

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1201007
BOARD DATE: 20130129

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030617

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Specialist/E-4 (31R1O/Multichannel Transmission Systems Operator Maintainer), medically separated for chronic right knee pain with findings of an osteochondral defect of the lateral femoral condyle after arthroscopic loose body removal. The CI injured his right knee playing football for unit physical training in January 2002. After imaging disclosed abnormalities, arthroscopic surgery was done in May 2002, and a loose body was excised. Despite subsequent physical therapy (PT), the CI had persistent pain. The CI could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. In November 2002, the CI was issued a permanent P3 profile and referred for an MOS/Medical Retention Board (MMRB). The MMRB resulted in the CI being referred to the Medical Evaluation Board (MEB). The MEB also identified and forwarded low back pain (LBP), vision defect, pes planus, occasional headaches and acne, identified in the rating chart below, as meeting retention standards. The PEB adjudicated the chronic right knee pain with findings of an osteochondral defect of the lateral femoral condyle after arthroscopic loose body removal condition as unfitting, rated 0%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting and not ratable. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: "My injury was with my right knee and back, and my right knee injury is why the medical board found me unfit to continue service after the Army tried knee surgery. When my VA rating of 10% came through, it was for my lower back which I also had issues with. I recieved (*sic*) 0 percent for my right knee, yet this was the reason I was found unfit for duty. For this reason I'd like my case reevaluated."

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 requested by the CI. Ratings for unfitting conditions are reviewed in all cases. The low back condition as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below, in addition to a review of the ratings for the unfitting condition. 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 respective service Board for Correction of Military Records.

RATING COMPARISON:

Service IPEB – Dated 20030411			VA (# Mos. Pre/Post-Separation) – All Effective Date 20030618			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Right Knee Pain	5099-5003	0%	Right Knee Osteochondritis Dissecans	5260	0%	20030610
Low Back Pain	Not Unfitting		Low Back Strain	5295	10%	20030610
Vision Defect	Not Unfitting		No VA Entry			
Pes Planus	Not Unfitting		Pes Planus	5276	NSC	20030610
Occasional Headaches	Not Unfitting		Headaches	8199-8100	NSC	20030610
Acne	Not Unfitting		Acne	7828	0%	20030610
↓ No Additional MEB/PEB Entries ↓			0% X 3* / Not Service-Connected x 4* (*Includes Above)			
Combined: 0%			Combined: 10%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding his service-incurred condition rating and his VA rating. 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 evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board also acknowledges the CI’s contention suggesting that ratings should have been conferred for other conditions documented at the time of separation. 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.

Chronic Right Knee Pain Condition. The narrative summary (NARSUM) notes the CI injured his right knee in January 2002. He continued to have persistent pain and swelling. X-rays and magnetic resonance imaging (MRI) confirmed the presence of an osteochondral defect of the lateral femoral condyle with a bony fragment. He underwent arthroscopic surgery May 2002 with a loose body excision. The CI continued to report right knee pain and was placed on a P3 profile. At the MEB exam 3 months prior to separation, the CI reported persistent right knee pain and swelling with activity. The MEB physical exam of the right knee noted tenderness to palpation in the peripatellar area, a positive grind test, extension of 0 degrees (normal 0 degrees) and flexion to 130 degrees (normal 140 degrees). At the VA Compensation and Pension (C&P) exam; at the time of separation, the CI reported persistent pain and swelling of the right knee. Examination revealed a normal gait. The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the right knee pain at 0% under an analogous 5003 code (degenerative arthritis), while the VA rated the condition at 0%, coded 5260, for non-compensable limitation of range-of-motion (ROM). The MEB examination meets the criteria for 10% for painful motion IAW VASRD §4.59. There is no route to a rating higher than 10% and no coexistent pathology which would merit additional rating for the knee pain

condition under a separate code at the time of separation. 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 condition.

Contended PEB Condition. The Board's main charge is to assess the fairness of the PEB's determination that the LBP condition was not unfitting. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. The LBP condition was not profiled or implicated in the commander's statement and was not judged to fail retention standards. All evidence was reviewed by the action officer and considered by the Board. The service treatment records (STRs) documented that the CI only sought medical attention for the LBP condition at the initial onset of pain in 2002. There was no performance based evidence from the record that the LBP 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 contended LBP condition and so no additional disability rating is 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. 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 chronic right knee pain condition, the Board unanimously recommends a disability rating of 10%, coded 5099-5003 IAW VASRD §4.71a and §4.59. In the matter of the contended LBP condition, the Board unanimously recommends no change from the PEB determinations 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 her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Right Knee Pain	5099-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120614, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF
Acting 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 XXXXXXXXXXXXXXXXXXXX, AR20130003084 (PD201201007)

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

XXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)