

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
BRANCH OF SERVICE: ARMY

CASE: PD-2023-00006
SEPARATION DATE: 20070420

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was a National Guard E5, Automated Logistical Specialist, medically separated for "chronic neck pain," "chronic bilateral knee pain," and "chronic low back pain," rated 10%, 10%, and 0% respectively, with a combined disability rating of 20%.

CI CONTENTION: No specific contention was made. 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 - 20070315			VARD - 20080512			
Condition	Code	Rating	Condition	Code	Rating	Exam
Neck Pain	5237	10%	Degenerative Disc Disease, Cervical Spine	5242	20%	STR
Bilateral Knee Pain	5099-5003	10%	Patella Femoral Syndrome, Right Knee	5260	10%	STR
			Patella Femoral Syndrome, Left Knee	5260	10%	STR
Low Back Pain	5237	0%	Mechanical Back Syndrome, Lumbar Spine	5237	10%	STR
COMBINED RATING: 20%			COMBINED RATING OF ALL VA CONDITIONS: 40%			

ANALYSIS SUMMARY:

Neck Pain. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI's neck condition manifested while deployed to Iraq in 2004-2005. An MRI showed partially degenerated discs at C4-5 and CS-6 levels with either mild spondylosis and/or mild disc bulging, but no cord compression and mild facet disease.

At the 3 November 2006 MEB NARSUM examination, 5 months prior to separation, the CI complained of 7/10 neck pain that occasionally radiated into his shoulders. Physical examination showed painful neck motion and tenderness throughout the cervical spine. Range of motion (ROM) measurements by physical therapy (PT) on 13 December 2006, showed flexion of 30

Controlled by: DAF
 Controlled by: SAF/MRBD
 CUI Categories: SP-ML/SP-PRVCY
 Limited Dissemination Control: N/A
 POC: SAF.MRBD.Workflow@us.af.mil

degrees (normal 45) and combined ROM of 200 degrees (normal 340) limited by pain. An inclinometer was used for flexion and extension, and a goniometer for rotation and lateral flexion. There was no VA examination proximate to separation in evidence.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the neck condition 10%, coded 5237 (cervical spine strain), citing flexion of 50 degrees and extension of 34 degrees. The VA rated the neck condition 20%, coded 5242 (degenerative arthritis of the spine), based on the STR, citing residual limitation of motion. The panel agreed that a 20% rating, but no higher, was justified for limitation of flexion (greater than 15 degrees but not greater than 30 degrees), as reported on the PT ROM examination. There were no additional ROM measurements in the STR for comparison. There was no documentation of intervertebral disc syndrome (IVDS) with incapacitating episodes which would provide for a higher rating under that formula. 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 neck condition, coded 5237.

Bilateral Knee Pain. According to the STR and MEB NARSUM, the CI's bilateral knee conditions began while deployed to Iraq. The PEB combined the right and left knee conditions under a single disability rating, coded analogously to 5003 and rated 10% with application of the USAPDA pain policy AR 635-40 B24.f. The panel noted that "bundling," the combining of two or more major joints, may be permissible under the VASRD 5003 rating requirements, and that this approach does not compromise the VASRD §4.7 directive to choose the higher of two valid ratings. The panel's initial charge in this case was therefore directed at determining if combining conditions under a single rating was justified in lieu of separate ratings. When considering a separate rating for each condition, the panel considers each bundled condition to be reasonably justified as separately unfitting unless a preponderance of evidence indicates the condition would not cause the member to be referred into the DES or be found unfit because of physical disability. When the panel recommends separate fitness recommendations in this circumstance, its recommendations may not produce a lower combined rating than that adjudicated by the PEB. In this case, both knees were considered to fail retention standards. They were implicated by the NARSUM and the commander's statement, and both were profiled. The panel concluded there was not a preponderance of evidence in the service records which overcame the presumption that the bundled knee conditions were reasonably considered separately unfitting. The panel then considered its rating recommendation for the unfitting knee conditions at the time of separation. The MEB NARSUM examination noted complaints of 6/10 patellar knee pain. The CI could flex to 124 degrees on the right, and 121 degrees on the left (normal 140). He could also extend to 0 degrees on the right, and -1 degrees on the left (normal 0).

The panel directed attention to its rating recommendation based on the above evidence. As noted previously, the PEB combined the right and left knee conditions under a single disability rating, coded analogously to 5003 and rated 10%. The VA rated the left and right knee conditions 10% each, coded 5260 (leg, limitation of flexion), based on the STR, citing painful motion. Panel members considered that the objective findings and associated disability for each knee were nearly identical, and agreed with the VA that the respective ratings should therefore be the same. The panel concluded that there was sufficient evidence of painful motion and functional loss to support a 10% rating for each knee IAW §4.40 and §4.59. In considering higher ratings the panel noted there was no limitation of motion which attained a higher rating under the diagnostic codes for limitation of flexion (5260) or extension (5261). There was no history or evidence of dislocated meniscus or loose body causing frequent locking with recurrent effusions (5258) to support higher ratings under that code. There was no fracture, nonunion or malunion of the femur or tibia to support consideration under the respective codes for knee impairment related to long bone conditions (5255, 5262). After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 10% for the left knee, and 10% for the right knee, both coded 5260.

Low Back Pain. According to the STR and MEB NARSUM, the CI's back condition began in 1998 After a motor vehicle accident. The MEB NARSUM noted complaints of 6/10 pain in the lower back that occasionally radiated into the buttock and thigh bilaterally. Physical examination showed no gross abnormalities and no tenderness. Thoracolumbar ROM measurements performed by PT on 13 December 2006, showed flexion of 65 degrees (normal 90) and combined ROM of 210 degrees (normal 240) after repetition, associated with painful motion.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the back condition 0%, coded 5237 (lumbosacral strain), citing flexion of 63 degrees and extension of 24 degrees, limited by pain. The VA rated the back condition 10%, coded 5237, based on the STR, citing limitation of motion. The panel agreed that a 10% rating, but no higher, was justified for limitation of flexion (greater than 60 degrees but not greater than 85 degrees) and combined ROM (greater than 120 degrees but not greater than 235 degrees), as reported on the PT ROM examination. There were no additional ROM measurements in the STR for comparison. There was no muscle spasm or guarding severe enough to result in an abnormal gait or spinal contour, thus the next higher 20% rating was not justified on this basis. There was no documentation of IVDS with incapacitating episodes which would provide for a higher rating under that formula. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 10% for the back condition, coded 5237.

BOARD FINDINGS: In the matter of the neck condition, the panel recommends a disability rating of 20%, coded 5237 IAW VASRD §4.71a. In the matter of the bilateral knee conditions, the panel recommends that each joint be separately adjudicated as follows: an unfitting right knee condition coded 5260 and rated 10%, and an unfitting left knee condition coded 5260 and rated 10%, both IAW VASRD §4.71a. In the matter of the back condition, the panel recommends a disability rating of 10%, coded 5237 IAW VASRD §4.71a. There are no other conditions within the panel's scope of review for consideration. Therefore, 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
Neck Pain	5237	20%
Left Knee Pain	5260	10%
Right Knee Pain	5260	10%
Low Back Pain	5237	10%
	COMBINED	40%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20230103, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record



DEPARTMENT OF THE ARMY
ARMY REVIEW BOARDS AGENCY
251 18TH STREET SOUTH, SUITE 385
ARLINGTON, VA 22202-3531

AR20230007849,

Dear

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 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.

Sincerely,

Enclosure



DEPARTMENT OF THE ARMY
ARMY REVIEW BOARDS AGENCY
251 18TH STREET SOUTH, SUITE 385
ARLINGTON, VA 22202-3531

SAMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency (AHRC-DO),
1835 Army Boulevard, Building 2000, JBSA, Fort Sam Houston, TX 78234

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for , AR20230007849 (PD-2023-00006)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to re-characterize the individual's separation as a permanent disability retirement with the combined disability rating of 40% effective the date of the individual's original medical separation for disability with severance pay.

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:

a. Providing a correction to the individual's separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 40% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

SAMR-RB

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for AR20230007849 (PD-2023-00006)

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:

Enclosure