including the post-separation VA examinations. The CI was right hand dominant. The permanent U2 profile was granted in 1995 and the CI was able to continue to perform his duties. There were no further medical visits for the wrist condition in 6 years prior to separation. This condition was reviewed by the action officer and considered by the Board. There was no indication from the record that the left hand/wrist 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 left hand/wrist condition, 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 chronic 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 chronic left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the chronic pain in the left hand and left wrist s/p I and D of infection of the left wrist and hand and fractures of left wrist bones contended condition, 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, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Knee Pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120110, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

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 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 XXXXXXXXXXXXXXXXXXXXX, AR20120020029 (PD201200065)

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