

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
CASE NUMBER: PD1200786
BOARD DATE: 20130103

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020603

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92Y/Unit Supply Specialist), medically separated for chronic right knee pain. The CI initially strained his right knee during a routine training run in 1999 and received conservative treatment. After suffering from a second knee strain injury in 2001, an evaluation by orthopedics determined it was not a surgical condition. He did not improve adequately with continued treatment and was unable to meet the requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was issued an L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded right knee chronic retropatellar pain syndrome to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Migraine headaches and right shoulder: biceps tendinitis conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The PEB adjudicated the right knee chronic retropatellar pain syndrome condition as unfitting, rated 0% with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: "Constant pain in R knee and R shoulder."

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 conditions right knee chronic patellar pain syndrome and right shoulder pain as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. 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 20020405			VA (12 Mos. Post-Separation) – All Effective Date 20020604			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Knee Chronic Patellar Pain Syndrome	5099-5003	0%	Right Knee Retropatellar Pain Syndrome	5099-5261	30%*	20030613
Right Shoulder: Biceps Tendinitis	Not Unfitting		Right Shoulder Injury with Biceps Tendonitis	5299-5024	10%*	20030613
Migraine Headaches	Not Unfitting		Migraines	Not Service Connected		
↓ No Additional MEB/PEB Entries ↓			0% x 1 / Not Service-Connected x 3 Additional			20030613
Combined: 0%			Combined: 40%			

*Initial VA decision rated each at 0%, coded 5014-5260 and 5201 respectively; based on service treatment record.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. That role and authority is granted by Congress to the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code). 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 further acknowledges the CI’s contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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 DVA, however, 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.

Right Knee Pain Condition. Magnetic resonance imaging revealed slight irregularity of the medical meniscus, but no major tears or other abnormalities. X-ray was normal. 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.

Right Knee ROM	MEB ~4 Mo. Pre-Sep	NARSUM ~2.5 Mo. Pre-Sep	VA C&P ~12 Mo. Post-Sep
Flexion (140° Normal)	140°	140°	110°
Extension (0° Normal)	0°	0°	-9°
Comment	+Tenderness	+Tenderness	+Painful motion
§4.71a Rating	10%	10%	10% (VA 30%)*

*Rating decision incorporated additional loss of motion against resistance

An orthopedic addendum narrative summary (NARSUM) prepared 3 months prior to separation indicated that there was no surgical indication for the knee condition. Examination revealed “full active range of motion,” no crepitus and stable ligaments. At the NARSUM exam 2 months prior to separation, the CI reported recurrent pain and swelling of the right knee with overuse. Pain was caused by walking more than a mile, climbing stairs, riding a bike, squatting, and kneeling. Over the counter medication was used for pain. Examination revealed no laxity, effusion, warmth or redness. At the VA Compensation and Pension exam over a year after separation, the CI reported that symptoms had increased. Pain occurred after walking a half mile and he could no longer run. Examination revealed additional loss of extension of -11 degrees with resistance. Ligament testing caused pain but stability was not specified. X-rays were negative.

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) with application of the USAPDA pain policy. The VA exam was over a year after separation, and the Board therefore relied more heavily on the exams as an accurate indicator of disability severity at the time of separation. Although there was no limitation of motion, there is sufficient evidence of pain with use (§4.40, Functional loss) to justify a minimal compensable rating under

§4.71a. The Board could find no support for rating higher than 10% under alternate knee codes. After due deliberation, 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 right knee pain condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was right shoulder pain. The Board's first charge with respect to this condition is an assessment of the appropriateness of the PEB's fitness adjudication. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. This condition was not profiled, was not implicated in the commander's statement and was not judged to fail retention standards. It was reviewed by the action officer and considered by the Board. There was no indication from the record that the right shoulder condition significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the right shoulder biceps tendinitis condition; and, therefore, no additional disability ratings can be recommended.

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 right knee pain was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right knee chronic retropatellar pain syndrome condition, the Board unanimously recommends a disability rating of 10%, coded 5099-5003 IAW VASRD §4.71a. In the matter of the contended right shoulder biceps tendinitis condition, the Board unanimously recommends no change from the PEB determination as not unfitting. 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
Right Knee Chronic Retropatellar Pain Syndrome	5099-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120613, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

xxxxxxxxxxxxxxxxxx, DAF
Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for xxxxxxxxxxxxxxxxxxxx, AR20130002250 (PD201200786)

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)