

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:XXXXXXXXXXXXX
CASE NUMBER: PD1201109
BOARD DATE: 20130208

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20031215

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92G/Food Service Specialist), medically separated for chronic bilateral knee pain. The CI developed knee pain in 1996 which was aggravated after running or prolonged weight bearing. The chronic bilateral knee pain condition did not improve adequately to meet the physical requirements of her Military Occupational Specialty or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB) which found the bilateral knee pain to be medically unacceptable. The bilateral knee pain was the sole condition forwarded by the MEB to the Physical Evaluation Board (PEB) for adjudication. The PEB adjudicated the chronic bilateral knee pain 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.

CI CONTENTION: "While on active duty, I was in non-deployable status due to various medical conditions. I was not allowed to wear any gear to keep added weight from further damaging my joints. I had a permanent profile that stated that I could not do push-ups due to problems with my left wrist, and that I was to walk at my own pace. In addition, I was not allowed to stand for extended periods of time and I was to eat every two hours to control (con't) low blood sugar levels. The medical conditions diagnosed while I was on active duty have worsened, and some new conditions have been diagnosed. I still can't jump or run and in order to avoid stiff joints, I have to constantly stand up, sit and move around in equal amounts throughout the day. The condition with my hips has gotten worse. A recent MRI (May 2012) showed degeneration of the hips and fluid in one hip. They are extremely painful, and the pain affects my overall quality of life. In addition, both wrists become so painful that I can't open jars and bottles, and I'm unable to lift heavy objects. My knees are also extremely painful. All affected joints swell and limit my range of motion. In the last year, I started to experience the migraine headaches I was experiencing while on active duty. I also have been diagnosed with cysts in the left sinus cavity, left wrists, and more recently, in my left ovary. The situation with my ovary caused heavy bleeding and irregular and painful menstrual periods. I'm in the process of being seen by an OB-GYN for a determination on how best to address the latter medical condition."

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 other requested conditions are not within the Board's purview. 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 service Board for Correction of Military Records.

RATING COMPARISON:

| Service IPEB – Dated 20031104 | | | VA (4 Mos. Post-Separation) – All Effective Date 20031216 | | | |
|---------------------------------|-----------|--------|---|------|--------|----------|
| Condition | Code | Rating | Condition | Code | Rating | Exam |
| Chronic Bilateral Knee Pain | 5099-5003 | 0% | Left Knee Condition | 5260 | 10% | 20040413 |
| | | | Right Knee Condition | 5260 | 10% | 20040413 |
| | | | Left Wrist Tendinitis | 5215 | 10% | 20040413 |
| | | | Not Service-Connected x 5 | | | 20040413 |
| ↓No Additional MEB/PEB Entries↓ | | | | | | |
| Combined: 0% | | | Combined: 30% | | | |

ANALYSIS SUMMARY: The PEB combined the right and left knees conditions as the single unfitting condition and rated the chronic bilateral knee pain at 0%, using code 5099-5003. However, the Board must apply separate codes and ratings in its recommendations, if compensable ratings for each condition are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each unbundled condition was unfitting in and of itself. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting and that there was no need for separate fitness adjudications, rather than a judgment that each condition was independently unfitting. Thus the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its recommendation; as summarized in the chart below.

| Knee ROM | MEB ~2 Mos. Pre-Sep | | VA C&P ~4 Mos. Post-Sep | |
|-----------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| | Left | Right | Left | Right |
| Flexion (140° Normal) | 140° | 140° | 140° | 140° |
| Extension (0° Normal) | 0° | 0° | 0° | 0° |
| Comment | No instability or pain on motion | No instability or pain on motion | No instability or pain on motion | No instability or pain on motion |
| §4.71a Rating | 0% | 0% | 0% | 0% |

Left Knee Pain: The Board first considered if the left knee pain, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. The CI received profiles for both the knees to limit running, jumping, crawling. The CI's commander wrote, in a memorandum dated 30 October 2003, that the CI is incapable of fully performing her duties due to her chronic knee pain. The commander recommended the CI not be retained because continued military service would risk aggravating her medical condition. At the MEB examination, (2 months prior to separation) the CI had normal ROM. She had no pain with motion, instability or signs of meniscal irritation. She did have some tenderness in the knee and a positive patellar grind test (a non-diagnostic finding). At the VA Compensation and Pension (C&P) evaluation (4 months after separation), the CI had no tenderness or pain with motion. She had no knee instability. The CI's X-rays have demonstrated no abnormalities. In light of essentially normal findings of the left knee, the Board members concluded that the

preponderance of evidence did not show that the left knee pain condition was separately unfitting.

Right Knee Pain: The Board then considered if the right knee pain, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. The history and findings were the same as for the left knee. The Board members concluded that the preponderance of evidence did not show that the right knee pain condition was separately unfitting.

Having concluded that the knees were not separately unfitting, the Board directs attention to its rating recommendation for the sole unfitting condition, chronic bilateral knee pain, based on the above evidence. The PEB rated the bilateral knee condition 0% using the analogous code for degenerative arthritis, 5003. The VA rated each knee separately at 10% for pain using the code 5260, limitation in flexion. The Board noted that both the MEB and C&P examinations were normal as were the X-rays. Painful motion was not documented and the use of VASRD §4.59 is not applicable. The positive patellar grind test is non-specific. There was no instability of the knees. The Board considered the coding options available for the knees and determined that the code 5003 was the best fit as an analogous coding for the bilateral knee pain condition. There were no objective findings to support a higher rating than the 0% awarded by the PEB. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the chronic bilateral knee pain 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. 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 bilateral knee pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board's scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

| UNFITTING CONDITION | VASRD CODE | RATING |
|-----------------------------|-------------------|---------------|
| Chronic Bilateral Knee Pain | 5099-5003 | 0% |
| | COMBINED | 0% |

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

xxxxxxxxxxxxxxxxxxxxxxxxxxxx, DAF
Acting Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for xxxxxxxxxxxxxxxxxxxx, AR20130002988 (PD201201109)

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 and hereby deny the individual's application. This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

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Deputy Assistant Secretary
(Army Review Boards)