RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2022-00055
SEPARATION DATE: 20091010

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E3, Infantryman, medically separated for "left knee impairment with recurrent instability post anterior cruciate ligament [ACL] reconstruction (and meniscal tear repair)" with a disability rating of 20%.

CI CONTENTION: The VA provided a higher rating for the left knee condition. The CI also requested review of additional conditions not identified by the Medical Evaluation Board (MEB) and/or Physical Evaluation Board (PEB). The complete submission is at Exhibit A.

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.

RATING COMPARISON:

SERVICE PEB - 20090807			VARD – 20120109 (Decision Review Officer)			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Left Knee Impairment w/ Recurrent Instability Post ACL Reconstruction (and Medial Meniscal Tear Repair)	5257	20%	Left Knee Sprain, Status Post (SP) ACL Surgery and Medial Meniscus Tear (Also Claiming Instability)	5260	10%	20100331
COMBINED RATING: 20%			**COMBINED RATING OF ALL VA CONDITIONS: 30%**			

ANALYSIS SUMMARY:

Left Knee Impairment with Recurrent Instability. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI underwent a left knee ACL reconstruction (with hamstring allograft) and medial meniscus repair in August 2008. In February 2009, he required another arthroscopy after re-injuring the same knee, and the surgeon found an intact, but attenuated (lax) ACL graft, and no new meniscal injuries. At an orthopedic follow-up on 2 March 2009, the surgeon noted an abnormal degree of laxity as well as a significant left knee effusion that made Lachman testing difficult. Two days later, the CI reported reinjuring his left knee. At an orthopedic visit on 21 April 2009, the surgeon noted a positive anterior drawer sign and one plane instability with Lachman testing. During a physical therapy (PT) visit on 30 April 2009, the therapist found a positive Lachman sign and anterior drawer test with 2+ laxity.

The CI was scheduled for an ACL revision repair, but at the orthopedic pre-operation consult on 12 May 2009, he declined the surgery after learning it would likely require a year or more of rehabilitation without guarantee of return to full duty. He reported continued left knee pain with a deep patellar ache that worsened when going up stairs. Physical findings showed normal motion without pain, but the orthopedic surgeon did note a positive anterior drawer sign as well as anterior instability during Lachman testing.

At the May/July 2009 MEB examinations (recorded on DD Forms 2807-1 and 2808), 5 and 3 months prior to separation, the CI reported left knee pain with swelling, giving out, and buckling. He wore a brace for stability and stated that the knee was "painful to get around on." Physical examination showed a positive anterior drawer sign, pain on light palpation, subluxation of the patella, and positive anteromedial swelling. At a PT visit on 26 June 2009, the examiner noted a positive Lachman test as well as anterior drawer with 2+ laxity.

The 2 July 2009 MEB NARSUM examination, 3 months before separation, noted CI complaints of achy, throbbing left knee pain (rated at 6/10) that radiated into the thigh and lower leg. He also had sharp pain under the kneecap with 2-3 daily flare-ups. The pain improved with rest and use of a transcutaneous electrical nerve stimulation (TENS) unit, and he wore a knee brace to maintain stability. Physical examination revealed mild left knee swelling along the anterior-medial aspect, with tenderness along the medial and inferior aspects of the patella. There was pain with patellar subluxation, and Lachman testing demonstrated grade 2 (1.0 cm) laxity with a soft endpoint. The anterior drawer test was positive with a laxity of the same magnitude, and the CI had a TENS unit in place. The examiner noted an antalgic gait favoring the left knee, as well as pain-inducing knee ROM from 0-110 degrees (normal 0-140), which was limited by pain after repetition. The examiner diagnosed "left knee instability and pain" and listed this medical condition description on the CI's physical profile the same day.

At the 31 March 2010 VA Compensation and Pension (C&P) examination, 6 months after separation, the CI reported constant aching pain, weakness, stiffness and swelling of the left knee, with instability and giving way. Flares occurred up to 3 times a week, and although he could walk for 2 miles, he had to wear a brace and pace chores. Physical findings showed a normal gait without assistive devices. Measured ROM was from 0-80 degrees after repetition, and tests for instability were normal. The examiner did annotate painful motion and tenderness, but no guarding or crepitus. On the same day, X-ray results indicated "minor abnormality" with residual hardware noted from the previous procedures. Professional credentials indicated the examiner was a nurse practitioner with no additional specialty training annotated.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the left knee condition 20%, coded 5257 (knee, other impairment of: recurrent subluxation or lateral instability), citing moderate instability. The VA rated the left knee condition 10%, coded 5260 (leg, limitation of flexion of:), based on the STR or C&P examination, citing painful or limited motion. Panel members first considered whether the left knee pain (after medial meniscus repair), having been de-coupled from the combined PEB adjudication of knee pain with instability, remained separately unfitting. The panel noted the disparity between the STR and VA examinations and agreed that most of the in-service examinations were performed by specialists in bone and joint disorders (orthopedics and physical therapy), and were closer to separation, and thus warranted greater probative value. Panel members agreed this evidence reasonably justified that the functional limitations of the left knee pain contributed to the CI's inability to perform his military duties, and accordingly a separate disability rating is recommended. While there was no limitation of flexion or extension that supported a rating 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). After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the

panel concluded there was insufficient cause to recommend a change in the PEB adjudication for the left knee instability. The panel recommends a separately unfit determination for the left knee pain with a disability rating of 10% (painful motion), coded 5260.

BOARD FINDINGS: In the matter of the left knee instability and IAW VASRD §4.71a., the panel recommends no change in the PEB adjudication. In the matter of the left knee pain, the panel recommends a separate disability rating of 10% coded 5260 IAW VASRD §4.71a. 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:

CONDITION	VASRD CODE	PERMANENT RATING
Left Knee Instability	5257	20%
Left Knee Pain	5260	10%
	COMBINED	**30%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20220513, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans Affairs Record

AR20230009467, XXXXXXXXXXX

XXXXXXXXXX

Dear XXXXXXXXXX:

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 30% 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 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.

A copy of this decision has also been provided to the Department of Veterans Affairs.