

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200768
BOARD DATE: 20130103

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20040701

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated National Guard SSG/E-6 (95B30/Military Policeman), medically separated for chronic left knee pain. The CI complained of left knee pain of an insidious onset without history of trauma, since about 1998. The CI could not be adequately rehabilitated 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 retropatellar pain syndrome, left knee Baker's cyst, and left knee joint effusion conditions for Physical Evaluation Board (PEB) adjudication. After reconsideration of initial PEB determinations, the PEB adjudicated the chronic left knee pain as unfitting, rated 0% with possible application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI did not appeal this last PEB decision, and was medically separated.

CI CONTENTION: "I was released from active duty while MEB pending. Thus this should reflect a time in service which should qualify myself for retirement benefits."

SCOPE OF REVIEW: The Board's scope of review is defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2). It is limited to those conditions determined by the PEB to be unfitting for continued military service and those conditions identified but not determined to be unfitting by the PEB when specifically requested by the CI. The rating for the unfitting condition, chronic left knee pain, 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 Informal Reconsideration – Dated 20040518			VA – All Effective Date 19991013*			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Lt Knee Pain	5099-5003	0%	Lt Knee RPS	5257-5003	10%	STR
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 1			STR
Combined: 0%			Combined: 10%			

*VARD dated 20040204 granted rating effective 20010220 but noting the CI was not entitled to compensation for the 1 year he was on EAD after the grant of benefits. As a result of a Notice of Disagreement, a DRO De Novo Review granted a retroactive effective date to 19991013 per VARD dated 20040915 but did not note that the CI was not entitled to VA compensation while on periods of active duty even though they acknowledge he was on active duty for one year from March 2002 to March 2003.

ANALYSIS SUMMARY:

Chronic Left Knee Pain Condition. Service treatment records (STR) reflect a history of left knee pain since 1998 without specific traumatic trigger. The MEB narrative summary (NARSUM) noted that over the years, the CI received treatment including medications and physical therapy (PT) and that office exams revealed joint line tenderness, but usually full range-of-motion (ROM) without swelling. In October 2002, recurrent left knee pain developed following a physical fitness test and soft ball game which interfered with full performance of duties. A magnetic resonance imaging (MRI) scan showed a possible left knee degenerative meniscal tear and significant Baker's cyst and cartilage in the trochlea and patellar region consistent with a clinical diagnosis of retropatellar pain syndrome. The MEB NARSUM examination recorded "full active range of motion" of the left knee, without instability. The CI did have a dull ache in the back of the knee with fullness noted consistent with the Baker's cyst, and minimal patellofemoral joint crepitance with resisted extension. There was no joint line tenderness suggestive of meniscus injury. No VA Compensation and Pension (C&P) exam was performed within 12 months of the time of the CI's last separation from the Army. The VA referred to the MEB documents in making their decision. A subsequent VA examination in March 2006, 2 years after separation recorded a similar examination with full ROM, no instability, negative meniscus signs, normal gait and normal X-rays.

The Board directs attention to its rating recommendation based on the above evidence. The PEB gave a rating of 0% for chronic left knee pain; in their decision, they noted that the CI was not using any pain medication. The VA gave a rating of 10% due to painful or limited motion of a major joint. There was no limitation of motion or instability to warrant a minimum rating under the respective VASRD diagnostic codes (5260, 5261, 5257). The Board noted the MRI results showing a possible meniscus tear but the MRI did not show a dislocated meniscus and examinations were negative for meniscus signs and there was no locking to support a minimum rating under code 5258. The Board considered whether a minimum rating was supported with application of code 5003, §4.59 (painful motion) or §4.40 (functional impairment). The Board also noted that the record does reflect pain with use of the left knee for which the CI received medications, PT, and duty restrictions which supports application of VASRD §4.59 or §4.40 for a rating of 10%. After due deliberation of the rating options, 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 pain condition 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. The Board surmised in this case that the PEB may have rated the chronic left knee pain 0% with likely application of the USAPDA pain policy and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic left knee pain condition and IAW VASRD §4.71a, the Board unanimously recommends a rating of 10%. 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 Pain	5099-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120612, 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 / XXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20130002286 (PD201200768)

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

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Deputy Assistant Secretary
(Army Review Boards)