

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2022-00108
SEPARATION DATE: 20070912

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was a Reserve O3, Field Artillery Officer, medically separated for “chronic right knee instability and pain,” and “right peroneal nerve injury with chronic neuropathic pain,” rated 10% each, with a combined disability rating of 20%.

CI CONTENTION: The CI’s counsel attached a 7-page statement arguing for a higher rating. 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 Physical Evaluation Board (PEB) to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the Medical Evaluation Board (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 - 20070621			VARD - 20080310			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Knee Instability and Pain	5257	10%	Arthritis, Right Knee	5260	10%	20070612
Right Peroneal Nerve Injury with Chronic Neuropathic Pain	8521	10%	Nerve Damage, Right Lower Extremity Associated with Scar, Right Knee	8520	10%	20070612
COMBINED RATING: 20%			COMBINED RATING OF ALL VA CONDITIONS: 50%			

ANALYSIS SUMMARY:

Right Knee Instability. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s right knee instability began in August 2004, when he sustained an injury during a physical training exercise. He had reconstructive surgery in September 2004, and post-operatively had a right foot drop and neuropathic pain to the right leg and foot. He subsequently had two more surgeries: a high tibial osteotomy in December 2005, and then an anterior cruciate ligament reconstruction and scar tissue debridement in September 2006.

The 15 March 2007 MEB NARSUM examination, 6 months prior to separation, noted complaints of instability and pain. Physical findings showed lateral joint line tenderness and some crepitus, but no swelling or erythema. There was right quadriceps atrophy compared to the left, and slight laxity to Lachman and varus stress testing, but with a firm end point. Range of motion (ROM) was limited to 90 degrees of flexion (normal 140) and lacked 5 degrees of extension (normal 0).

At the 12 June 2007 VA Compensation and Pension (C&P) examination, 3 months before separation, the CI complained of right knee stiffness and locking. Physical examination showed a stable right knee and ROM from 0-115 degrees after repetition, with pain.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the right knee condition 10%, coded 5257 (knee, other impairment), citing tenderness and “1+ Lachmans” with flexion from 3-140 degrees. The VA rated the right knee condition 10%, coded 5260 (leg,

limitation of flexion), based on the C&P examination, citing leg flexion limited to 45 degrees. Panel members agreed that the laxity noted by the MEB NARSUM examiner warranted a 10% rating, but no higher, for slight recurrent lateral instability or subluxation. There was no compensable limitation flexion or extension (5260 or 5261), and while the panel noted the C&P examiner recorded painful motion, this was subsumed in the peroneal disability rating. The panel considered other VASRD knee and analogous codes, but all were less applicable and not advantageous for rating. There was therefore no higher rating than the 10% adjudicated by the PEB available under any applicable VASRD code. 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 right knee instability.

Right Peroneal Nerve Injury. According to the STR and NARSUM, the CI's right peroneal nerve condition began after the reconstructive knee surgery in September 2004. The MEB NARSUM examination noted complaints of right foot drop and constant right foot neuropathic pain that was unresponsive to treatment. Physical examination revealed intrinsic foot atrophy, most notably of the extensor digitorum brevis, with allodynia and hyperesthesia to the top of the foot. Motor testing was normal except for 4+/5 right supraspinatus strength during right dorsiflexion and 4/5 extensor hallucis longus strength. There was decreased "sensation in the distribution of the deep peroneal greater than superficial peroneal cutaneous nerves," but the remainder of sensory examination was normal with reflexes intact.

At the VA C&P examination, the CI reported numbness over the dorsal right foot. The examiner noted right anterior tibialis/extensor hallucis longus strength at 4/5, but motor testing was otherwise at 5/5. Touch and pin prick revealed "hypoesthesia, hyperalgesia/allodynia over the right dorsal and dorso-lateral foot to just inferior to the lateral malleolus, otherwise normal touch and pin prick testing." The CI had a limp on the right.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the nerve condition 10%, coded 8521 (paralysis of), citing decreased sensation in the distribution of the deep peroneal nerve, and noting that the rating for pain was "included in the rating for the peroneal nerve." The VA also rated the nerve condition 10%, coded 8520 (paralysis of), based on the C&P examination, citing incomplete, mild paralysis below the knee. Panel members agreed that a 10%, but no higher, was justified for mild symptoms manifested by mild sensory changes and slight decrease in motor strength. The higher 20% rating for moderate disability was not supported based on the absence of significant muscle weakness. The CI used no ambulatory aids, had a functional gait, and was able to perform activities of daily living independently. While the NARSUM and C&P examinations documented right foot and leg muscle atrophy, extensor hallucis longus motor strength was only slightly decreased (4/5), and all other test results were normal. There was no evidence of significant loss of motor function or loss of toe or foot use. 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 rating recommendation based on the above evidence.

BOARD FINDINGS: In the matter of the right knee instability and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. In the matter of the right peroneal nerve injury and IAW VASRD §4.124a, the panel recommends no change in the PEB adjudication. There are no other conditions within the panel's scope of review for consideration. Therefore, the panel recommends no modification or re-characterization of the CI's disability and separation determination.

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20220907, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record



DEPARTMENT OF THE ARMY ARMY
REVIEW BOARDS AGENCY 25118TH STREET
SOUTH, SUITE 385 ARLINGTON, VA 22202-3531

AR20230008316, XXXXXXXXXXXXXXX

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Dear XXXXXXXXXXXXXXX:

The Department of Defense Physical Disability Board of Review (DoD PDBR) reviewed your application and found that your disability rating should be modified but not to the degree that would justify changing your separation for disability with severance pay to a permanent retirement with disability. I have reviewed the Board's recommendation and record of proceedings (copy enclosed) and I accept its recommendation. This will not result in any change to your separation document or the amount of severance pay. A copy of this decision will be filed with your Physical Evaluation Board records. I regret that the facts of the case did not provide you with the outcome you may have desired.

This decision is final. Recourse within the Department of Defense or the Department of the Army is exhausted; however, you have the option to seek relief by filing suit in a court of appropriate jurisdiction.

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



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