RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200352
BOARD DATE: 20121130

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20050325

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SGT/E-5 (21E/Heavy Construction Equipment Operator), medically separated for left knee pain status post (s/p) anterior cruciate ligament (ACL) repair. Despite post-operative extensive rehabilitation in physical therapy (PT), the CI did not improve adequately 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 no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the left knee pain condition as unfitting, 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: "The military could only rate one condition pertaining to my injuries and received 20% for pain to my knee and i was prompted by the military to go to VA to receive total compensation for the rest of the knee and granted 40% for that same knee. Also had other conditions that found me unfit. Please see Letter Of Appeal that is enclosed". The attached letter also addresses surgical scars, peroneal neuropathy and the hamstring graft.

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 condition left knee pain s/p ACL repair as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview. The Board determined that the surgical scars, peroneal neuropathy and hamstring graft were secondary to the ACL graft and therefore within the purview of the Board. 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 PEB – Dated 20050201			VA (3 Mos. Post-Separation) – All Effective Date 20050326			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
L Knee Pain S/P ACL Repair	5099-5003	20%	Post-op Residuals L Knee…	5299-5261	40%*	20050629
↓No Additional MEB/PEB Entries↓			Low Back Strain …	5237	20%**	20050629
			Post-op Residuals of L Peroneal Nerve Damage	8521	10%	20050629
			0% X 0 / Not Service-Connected x 0 at Separation			
Combined: 20%			**Combined: 60%**			

*10% from 20090301/20% from 20100625. **10% from 20090301/40% from 20100625. Scars at 10% added 20070129

ANALYSIS SUMMARY: 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. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, 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 his degree of impairment vary over time. 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. 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. 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 DES improprieties in the processing of his case.

Left Knee Pain S/P ACL Repair Condition. 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 Degrees	Narsum~2 Mo. Pre-Sep	VA C&P ~3 Mo. Post-Sep	VA C&P ~6 Mo. Post-Sep
Flexion (140 Normal)	110	110	30 after repetition
Extension (0 Normal)	0	10	0
Comment		Painful motion; limp; Dual codes for separate ratings for limitations in flexion and extension	Painful motion; muscle atrophy; antalgic gait
§4.71a Rating	10%	10% + 10% = 20%	20%

The CI twisted his knee while playing basketball in January of 2004. He was noted to have diffuse pain with full ROM (FROM) and no ligamentous instability. The narrative summary (NARSUM) noted that he had returned to duty, but reinjured his knee, again playing basketball. Despite conservative treatment, he continued to have pain and had a magnetic resonance imaging (MRI) exam performed on 16 April 2004 which showed a complete tear of the ACL, a tear of the posterior horn of the medial meniscus and degeneration of the lateral meniscus. On 22 April 2004, he underwent ACL reconstruction with a hamstring tendon graft, repair of the medial meniscus and partial lateral meniscectomy. Post-operative X-rays showed good alignment. He then had rehabilitation in PT. Two months after surgery, at the 17 June 2004 PT appointment, he did not have an antalgic gait. Some atrophy was noted of the left thigh with a circumference one cm less than the right at both seven and ten cm above the knee. A month later at the 21 July 2004 orthopedic appointment, he had full ROM and intact testing of the ACL after repair. A PT noted on 4 August 2004 noted that he was slowly improving, but did not yet have FROM and used a brace when walking. Another PT note on 20 August 2004 noted a

slightly antalgic gait. The 7 October 2004 PT noted documented a normal gait and steady improvement. The 29 October 2004 PT note documented normal ROM, but reduced strength for flexion and extension for the left knee compared to the right. However, a PT note 2 days later on 1 November 2004 annotated that flexion was limited to 100 degrees, strength reduced and gait abnormal. Also noted were atrophy of the quadriceps and some laxity of the ACL in anterior drawers testing. An orthopedic examination a month later on 3 December 2004 noted normal sensation and strength and intact ligaments. The NARSUM was dictated on 25 January 2005, 2 months prior to separation. The CI reported weakness and decreased ROM in the left knee, but denied numbness or tingling. The pain was aggravated by bending or prolonged standing and relieved with rest, ice and medications. On examination his gait was mildly antalgic. There was no redness, swelling, induration or effusion. Mild distal quadriceps atrophy was noted as was hamstring tightness. Medial joint line tenderness was noted. There was no ligamentous instability, weight bearing was normal, crepitus absent and the scar well healed. Sensation, strength and reflexes were normal. Flexion was limited to 110 degrees with pain and extension normal. At the VA Compensation and Pension (C&P) exam on 29 June 2005, 3 months after separation, the CI reported an ACL tear and as well as tears to the medial and lateral ligaments. The Board noted that the medial and later ligaments were, in fact, intact, whereas the medial and lateral menisci were injured. The CI was employed to stock shelves in a grocery store where he had worked prior to the military, but was impaired from his knee pain and needed to rest frequently. On examination, the scars were noted without further comment. The knee was tender to palpation above, below and to both sides of the patella. Flexion and extension were both limited as noted above. There was no effusion. Strength was good, but he was unable to heel or toe walk on the left. There was tenderness at the graft donor site of the hamstrings and some residual weakness. Sensory loss was present in the upper third of the left lateral leg. The quadriceps reflex was reduced compared to the right side. He was noted to limp. No comment was made regarding either the ligaments or the menisci. The VA requested a second joint evaluation which was on 21 September 2005, 6 months after separation. The history was unchanged. On examination though, the knee flexion was reduced to 40 degrees and to 28 degrees after three repetitions. A 2 cm loss in thigh circumference was noted on the left compared to the right at 15 cm above the knee. He was again noted to have sensory loss of the left lower leg which was attributed to a peroneal injury during surgery. As in the previous C&P examination, no comment was made on the ligaments or menisci. The Board also looked at the C&P examination dated 29 March 2007, performed 2 years after separation, due to the loss of motion seen on the second C&P in September 2005. On the 2007 examination, the flexion was 100 degrees and extension normal at zero degrees without additional loss from repetition. Painful motion was present. The CI was able to heel and toe walk, ligaments were intact and provocative testing of the menisci was negative. Sensation, strength and reflexes were normal. A suprapatellar effusion was noted on X-ray, but not documented on the physical examination. Gait remained antalgic. The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the left knee as analogous to degenerative arthritis, 5099-5003, and rated it 20% using the pain policy. The VA coded the left knee as analogous to limitation of extension, coded 5299-5261, and rated it 40% based on the second VA C&P examination dated 21 September 2005. The flexion measured at the September 2005 is an outlier of other measurements obtained both prior to separation and following separation. It therefore is determined to be of reduced probative value and is not used for rating purposes. The Board noted that the VA reduced the disability rating to 10% and then 20% upon review. The Board first considered the post-operative scars. No examination proximate to separation documented any impairment from these. There is no indication in the record that the scars interfered with duty performance or the wear of military equipment. By precedent, the Board does not recommend separation rating for scars unless their presence imposes a direct limitation on fitness. The Board next

considered the sensory loss. The orthopedic examination, the NARSUM and the 2007 C&P examination all noted normal sensation. However the two C&P examinations noted loss in the distribution of the peroneal nerve. Regardless, Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The sensory component in this case, if indeed present, has no functional implications. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. There was no evidence in the record that the pain at the donor site for the ACL graft (hamstrings) was additionally unfitting. The Board then considered the functional loss from both the pain and limitation in motion. It noted that the use of the PEB code 5003, degenerative arthritis, would support a 10% disability rating for painful, reduced motion in which the limitation of motion was not separately compensable. Code 5259, loss of a meniscus, would also support a 10% rating. While the use of both codes at the 10% level could be supported, this provides no advantage to the CI. The Board prefers this coding route, but sees no point in recommending a change in the code utilized by the PEB since rating is unaffected. The limitation in motion in evidence does not support a higher level of disability than awarded by the PEB using the USAPDA pain rule. There is no instability in evidence. As already noted, the 40% rating awarded by the VA was based on an examination not supported otherwise in the record and the rating was later reduced based on later examinations. 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 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 the USAPDA pain policy for rating the left knee was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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 Pain s/p Left Knee ACL Repair …	5099-5003	20%
	COMBINED	**20%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120413, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX
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 XXXXXXXXXXXXXXXXXX, AR20130000032 (PD201200352)

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

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA