

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX  
BRANCH OF SERVICE: ARMY

CASE: PD-2021-00113  
SEPARATION DATE: 20020410

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E4, Utility Equipment Repairer, medically separated for “low back pain” and “right hip and left knee pain,” rated 10% and 0%, respectively, with a combined disability rating of 10%.

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**CI CONTENTION:** Review requested of an additional condition not identified by the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB). The complete submission is at Exhibit A.

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**SCOPE OF REVIEW:** The panel’s scope of review is defined in DoDI 6040.44. It is limited to review of disability ratings assigned to those conditions determined by the PEB to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the MEB, but determined by the PEB to be not unfitting or non-compensable. Any conditions outside the panel’s defined scope of review, and any contention not requested in this application, may remain eligible for future consideration by the Board for Correction of Military Records. The panel’s authority is limited to assessing the fairness and accuracy of PEB rating determinations and recommending corrections when appropriate. The panel gives consideration to VA evidence, particularly within 12 months of separation, but only to the extent that it reasonably reflects the severity of disability at the time of separation.

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**RATING COMPARISON:**

SERVICE PEB - 20011214			VARD - 20021216			
Condition	Code	Rating	Condition	Code	Rating	Exam
Low Back Pain	5299-5295	10%	Lumbosacral Strain w/ Spasm	5295	20%	20020627
Right Hip and Left Knee Pain	5099-5003	0%	Right Hip Strain	5099-5010	10%	20020627
			Patellar Tendinitis, Left Knee	5024	10%	20020627
<b>COMBINED RATING: 10%</b>			<b>COMBINED RATING OF ALL VA CONDITIONS: 40%</b>			

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**ANALYSIS SUMMARY:**

**Low Back Pain (LBP).** According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s low back condition began in 1998 without any specific injury or trauma. An MRI in June 2001 showed a mild broad-based posterior disc bulge with a small central disc protrusion and possible annular tear. The bulge appeared to contact the L-5 nerve roots.

The 29 August 2001 MEB NARSUM examination, 7 months before separation, noted complaints of LBP severe enough to cause difficulty getting out of bed. Physical examination showed limited range of motion (ROM) due to muscle spasm and discomfort, but the CI denied any back tenderness. Straight leg raise testing was negative and reflexes were 1+ on both sides, with normal strength and sensation.

At the 27 June 2002 VA Compensation and Pension (C&P) examination, 3 months after separation, the CI reported low back stiffness and constant aggravating pain, which radiated from the back to both legs. The examiner recorded normal posture and gait, bilateral muscle spasm, and tenderness. Lumbosacral spine forward flexion was to 70 degrees (normal 95), with painful motion and weakness and lack of endurance of the spine.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the low back condition 10%, analogously coded 5299-5295 (lumbosacral strain), citing pain with motion. The VA rated the low back condition 20%, coded 5295, based on the STR and C&P examination, citing muscle spasm on extreme forward bending and unilateral loss of lateral spine motion in a standing position. In accordance with DoDI 6040.44, the panel is required to recommend a rating in accordance with the VASRD in effect at the time of separation. Unlike the current VASRD §4.71a rating standards, numerical ROM values were not a feature of the rating schedule. Panel members agreed that diagnostic code 5295 was applicable in this case, and that a 20% rating was warranted for evidence in both the MEB NARSUM and C&P examinations, which recorded muscle spasms during forward flexion. The panel considered other VASRD spine and analogous codes, but all were less applicable and not advantageous for rating. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 20% for the low back condition, coded 5295.

Right Hip and Left Knee Pain. According to the STR and MEB NARSUM, the CI's right hip pain began in 1998 after a 13-mile road march. In June 2001, hip X-rays were normal. During the MEB NARSUM examination, he complained of right hip pain. The examiner noted right hip snapping with flexion, abduction, and extension, but no tenderness or swelling. At an orthopedic consult the same day, the provider documented mild tenderness at the anterior superior iliac spine, and full right hip ROM with no mention of painful motion. The diagnosis was right hip flexor tendonitis. At the VA C&P examination, the CI reported "annoying" pain and pressure while walking or running, and "stabbing" pain after walking. Physical examination showed right hip flexion to 60 degrees (normal 125), extension to 30 degrees (normal) and adduction to 25 degrees (normal), with ROM reduced by pain, and hip fatigue and weakness noted.

According to the STR and MEB NARSUM, the CI's left knee pain began during a 4-mile run in 2000. The MEB NARSUM examination noted complaints of left knee, and physical findings showed normal knee strength and sensation with no swelling or masses. The examiner documented "good" left knee ROM and noted negative X-ray results. At the orthopedic consult the same day, the provider recorded full left knee ROM and diagnosed patellar tendonitis. During the VA C&P examination, the CI reported that his left knee locked up at times. Physical examination revealed a stable tibia, no anterior knee tenderness, and negative drawer and McMurray tests. Left knee flexion was from 5-130 degrees, with painful motion and weakness and fatigue.

The panel directed attention to its rating recommendation based on the above evidence. The PEB bundled the right hip and left knee conditions and applied a single 0% rating coded analogously to 5003 (degenerative arthritis), citing the US Army Physical Disability Agency pain policy. The VA rated the right hip condition 10%, analogously coded 5099-5010 (arthritis, due to trauma, substantiated by X-ray findings), based on the STR and C&P examination, citing painful or limited motion of a major joint. The VA rated the left knee condition 10%, coded 5024 (tenosynovitis), based on the STR and C&P examination, citing painful or limited motion of a major joint.

Panel members noted that the right hip and left knee joints were listed separately on the October 2001 permanent profile, and considered separately by the MEB NARSUM examiner

and the MEB. Since undue speculation was required to conclude that impairment from either the right hip or the left knee would not have unacceptably interfered with the performance of military duties, the panel agreed that each condition was reasonably justified as separately unfitting. Accordingly, a separate disability rating is recommended for the right hip and for the left knee.

For the right hip condition, while there was no compensable limitation of extension or flexion under codes 5251 or 5252, there was evidence of painful motion with functional loss supporting a 10% rating (based on §4.59, §4.40 and §4.45). The panel considered other VASRD hip and analogous codes, but all were less applicable and not advantageous for rating. For the left knee condition, while there was no compensable limitation of flexion or extension under codes 5260 or 5261, there was evidence of painful motion with functional loss supporting a 10% rating (based on §4.59, §4.40 and §4.45). The panel considered other VASRD knee and analogous codes, but all were less applicable and not advantageous for rating. After due deliberation, considering all the evidence, the panel majority recommends an unfit determination and a disability rating of 10% for the right hip condition, coded 5252; and an unfit determination with a disability rating of 10% for the left knee condition, coded 5260.

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**BOARD FINDINGS:** In the matter of the low back condition, the panel recommends a disability rating of 20%, coded 5295 IAW VASRD §4.71a. In the matter of the bundled right hip and left knee conditions, the panel recommends a separately unfitting right hip condition with a disability rating of 10%, coded 5252 IAW VASRD §4.71a; and a separately unfitting left knee condition, with a disability rating of 10%, coded 5260 IAW VASRD §4.71a. The single voter for dissent recommends a separately unfitting left knee condition with a disability rating of 0%, and did not elect to submit a minority opinion. There are no other conditions within the panel's scope of review for consideration.

The panel recommends the CI's prior determination be modified as follows; and, that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective the date of medical separation:

<b>CONDITION</b>	<b>VASRD CODE</b>	<b>PERMANENT RATING</b>
Low Back Pain	5295	20%
Right Hip Pain	5252	10%
Left Knee Pain	5260	10%
	<b>COMBINED</b>	<b>40%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20210831, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20230004229, XXXXXXXXXX

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Dear XXXXXXXX:

I accept the recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) to re-characterize your separation as a permanent disability retirement with the combined disability rating of 40% effective the date of your medical separation for disability with severance pay. Enclosed is a copy of the Board's recommendation and record of proceedings for your information.

The re-characterization of your separation as a permanent disability retirement will result in an adjustment to your pay providing retirement pay from the date of your original medical separation minus the amount of severance pay you were previously paid at separation.

The accepted DoD PDBR recommendation has been forwarded to the Army Physical Disability Agency for required correction of records and then to the U.S. Defense Finance and Accounting Service to make the necessary adjustment to your pay and allowances. These agencies will provide you with official notification by mail as soon as the directed corrections have been made and will provide information on your retirement benefits. Due to the large number of cases in process, please be advised that it may be several months before you receive notification that the corrections are completed and pay adjusted. Inquiry concerning your correction of records should be addressed to the U.S. Army Physical Disability Agency, 1835 Army Boulevard, Building 2000, JBSA, Fort Sam Houston, TX 78234.