

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200891  
BOARD DATE: 20130125

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20040302

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC E-4 (62E/Heavy Construction Equipment Operator), medically separated for right knee injury. The CI initially experienced a twisting right knee injury in 1994, while in the Marine Corps and underwent arthroscopic surgery to repair his meniscus (partial menisectomy) in November 1996. The CI left the Marine Corps in 1997 and was discharged without medical problems. He entered active duty with the Army on 1 July 2001. The CI re-injured his right knee in July 2001 during physical training. He did not improve adequately to conservative and rehabilitative treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Knee pain secondary to chondromalacia was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The PEB adjudicated the right knee injury condition as unfitting, rated 0%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% disability rating.

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**CI CONTENTION:** "My disability was severe enough that I could not continue active duty. Also since my separation in 2004, I have had 1 additional knee surgery. I live in pain daily."

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**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 rating for the unfitting right knee condition is addressed below; and, no additional conditions are within the DoDI 6040.44 defined purview of the Board. Any condition 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.

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**RATING COMPARISON:**

Service IPEB – Dated 20031003			VA (48 Mos. Pre-Separation) – All Effective Date 20040303			
Condition	Code	Rating	Condition	Code	Rating	Exam
R Knee Injury	5099-5003	0%	S/P Arthroscopy, R Knee	5259	10%*	20000325
No Additional MEB/PEB Entries			Patellofemoral Jt Syndrome, L Knee	5257	10%	20000325
Combined: 0%			Combined: 20%*			

\*VARD 20050324; 5259 initially rated 20% effective 19970526 in VARD 19980219; CI failed to report to C&P 20050310 most proximal DOS 20040302 to VARD 20050324; VA increased 5259 to 20% effective 20040303 based on exam of 20060329 VARD 20060414 (combined 40%)

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ANALYSIS SUMMARY: The Board acknowledges the CI's information regarding the significant impairment with which his service-connected conditions continues to burden him; but, must emphasize that the Disability Evaluation System 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, operating under a different set of laws.

Right Knee Injury Condition. The narrative summary notes that the CI had no serious medical problems other than the right knee injury while in the Marine Corps and that this condition resolved, following surgery that included meniscal shaving. After separation from the Marine Corps, the CI received a 30% disability rating from the VA secondary to his arthroscopic knee surgery. He did well with the Army initially after his return to active duty, but in July 2001, due to the increased level of physical activity required at physical training he noted increasing discomfort with the right and left knee, with swelling and pain. Magnetic resonance imaging (MRI) was done which showed minimal degenerative changes. Profiling and physical therapy brought no essential relief and the service member was placed on a permanent L3 profile and recommended for an MEB.

The 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. Other ROM measurements were 19 and 48 months prior to separation and are not charted.

Right Knee ROM in Degrees	MEB ~7 Mo. Pre-Sep	VA C&P ~25 Mo. Post-Sep*
Flexion (140 Normal)	Not measured	140 (90 with repeat ROM)
Extension (0 Normal)	Not measured	0
Comment: Surgery 1994 (meniscus)	Antalgic gait; positive patellar inhibition; neg for: effusion; ligamentous laxity of ligaments; Lachman's McMurray's; positive for SLR w/ resisted patella extremely uncomfortable	Mild pain w/palpation below kneecap; + crepitus; neg for: instability; anterior or posterior drawer sign; medial or lateral ligament instability
§4.71a Rating	10% (PEB 0%)	10%-20% (VA 20%)

\* CI failed to report to C&P 20050310 most proximate to DOS 20040302 to VARD 20050324

At the MEB exam, the CI reported right knee pain with repetitive climbing, with mounting and dismounting of military tactical vehicles, with running and ruck marching as well as crawling and walking. The MEB physical exam noted an antalgic gait with no obvious muscle atrophy and no ligamentous laxity. Negative Lachman's and McMurray's testing on examination with no effusion, but patellar inhibition on the right side more than the left. Straight leg raising with resisted patella was extremely uncomfortable. Quadriceps strength was measured at 5/5. No other physical abnormalities were noted on exam. There was no MEB ROM evaluation. The MRI showed no significant joint effusion, bone contusion, or Baker's cyst. It was significant for lateral collateral ligament strain, but no evidence of meniscal tear. Routine x-rays of the knees were read as normal. There was no VA Compensation and Pension (C&P) exam proximate to separation. The first post-separation C&P exam was approximately 25 months after separation. This remote VA exam indicated right knee with mild pain, crepitus and painful motion. There was no instability. ROM was 0-140 degrees with "50 degrees of further loss of degrees of motion with repeat range of motion in his right knee."

The Board directs attention to its rating recommendation based on the above evidence. The Board considered that the preponderance of the record indicated painful motion or functional loss of the right knee joint (including crepitus) to meet the §4.59 (Painful motion) provisions for a 10% rating. There was no instability or ratable loss of ROM proximate to separation for any higher rating. The Board discussed coding options of analogous to 5003 (Arthritis, degenerative) or 5014 (Osteomalacia), or other codes that use the criteria from 5003 IAW the VASRD. Coding under 5259 (Cartilage, semilunar, removal of, symptomatic) was considered as the CI had prior meniscal surgery. Meniscal coding includes painful motion, and there was insufficient evidence of frequent episodes of "locking," pain, and effusion into the joint to support coding at the 20% level under 5258. There was no advantage to the CI for coding under either 5099-5003, 5099-5014, or 5299-5259. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), §4.59 (Painful motion) and §4.40 (Functional loss) the Board recommends a disability rating of 10% for the right knee condition.

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**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 did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the right knee injury condition and IAW VASRD §4.71a, the Board unanimously recommends a disability rating of 10%, coded 5099-5003 IAW VASRD §4.71a. There were no other conditions within the Board's scope of review for consideration.

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**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 Chondromalacia Patellae	5099-5003	10%
	COMBINED	10%

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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

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President  
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for xxxxxxxxxxxxxxxxxxxx, AR20130003107 (PD201200891)

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)