RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY
CASE NUMBER: PD1200166 SEPARATION DATE: 20050624
BOARD DATE: 20121115

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (19D/Cavalry Scout), medically separated for moderate/constant chronic pain of the left knee, right and left shoulders, and left femur status post (s/p) injuries. The CI was in a serious motorcycle accident in May 2004 and sustained significant injuries to his left knee, left femur, and both shoulders. Despite two surgeries for a fractured femur, physical therapy, and medication, the CI's injuries could not be adequately rehabilitated. He was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3/L3 profile and referred for a Medical Evaluation Board (MEB). Although the MEB forwarded each condition as separate medically unacceptable conditions, the Physical Evaluation Board (PEB) rated them together as a single unfitting condition of chronic pain. The MEB forwarded: left knee pain, meniscal tear and ACL laxity by orthopedic exam; right shoulder pain, AC separation 1.0cm; left shoulder pain, supraspinatus tendon tear, Grade II SLAP lesion; pain in the left leg s/p femur fracture and intramedullary rod placement; and delayed union of the left femur fracture. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated chronic pain left knee, right and left shoulders, and left femur s/p injuries conditions as a single unfitting condition, rated 20%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: "Shoulder pops out of place, L knee injury causes back + L leg pain, L leg is shorter than the right because of femur break. Also see VA rating (PTSD + TBI etc.)." Remarks: "I served for ten years honorably. I am in school to pay the bills but, I can't get a job. People don't like being around me! Thank you for your consideration!"

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. Therefore the unfitting chronic pain left knee, right and left shoulders, and left femur s/p injuries conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested conditions (posttraumatic stress disorder [PTSD] and traumatic brain injury [TBI]), and any other 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.

RATING COMPARISON:

Service IPEB – Dated 20050405			VA (2 Mos. Post-Separation) – All Effective Date 20050625			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Chronic Pain Left Knee, Right and Left Shoulders, and Left Femur status post Injuries	5099-5003	20%	Left Knee Strain with Instability	5257	20%	20050826
			Left Shoulder Strain	5299-5024	10%	20050826
			Right Shoulder Strain	5299-5024	10%	20050826
			Residuals, Left Femur Fracture status post ORIF	5252	0%**	20050826
↓No Additional MEB/PEB Entries↓			PTSD with Depression NOS and Alcohol Abuse	9411	30%	20050901
			Right Knee Strain	5299-5024	10%	20050826
			Lumbar Strain	5237	10%	20050826
			Not Service-Connected x 3			
Combined: 20%			**Combined: 70%*** (Bilateral Factor 4.2)**			

*5260 Left knee strain with limited motion at 10% added effective 20101105
**Increased to 10% effective 20101105
***Increased to 90% effective 20101105 with changes noted above and addition of four other conditions

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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 and his contention that suggests ratings should have conferred for other conditions documented at the time of separation. 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. 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 (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time. 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 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. 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 PEB rated all under the single analogous 5003 degenerative arthritis code. This coding approach is countenanced by AR 635-40 (B.24 f.), but IAW DoDI 6040.44 the Board must apply only VASRD guidance to its recommendation. The Board must therefore apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a. The Board must 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. 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. Since §4.71a criteria are met for separate joint ratings in this case, the Board is pursuing separate rating and fitness evaluations as follows.

Left Femur Fracture, Status Post Intramedullary Rod Placement with Delayed Union Condition. The Board first considered if the left femur condition, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. In analyzing the intrinsic impairment for appropriately coding and rating the left femur fracture, s/p intramedullary rod placement with delayed union condition, the Board is left with a questionable basis for arguing that this condition was indeed independently unfitting. While

the CI did have a significant injury to his left femur, the restrictions due to this condition that render him unfit for continued service cannot be separated out from those restrictions due to his left knee pain condition. Any apportionment of limitations to residuals of the femur fracture as opposed to the left knee condition would be mere speculation. After due deliberation, the Board agreed that evidence does not support a conclusion that left femur fracture, s/p intramedullary rod placement with delayed union, as an isolated condition separate from the left knee condition, would have rendered the CI incapable of continued service within his MOS, and accordingly cannot recommend a separate disability rating for it. The Board therefore recommends rating the left femur and left knee conditions together as one unfitting condition as discussed below.

Left Knee, Meniscal Tear and Anterior Cruciate Ligament (ACL) Laxity and Left Femur Fracture, Status Post Intramedullary Rod Placement with Delayed Union Condition. The Board first considered if the left knee condition, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. The CI's permanent profile documented multiple significant limitations that can be attributed only to the left knee condition and/or the left femur condition discussed above. These include the inability to do 3 to 5 second rushes under direct and indirect fire and no lower body weight training, running, biking, ruck marching, marching, and jumping. These restrictions cannot be attributed to either shoulder condition. The profile does include other restrictions that could be attributed to both the left knee and the shoulder conditions including the inability to move with a fighting load at least two miles and construct an individual fighting position and no swimming. All members agreed that left knee, meniscal tear, ACL laxity, and left femur fracture, s/p intramedullary rod placement with delayed union, as an isolated condition, would have rendered the CI incapable of continued service within his MOS, and accordingly merits a separate rating.

There were three 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.

Left Knee ROM	PT (MEB) ~3 Months Pre-Separation	Ortho ~3 Months Pre-Separation	VA C&P ~2 Months Post-Separation
Flexion (140º Normal)	115º	90º	120º
Extension (0º Normal)	0º	0º	0º
Comment	ROM completed by PT-source document not available. MEB Examiner noted tenderness along the medial and lateral joint lines and no laxity. Uses cane for ambulation	Medial joint line tenderness, minimal effusion, mild ACL laxity. Assessment: acute meniscal tear, old disruption of ACL.	Moderate to severe left antalgic gait. Weakly positive McMurray sign with pain and tenderness in the medial compartment, moderate anterior cruciate laxity, medial and lateral collateral ligaments were stable, no change with repetitive motion. Wears left knee stabilizer brace, stopped using cane 5 months ago.
§4.71a Rating 5260	10% Deluca	10% Deluca	10% Deluca
5257	--	10%	20%

The MEB narrative summary (NARSUM) examination was completed approximately 3 months prior to separation and it documented the multiple injuries sustained during the motorcycle accident in May 2004. Orthopedics evaluation after the accident included left knee medial and lateral meniscal tears with a possible ACL tear. A subsequent orthopedic evaluation performed in January 2005 documented a positive anterior drawer and Lachman's test as well as varus stress test. It also noted full active ROM and the absence of tenderness or effusion. Multiple outpatient notes document antalgic gait with the latest in November 2004. The CI was using a cane for support. He had previously used a wheelchair and then crutches. The record

documents use of a cane from as early as November 2004 at least through the time of the MEB NARSUM examination. At the time of the NARSUM, the CI reported a constant severe ache in his left knee rated at 4/10 that increases to 7/10 with use. He also reported that while most of his injuries appeared to have been slowly improving, his left knee pain had been getting worse. The examination findings are reported in the chart above. Of note, the examiner noted no laxity. However, an orthopedic exam completed a day after the ROM measurements by physical therapy in March 2005 noted the findings in the chart above, including mild ACL laxity. This is consistent with previous orthopedic evaluations. Although the NARSUM examiner did not find any joint laxity on examination, she noted the orthopedic evaluation findings in the final diagnosis of left knee pain, meniscal tear and ACL laxity by orthopedic exam. At the MEB examination performed in March 2005, the CI reported his left knee was swollen and painful, and that both knees would lock and give out, and that he required the use of corrective devices of orthotics and a knee brace. The examiner noted the left knee ACL was torn during the motorcycle accident of May 2004 and that surgery was recommended to repair it. The MEB physical exam documented tenderness along the medial and lateral joint lines but no swelling or laxity. The examiner (the same physician who completed the NARSUM) also noted the CI walked into the exam using a cane. The diagnosis was torn ACL left knee. The VA Compensation and Pension (C&P) examination was completed approximately 2 months after the CI separated from the Army. At that time, he was wearing a stabilizing knee brace on his left knee during most of his waking hours and reported he had stopped using the cane approximately 5 months prior. He was unable to work in the job for which he was qualified in law enforcement because of the physical requirements. The examination findings are reported in the chart above. Of note, the VA examiner noted a moderate ACL laxity as compared to the mild laxity noted by orthopedics approximately 6 months prior.

The CI sustained a left femur midshaft fracture in the motorcycle accident and initially underwent an operative reduction with intramedullary nailing. Approximately 5 months later, minimal callus and a 4mm gap at the fracture site were present and a second surgery removed the left femoral nail distal interlocking screw. The MEB NARSUM examination noted constant dull pain at the fracture site, rated at 2/10 with increasing pain to the level of 7/10 with exertion. The C&P examination X-rays taken approximately a year after the second surgery and 16 months after the initial injury continued to document a visible fracture line indicating the fracture was not yet fully healed. The C&P examination noted full ROM of the left hip with no strength deficit.

The Board directs attention to its rating recommendation based on the above evidence. As discussed above the PEB combined multiple conditions and assigned an overall 20% rating IAW the USAPDA pain policy. The VA rated the moderate left knee instability at 20% under 5257 Knee, other impairment of. The VA rated the left femur fracture residuals at 0% under 5252 based on the absence of painful motion. This rating was increased to 10% effective 5 November 2010 after two examinations documented daily hip pain without instability and decreased ROM with painful motion. While the MEB NARSUM and MEB history and physical examinations do not document knee instability, the preponderance of evidence in the service treatment record (STR) supports the presence of this finding from the accident through the time of separation. Additionally, even though the MEB examiner did not find instability in her own examination, she noted its presence on orthopedic examination. The VA examiner determined the instability was moderate but the military orthopedic surgeons never noted more than mild instability. This discrepancy in severity could result from either a worsening of the condition over time or from a difference in opinion over what would be mild or moderate and the Board has no way to determine which reflects the truth. If the discrepancy resulted from a worsening of the condition over time, there would be no way to determine at what period in time the CI crossed the threshold from mild to moderate without resorting to speculation. However, the Board acknowledged that the condition, more likely than not, was worse at the time of separation than it was on the day of the orthopedic examination discussed

above. Although completed more than 5 years after separation, the record does contain a magnetic resonance imaging (MRI) report from November 2010 that shows an intact ACL with any sign of intervening surgery. Both the Army and VA examinations document pain-limited motion at a non-compensable level and this would warrant a minimum 10% under 5260 Leg, limitation of flexion. After reviewing the totality of evidence, the Board determined that the record supports a rating greater than 10% for slight instability at the time of separation. With combined effect on the CI's functional impairment due to the painful motion of the knee along with knee and thigh pain, the CI's disability picture more nearly approximates a 20% rating. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of these two combined conditions favors recommendation as separately unfitting for disability rating. Considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.7 (higher of two evaluations), the Board recommends a disability rating of 20% for the left knee, meniscal tear and ACL laxity and left femur fracture, s/p intramedullary rod placement with delayed union condition rated as 5260-5252.

Right Shoulder Grade III Acromioclavicular (AC) Joint Separation Condition. The Board first considered if the right shoulder condition, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. The CI's permanent profile documented multiple significant limitations that can be attributed only to the shoulders. These include the inability to carry and fire individual assigned weapon, perform any push-ups, and perform any upper body weight training. These restrictions cannot be attributed to any lower extremity condition. The profile does include other restrictions that could be attributed to both the left knee and the shoulder conditions including the inability to move with a fighting load at least two miles and construct an individual fighting position and no swimming. The right shoulder injury, as an isolated injury with normal left shoulder, is significant enough to result in the permanent U3 profile as written. All members agreed that right shoulder Grade III acromioclavicular joint separation, as an isolated condition, would have rendered the CI incapable of continued service within his MOS, and accordingly merits a separate rating.

There were two goniometric 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.

Right Shoulder ROM	MEB ~3 Months Pre-Separation	VA C&P ~2 Months Post-Separation
Flexion (0-180°)	160°	170°
Abduction (0-180°)	170° (168)	170°
Internal Rotation (0-90°)	80° (77)	80°
External Rotation (0-90°)	80° (77)	80°
Adduction	40°	
Comments	1.0cm AC separation; AC joint tenderness	Palpable crepitus in glenohumeral and AC joints; ROM was stiff; repetitive motion increased pain and stiffness but did change ROM.
§4.71a Rating	10%	10%

The MEB NARSUM completed approximately 3 months prior to separation noted a diagnosis of right shoulder Grade III AC joint separation at the time of the initial injury. An MRI performed in July 2004 documented AC joint separation of approximately 1.0cm with significant narrowing of the subacromial space due to inferior displacement of the acromion and a small avulsion fracture, most likely from the clavicle. An MRI from May 2004 documented findings of a rotator cuff tear as well as a mild AC joint separation. The CI did have a history of a right shoulder

rotator cuff injury treated with physical therapy and steroid injections, approximately 18 months prior to the motorcycle accident. A second rotator cuff injury was documented in January 2004. However, all rotator cuff tendons were normal at the July 2004 MRI. The CI received physical therapy and steroid injections in his right shoulder after the accident. The Grade III AC joint separation was also noted on his initial orthopedic evaluation at Fort Polk in July 2004. At the time of the NARSUM, the CI had significant pain that never completely resolved. His shoulder pain would increase to 3-4/10 with use of or sleeping on either shoulder. The C&P exam, approximately 2 months after separation, reported the same history of the accident in May 2004. The CI was unable to work in the job for which he was qualified in law enforcement because of the physical requirements. The examination findings are reported in the chart above. Right shoulder X-rays documented posttraumatic osteolysis of the distal right clavicle with widening of the AC joint.

The Board directs attention to its rating recommendation based on the above evidence. As discussed above the PEB combined multiple conditions and assigned an overall 20% rating IAW the USAPDA pain policy. The VA rated the right shoulder AC joint separation/sprain, rotator cuff tear analogous to tenosynovitis using 5099-5024 and assigned a 10% rating for painful or limited motion of that exceeded shoulder level. While the 10% rating for pain-limited motion appears to be at the appropriate disability level, the CI did not have a rotator cuff injury at the time of separation. He did have a rotator cuff injury prior to the motorcycle accident but this appears to have resolved by July 2004. The Grade III AC joint separation is more appropriately rated as 5203 with a 10% rating assigned for malunion of the joint. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of right shoulder Grade III acromioclavicular joint separation condition favors its recommendation as a separately unfitting condition for disability rating. Considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the right shoulder grade IIII acromioclavicular joint separation condition.

Left Shoulder Supraspinatus Tendon Tear, Grade II Superior Labral Anterior to Posterior Tear (SLAP) Lesion Condition. The Board first considered if the left shoulder condition, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. The CI's permanent profile documented multiple significant limitations that can be attributed only to the shoulders. These include the inability to carry and fire individual assigned weapon, perform any push-ups, and perform any upper body weight training. These restrictions cannot be attributed to any lower extremity condition. The profile does include other restrictions that could be attributed to both the left knee and the shoulder conditions including the inability to move with a fighting load at least two miles and construct an individual fighting position and no swimming. The left shoulder injury, as an isolated injury with normal right shoulder, was significant enough to result in the permanent U3 profile as written. All members agreed that left shoulder supraspinatus tendon tear, Grade II SLAP lesion, as an isolated condition, would have rendered the CI incapable of continued service within his MOS, and accordingly merits a separate rating.

There were two goniometric 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 Shoulder ROM	MEB (PT ROM) ~3 Months Pre-Separation	VA C&P ~2 Months Post-Separation
Flexion (0-180°)	160° (156)	170°
Abduction (0-180°)	135°	170°
Internal Rotation (0-90°)	60° (57)	80°
External Rotation (0-90°)	50°	80°
Adduction	40°	
Comments	Tender anteriorly	Palpable crepitus in glenohumeral and AC joints; ROM was stiff; repetitive motion increased pain and stiffness but did change ROM.
§4.71a Rating	10%	10%

The MEB NARSUM notes a diagnosis of left shoulder instability with labral tear and rotator cuff pathology at the time of the initial injury. At the time of the NARSUM, the CI had significant pain that never completely resolved. His shoulder pain would increase to 3-4/10 with use of or sleeping on either shoulder. His left shoulder would occasionally sublux out of joint and he would have to pop it back in. When this occurred, his pain level would increase to 6/10 and last for 2 or 3 days. An episode of dislocation documented in the record in May 2004. An MRI from July 2004 documented a nearly complete tear of the supraspinatus tendon with only the very posterior fibers appearing to be intact. Abnormalities of the labrum consistent with a Grade II SLAP injury was also present, as was bursitis.

The CI had been receiving physical therapy for left shoulder instability. The initial orthopedic evaluation at Fort Polk in July 2004 noted a history of two to three episodes of frank subluxation as described above. That examination noted a bilaterally positive O'Brien's test and a positive apprehension test on the left shoulder. An orthopedic evaluation from November 2004 also documented a positive left shoulder O-Brien's test and apprehension (Crank) test; however, at that time these tests were negative on the right. A relocation test was negative. This orthopedist noted the diagnoses of left shoulder rotator cuff tear (complete) and left shoulder sprain with anterior glenoid labrum lesion. Both shoulder stiffness with movement and a positive O'Brien's test are consistent with a labral tear and the MRI corroborates these findings. While some labral tears will heal spontaneously, most require operative repair. The C&P exam, approximately 2 months after separation, reported the same history of the accident in May 2004. The CI was unable to work in the job for which he was qualified in law enforcement because of the physical requirements. The examination findings are reported in the chart above. Left shoulder X-rays were normal, however, neither a SLAP tear nor a rotator cuff tear would be seen on a plain X-ray.

The Board directs attention to its rating recommendation based on the above evidence. As discussed above the PEB combined multiple conditions and assigned an overall 20% rating IAW the USAPDA pain policy. The VA rated the left shoulder Grade II SLAP lesion and supraspinatus tendon tear (rotator cuff tear) analogous to tenosynovitis using 5099-5024 and assigned a 10% rating for painful or limited motion of that exceeded shoulder level. While there is no specific VASRD code for either labral tear or rotator cuff injury, the Board discussed various coding options and every appropriate option resulted in a 10% disability rating. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of left shoulder supraspinatus tendon tear, Grade II SLAP lesion condition favors its recommendation as a separately unfitting condition for disability rating. Considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the left shoulder supraspinatus tendon tear, Grade II SLAP lesion 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 reliance on the USAPDA pain policy for rating the chronic pain was operant in this case and the Board adjudicated the conditions independently of that policy. In the matter of the left knee, meniscal tear and ACL laxity and left femur fracture, s/p intramedullary rod placement with delayed union conditions, the Board unanimously agrees that together these conditions were separately unfitting; and, unanimously recommends a disability rating of 20%, coded 5260 IAW VASRD §4.71a. In the matter of the right shoulder Grade III acromioclavicular joint separation condition, the Board unanimously agrees that it was separately unfitting; and, unanimously recommends a disability rating of 10%, coded 5203 IAW VASRD §4.71a. In the matter of the left shoulder supraspinatus tendon tear, Grade II SLAP lesion condition, the Board unanimously agrees that it was separately unfitting; and, unanimously recommends a disability rating of 10%, coded 5099-5024 IAW VASRD §4.71a. 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, Meniscal Tear and ACL Laxity and Left Femur Fracture, Status Post Intramedullary Rod Placement with Delayed Union	5260-5252	20%
Right Shoulder Grade III Acromioclavicular Joint Separation	5203	10%
Left Shoulder Supraspinatus Tendon Tear, Grade II SLAP Lesion	5099-5024	10%
COMBINED (w/Bilateral Factor 1.9)		**40%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120211, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

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

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 40% 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 40% 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

Deputy Assistant Secretary
(Army Review Boards)