

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200306  
BOARD DATE: 20121026

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20040311

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized National Guard, SPC/E-4 (62E/Heavy Equipment Operator), medically separated for left knee pain. An initial injury in 1998 resulted in a patellar dislocation and intermittent pain. Recurrent patellar dislocations and worsened pain occurred after re-injury while deployed in 2003, and required medical evacuation. He did not respond adequately to operative and rehabilitative treatment and was unable 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 patellar stabilization to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Left shoulder impingement syndrome and hyperlipidemia, identified in the rating chart below, were also forwarded by the MEB as conditions meeting retention standards. The PEB adjudicated the chronic left knee pain as unfitting, rated 0% with likely application of the Department of Defense Instruction (DoDI) 1332.39. The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 0% disability rating.

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**CI CONTENTION:** "I feel it should be changed due to the fact that when I was discharged from the Army I was discharged as disabled but only given 0% rating. And due to the fact my knee is not or will never be the same and I am still having trouble with it. I did not get a chance to appeal the decision. I feel that I deserve a medical retirement considering due to my injury I can not and will not have a chance to get my 20 yrs in to retire and have the benefits me and my family deserve for me serving my country honorably as well as putting my life on the line."  
[sic]

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**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. 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 20040211			VA (1 Mos. Post-Separation) – All Effective Date 20040312			
Condition	Code	Rating	Condition	Code	Rating	Exam
Left Knee Pain	5099-5003	0%	Left Patellar Dislocation, Meniscal Tear	5010-5260*	10%	20040429
Left Shoulder Impingement	Not Unfitting		NO VA ENTRY			
Hyperlipidemia	Not Unfitting		NO VA ENTRY			
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 3			20040429
<b>Combined: 0%</b>			<b>Combined: 10%**</b>			

\*VA decision 20110922 added 5257 (left knee instability) at 10%, effective 20110331

\*\*VA decision 20090825 added PTSD at 30%, effective 20090521; combined 40%

**ANALYSIS SUMMARY:** The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans Affairs (DVA). The DVA, 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. 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.

**Left Knee Condition.** Magnetic resonance imaging (MRI) revealed an intra-articular osteochondral defect. Subsequent patellar instability surgery was performed on 17 October 2003 because of recurrent episodes of patellar dislocation. There were two 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 in degrees	Ortho ~2 Mo. Pre-Sep	VA C&P ~1.5 Mo. Post-Sep
Flexion (140 Normal)	120	100
Extension (0 Normal)	Not recorded	0
Comment	+ antalgic gait	+painful motion
§4.71a Rating	10%	10%

The orthopedic narrative summary (NARSUM) addendum states that the CI had minimal pain, but felt that the knee was very tight. He walked with a patellar tracking brace and a cane due to feelings of knee weakness. Examination revealed an antalgic gait, mild soft tissue swelling anteriorly, a well-healed surgical scar and thigh muscle atrophy. There was no patellar instability and no sign of other knee ligament instability. The MEB examiner on 14 January 2004 noted that pain continued at an average severity of 4-5 on a 1-10 scale. Walking and

stairs aggravated the pain, and he could not run, jump, march, wear a backpack or take the fitness test. Examination revealed left knee “puffiness” and significantly limited ROM with mild tenderness. There were no signs of cruciate ligament instability. Atrophy of the medial thigh muscle was present. X-rays showed early degenerative changes. At the VA Compensation and Pension (C&P) exam performed on 29 April 2004, the CI reported that there were no patellar dislocations since the surgery. He complained of left knee pain, fatigability and weakness. Climbing steps and prolonged walking or standing exacerbated his pain. He denied locking, but did experience giving way due to thigh muscle weakness. He was not using a cane or brace. Examination revealed a mildly antalgic gait and a mild effusion. There were no signs of ligament instability. Loss of knee motion was considered to be due to pain and not muscle weakness.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB assigned a 0% rating under an analogous 5003 code (degenerative arthritis). The VA used a 5010-5260 code (traumatic arthritis, limitation of flexion) and assigned a 10% rating. Sufficient evidence is present to support a 10% rating for noncompensable limitation of motion under 5003, or with application of §4.40 (functional loss) or §4.59 (painful motion). Because of the pathology in this case, the Board considered rating under the 5257 code (recurrent subluxation or lateral instability), and whether dual coding for pain and instability was justified. However the Board agreed that, because patellar dislocations resolved after surgery, these pathways were not defensible. A higher rating under the 5258 code (dislocated semilunar cartilage) was also not supported by the evidence. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the left knee 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 DoDI 1332.39 for rating left knee 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 pain condition, the Board unanimously recommends a disability rating of 10%, coded 5099-5003 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, effective as of the date of his prior medical separation:

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

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120221, 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  
for XXXXXXXXXXXXXXXXXXXXX, AR20120021432 (PD201200306)

1. 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 to modify the individual's disability rating to 10% without recharacterization of the individual's separation. This decision is final.

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.

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

XXXXXXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
( ) DoD PDBR  
( ) DVA