

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200694
BOARD DATE: 20130206

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20011127

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PV2/E-2 (88M/Heavy Wheeled Vehicle Operator), medically separated for chronic pain, left hip due to trochanteric bursitis and left knee due to patellar tendonitis. In April 2000, the CI fell off a horse and landed on his left knee. The CI reported that left hip pain began in July 2001. Despite conservative treatment including physical therapy and medication, the CI failed 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 patellar tendonitis, chronic in nature and left trochanteric bursitis to the Physical Evaluation Board (PEB). The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the chronic pain, left hip, due to trochanteric bursitis and left knee, due to patellar tendonitis as a single unfitting condition, rated 0%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and he was medically separated with a 0% disability rating.

CI CONTENTION: "Disability has increased in severity and causing secondary health issues."

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 20011001			VA (3 years post-separation) – All Effective Date 20011128			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Pain, Left Hip due to Trochanteric Bursitis and Left Knee due to Patella Tendonitis	5099-5003	0%	Left Hip Trochanteric bursitis	5099-5019	0%*	Failed to show
			Left Knee Patellar Tendonitis	5299-5024	0%*	Failed to show
			Low Back Strain	5237	10%**	20041109
			Scar on left side of head	7800	10%**	20041109
			0% X 2 / Not Service-Connected x 6			
↓No Additional MEB/PEB Entries↓			Combined: 20%***			
Combined: 0%						

*0% ratings were assigned because the CI failed to show for original C&P exam scheduled for 16 April 2002. First C&P exam was 6 July 2004 and after this exam, VA increased ratings to 10% for each effective 31 October 2003.

**Low back and scar added on 20041227 VARD with effective dates back to 20011231

***Increased to 20% effective 20011231 and 30% effective 20031031

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impact that his service-incurred condition has had on his current

earning ability and quality of life. 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 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 PEB combined the chronic left hip and left knee pain as a single unfitting condition, coded analogously to 5003, and rated 10% IAW the USAPDA pain policy. 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. 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 using a reasonably justified standard. The Board must exercise the prerogative of separate fitness recommendations with the caveat that its recommendations may not produce a lower combined rating than that assigned by the PEB.

Left Hip Trochanteric Bursitis Condition. The Board first considered whether the left hip trochanteric bursitis 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 hip trochanteric bursitis condition, the Board is left with a questionable basis for arguing that it was indeed independently unfitting. Although it was mentioned on the permanent profile, it is not clear that any of the restrictions would remain if the left knee condition were not present. Neither the hip raise nor hip stretch exercises were prohibited. The commander's letter specifically mentions the left knee condition as rendering the CI incapable of performing the duties required of his MOS but makes no mention of a hip condition. The left hip trochanteric bursitis was diagnosed on the MEB narrative summary (NARSUM) examination in September 2001 but was not mentioned in the MEB exam completed in August 2001. This examination does not include a hip examination. The NARSUM examination does not report any functional impairment related to the hip alone. There were no outpatient treatment records related to a left hip condition. No profiles other than the latest one included a left hip condition. Both X-rays and magnetic resonance imaging (MRI) of the left hip were completed by the VA in July 2004 and both were normal. After due deliberation, the Board agreed that, with application of the reasonably justified standard, the evidence does not support a conclusion that left hip trochanteric bursitis as an isolated condition, would have rendered the CI incapable of continued service within his MOS, and accordingly cannot recommend a separate service rating for it.

Chronic Left Knee Patella Tendonitis: The Board first considered whether chronic left knee patella tendonitis, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. All restrictions on the CI's permanent profile are attributable to the left knee condition and the commander's letter specifically states that the CI's knee condition rendered him physically incapable of performing the duties required of his MOS. All members agreed that chronic left knee patella tendonitis, as an isolated condition, would have rendered the CI incapable of continued service within his MOS, and accordingly merit a separate rating.

There was one 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	MEB ~2 Months Pre-Separation	VA C&P ~32 Months Post-Separation
Flexion (140° Normal)	No ROM's	92°
Extension (0° Normal)		0°
Comment	TTP over patellar tendon and tibial tuberosity; medial facet tenderness; some boggiess palpated presumed to be edema; positive patellofemoral compression; negative varus or valgus instability	Tenderness over the medial joint space, tibial tubercle, patellar tendon; no effusion or ligamentous laxity; gait is normal without a limp
§4.71a Rating	10%	10%

A left knee X-ray done at the time of the initial injury in April 2000 revealed an avulsion fracture of the left anterior tibial tuberosity. An orthopedics evaluation in December 2000 noted pain with running, use of a hinged brace that relieved pressure and tenderness to palpation over the patellar tendon and tibial tuberosity. The CI was diagnosed with left patellar tendonitis and was advised to continue using the brace. The NARSUM examination completed approximately 2 months prior to separation indicated that the CI had most of his pain around the kneecap and tibial tubercle, pain on running, and pain with full flexion. The examiner noted that an MRI showed no meniscal or ACL tear or ligamentous damage. The examiner diagnosed left patellar tendonitis, chronic in nature. The MEB physical exam findings are summarized in the chart above. Although the NARSUM examination is silent concerning painful motion, the totality of the record supports a finding a painful motion. The commander's statement documented that the chronic knee pain rendered the CI incapable of performing the duties required of his MOS. The CI failed to report for the scheduled VA Compensation and Pension (C&P) exam and the VA Rating Decision (VARD) stated the lack of any exam findings led to the 0% rating. It was not based on findings from the service treatment records (STR). The C&P exam was completed nearly 3 years after separation and noted that the CI had been in a knee brace regularly until 6 months prior to that examination and still used it occasionally. The CI reported pain with increased activity, and pain occasionally at night and when it rained. The CI had pain on both sides of the knee, in the front and deep in the knee. The knee occasionally gave out and caused a fall. Both X-rays and MRI of the left knee were normal.

The Board directs attention to its rating recommendation based on the above evidence. As described above the PEB bundled the left hip and knee and rated the two together at 0% utilizing the USAPDA pain policy. The VA rated the left knee patellar tendonitis analogous to 5024 Tenosynovitis rated 0% because the CI failed to show for his C&P examination. The 20041109 VARD later increased the left knee rating to 10% based on the C&P examination completed in July 2004. Although the NARSUM and C&P examinations were almost 3 years apart, both examinations support a 10% rating. While the NARSUM examination was silent on painful motion, the clinical history in the NARSUM and the rest of the STR support a finding of painful motion. The C&P noted pain-limited motion at the non-compensable level. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that the condition was separately unfitting and considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), recommends a disability rating of 10% for the chronic left knee patellar tendonitis coded 5099-5003.

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, the PEB bundled two separate conditions and assigned a single rating of 0% based on the USAPDA pain policy and the Board adjudicated this case independently of that policy by the Board. In

the matter of the left hip trochanteric bursitis, the Board unanimously agrees that it was not separately unfitting and therefore, no separate disability rating can be recommended. In the matter of the chronic left knee patellar tendonitis, 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, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Left Knee Patellar Tendonitis	5099-5024	10%
	COMBINED	10%

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

XXXXXXXXXXXXXXXXXXXX, 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 XXXXXXXXXXXX, AR20130002787 (PD201200694)

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)