

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200989
BOARD DATE: 20130118

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030505

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SPC/E-4 (91W10/Medical Specialist), medically separated for chronic right knee pain status post (s/p) anterior cruciate ligament (ACL) reconstruction. In February 2000 the CI injured her right knee during basic training. She had immediate swelling and pain. A magnetic resonance imaging (MRI) study was performed in April 2000, which revealed a slight meniscal tear. She was treated with activity modification, physical therapy and nonsteroidal anti-inflammatory drugs (NSAIDs). The CI continued to have right knee pain and swelling and in September 2001 her knee gave out after a jumping exercise. A repeat MRI revealed an effusion, medial meniscal tear, complete ACL tear, and a medial collateral ligament (MCL) tear. In October 2001 she underwent surgery to reconstruct her right ACL and repair the medial meniscus; excision of a prepatellar lipoma was also accomplished. The CI continued to have right knee swelling and pain despite post-operative conservative management. The right knee condition could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded s/p right ACL and medial meniscal tear repair to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the right knee condition as unfitting, rated 0% with cited application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: "I was injured LOD and had 3 knee surgeries from 2001 to 2009. I have arthritis and have been told I will need a knee replacement in the future."

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 20030206			VA (7 years Post-Separation) – All Effective Date 20091118			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Rt Knee Pain S/P Anterior Cruciate Ligament Reconstruction	5099-5003	0%	Traumatic Arthritis Rt Knee	5010-5260	10%	20100309
↓ No Additional MEB/PEB Entries ↓			0% X 0 / Not Service-Connected x 0			20100309

ANALYSIS SUMMARY. The Board acknowledges the sentiment expressed in the CI's application, that the gravity of her condition and predictable consequences merit consideration for a higher service disability rating. 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.

Right Knee Condition. The narrative summary (NARSUM) examiner, 5 months prior to separation, reported that the CI experienced swelling and occasional giving way of the knee. The condition was aggravated by the first steps in the morning, temperature change, kneeling and prolonged standing or sitting. Ascending or descending stairs caused pain, and she could not perform heavy lifting or running. Physical examination revealed a right quadriceps muscle measurement 1.5 centimeters (0.6 inches) less than the normal left side. There was no effusion. Medial and lateral joint line tenderness was present. Range-of-motion (ROM) measurement showed flexion of 130 degrees (normal to 140 degrees) and extension of 0 degrees (normal 0 degrees). Two examination findings suggested ACL instability; while a third test (Lachman) was equivocal. There was no medial or lateral instability. At the MEB exam 5 months prior to separation, the CI reported continued swelling, stiffness, and pain in the right knee. She used a knee sleeve. The physical exam noted mild tenderness to palpation of the medial right knee with 4/5 strength. Although 27 months remote from separation, an orthopedist stated (20 July 2005) that the CI "has done pretty well, but the knee has been clicking" since her surgery in 2001. Although the ACL graft appeared to be well functioning by physical examination ("solid Lachman"), at arthroscopy the following month debridement of a partial ACL tear was required. The Board directs attention to its rating recommendation based on the above evidence. The Board first considered the PEB's rating of 0% under the analogous 5003 code (degenerative arthritis). The PEB's DA Form 199 reflected application of the USAPDA pain policy, citing "slight/occasional" pain in support of its 0% rating. However, given that a single major joint was involved with a noncompensable loss of ROM and objective findings of joint pain with pressure and manipulation, a higher rating of 10% can be achieved under this code IAW VASRD §4.71a and § 4.59 (painful motion). The Board agreed that rating under 5258 (Cartilage, semilunar, dislocated, with frequent episodes of "locking," pain, and effusion into the joint) was not justified, and that rating under the 5259 code (Cartilage, semilunar, removal of, symptomatic; maximum rating 10%) provided no additional benefit to the CI. However, the Board also debated if additional rating for instability was warranted under the 5257 code given the history of ACL injury, subjective complaints of occasional "giving way" and physical examination findings by the NARSUM examiner of possible ACL insufficiency. The Board considered that the only reported symptom that could indicate instability (giving way) was "occasional," and that examination findings of instability by the NARSUM were not consistent. Furthermore, although the next orthopedic evaluation was 27 months after separation, the CI reported that the persistent symptom since the time of surgery was "clicking," which is not a symptom of instability. The Board therefore concluded that additional rating under the 5257 code was not justified. After due deliberation, considering all of the evidence and mindful of

VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the chronic right knee pain status post anterior cruciate ligament reconstruction condition.

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 the chronic right knee pain condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic right knee pain condition, the Board unanimously recommends a disability rating of 10%, coded 5099-5003 IAW VASRD §4.71a and §4.59. 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 her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Right Knee Pain Status Post Anterior Cruciate Ligament Reconstruction	5099-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120630, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX, DAF
Acting 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, AR20130003124 (PD201200989)

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

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)