

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200639
BOARD DATE: 20130206

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030627

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SFC/E-7 (96B4H/Intelligence Analyst), medically separated for bilateral knee pain with history left knee lateral release and findings of Grade III chondromalacia of left patellofemoral joint. The CI's knee pain started in 1994 with no history of trauma or prior knee pain. He was diagnosed with patellofemoral syndrome (PFS) and treated conservatively with anti-inflammatory medications and physical therapy (PT). He had a left knee arthroscopic evaluation in 1998 which revealed chondromalacia of the patella and underwent a lateral retinacular release. The bilateral knee pain condition could not be adequately rehabilitated. The CI did not improve adequately with treatment 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 patella chondromalacia and bilateral knee pain conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the bilateral knee pain condition as unfitting, rated 10%, with likely application of the United States Army Physical Disability Agency (USAPDA) pain policy and the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "- 1994-1998 chronic knee pain diagnosed and treated as Patella Femoral Syndrome.; - Left knee patella chondromalacia was confirmed by arthroscopy in 1998, lateral release was performed.; - Right knee had similar symptoms but arthroscopy was not recommended.; - MMRB proceeding, 18 July 2002, found that my knee condition did not prevent me from performing the physical tasks required by my MOS in a worldwide field environment and recommended MEBD [SP] because I could no longer take the APFT.; - MEB, 13 Nov 2002, determined that I was not able to participate in worldwide field deployment because of my.; -PEB proceedings, 02 Feb 2003, found me unfit and recommended a combined rating of 10%.; - April 2003, post PEB, I was diagnosed with Type II Diabetes (NIDDM). This condition was not considered as part of the combined rating by the PEB, but VA has granted 20% compensation as a service related disability." Remarks also commented on VA 40% disability rating and not offered pro-rated pension despite over 16 years active service.

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 bilateral knee pain conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. The other requested condition (Type II Diabetes) is not within the Board's purview. The remaining conditions rated by the VA at separation and listed on the DD Form 294 any pension or non-medical retirement issues 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 20030226			VA (~10 Mo. Post-Separation) – All Effective Date 20030628			
Condition	Code	Rating	Condition	Code	Rating	Exam
Bilateral Knee Pain with History of Lateral Release Left Knee ...	5099 5003	10%	Chondromalacia and Tendonitis of Left Knee, Postsurgical Lateral Retinacular Release	5259-5024	0%*	STR
			Chondromalacia, Right Knee	5299-5024	0%*	STR
			Non-Insulin Dependent Diabetes Mellitus Type 2	7913	20%	20040506
			Hypertension	7101	10%	20040506
			0% X 4 / Not Service-Connected x 1			
Combined: 10%			Combined: 30%*			

*Initially rated at 0% then increased to 10% each effective 20050208 (combined 40%).

ANALYSIS SUMMARY: The MEB forwarded two medically unacceptable conditions to the PEB. The PEB combined “left knee patella chondromalacia” and “bilateral knee pain” as a single unfitting and solely rated condition, coded analogously to 5099-5003. Although this approach complies with AR 635.40 (B.24 f.); the Board must apply separate codes and ratings in its recommendations, if compensable ratings for each condition are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, it must satisfy the requirement that each unbundled condition was reasonably unfitting. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting; and, that there was no need for separate fitness adjudications, not a judgment that each condition was independently unfitting. Thus 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.

Bilateral Knee Pain Condition. The narrative summary notes the CI’s knee pain started in 1994. Initially the CI presented with left knee pain, but gradually developed pain in the right. The CI had no history of trauma. He was diagnosed with bilateral PFS and treated with activity modification, anti-inflammatory medications, and PT without relief of pain. In 1998 the CI underwent an arthroscopic evaluation of the left knee which revealed patella chondromalacia and a lateral release was performed. The CI continued to have pain in both knees and was placed on a permanent L3 profile with limitations for alternate aerobic event for Army Physical Fitness Test (APFT), no knee bender, hop, high jump, or running. 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.

Knee ROM	MEB ~7 Mos. Pre-Sep		VA C&P ~10 Mos. Post-Sep	
	Left	Right	Left	Right
Flexion (140° Normal)	FROM “in both knees”		0-140°	0-140°
Extension (0° Normal)				
Comment	+tenderness; crepitance L>R; significant limitation of patellar motion both knees; no instability		Gait slow and stiff; cane in hand; no instability; no tenderness; normal left and right knee x-rays	
§4.71a Rating	10%	10%	0%	0%

At the MEB exam 7 months prior to separation, the CI reported pain with most activities related to soldiering and recreational sports. He related increasing locking and popping in his right knee and occasional instability and giving way in both knees. The MEB physical exam noted full

ROM, left greater than right knee crepitation, significant limitation of patellar motion both knees, and tenderness to palpation both patella, but no tenderness along the joint line. Tests for instability were negative. Radiographs were normal. At the VA Compensation and Pension exam 10 months after separation, the CI reported some improvement in his knee conditions with weight reduction. He reported that the knees “give out occasionally after being on knees for more than 20 minutes.” The VA exam noted no tenderness to palpation bilaterally. The exam ROM was 0-140 degrees (normal) with negative tests for instability. The VA exam 25 months after separation indicated the CI was using a cane for instability, but had a normal gait without his cane. There was slight pain-limited motion (0-130°) with objective findings of weakened movement and incoordination. Tests for instability were negative. The Board first considered if the left and right knee conditions, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. The CI has multiple notations within the service treatment record of bilateral knee pain and was treated with PT, bracing and oral medications for both knees. While the left knee pain was greater than the right and warranted surgical intervention, both knees prevented performance of service related duties and recreational activities. The CI’s permanent L3 profile documented restrictions that could be attributed to both the left and right knee conditions including limitations for alternate aerobic event for APFT, no knee bender, hop, high jump, or running. All members agreed that the left and right knee conditions were each reasonably unfitting, and accordingly merit separate ratings.

The Board directs attention to its rating recommendation based on the above evidence. As discussed above, the PEB combined multiple conditions into a single unfitting rating and assigned an overall 10% rating likely IAW AR 635-40. The VA provided separate 0% ratings for the right and left knees, based on an improved post-separation exam of the knees. There was no evidence of incapacitating episodes. The preponderance of the record indicated crepitation and functional loss due to each knee condition at the 10% rating level coded analogously to 5014 (Osteomalacia). After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of the bilateral knee pain conditions favor its recommendation as separately left and right knee unfitting conditions for disability rating. Considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board recommends a disability rating of 10% for the left knee condition and 10% for the right knee condition IAW VASRD §4.40 (Functional loss) and §4.45 (The joints).

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 USAPDA for rating the bilateral knee condition was likely operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the bilateral knee pain condition, the Board unanimously recommends that it be rated for two separate unfitting conditions as follows: left knee pain coded 5099-5014 and rated 10%, and right knee pain coded 5099-5014 and rated 10%; both 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
Condition Left Knee Patella chondromalacia status post surgery	5099-5014	10%
Condition Right Knee Patellofemoral Syndrome	5099-5014	10%
	COMBINED (w/ BLF)	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120607, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXX, DAF
Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20130002788 (PD201200639)

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 20% 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

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Deputy Assistant Secretary
(Army Review Boards)