

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX  
BRANCH OF SERVICE: ARMY

CASE: PD-2024-00010  
SEPARATION DATE: 20060714

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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, Human Resources Specialist, medically separated for “neck pain,” “low back pain,” and “chronic pain, right knee and left elbow” rated 10%, 10%, and 0%, respectively, with a combined disability rating of 20%.

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**CI CONTENTION:** He was given a higher rating by the VA for his injuries. 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 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.

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**RATING COMPARISON:**

SERVICE PEB – 20060607			VARD - 20071204			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Neck Pain	5299-5237	10%	Cervical Spine Spondylosis	5237	10%	20070601
Chronic Low Back Pain	5299-5242	10%	Lumbar Thoracic Spine	5238	20%	20070601
Chronic Pain, Right Knee & Left Elbow	5299- 5003	0%	Right Knee Arthritis	5010	10%	20070601
			Left Elbow Bursitis	5299-5213	10%	20070601
<b>COMBINED RATING: 20%</b>			<b>COMBINED RATING OF ALL VA CONDITIONS: 50%</b>			

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**ANALYSIS SUMMARY:**

**Neck Pain.** According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s neck condition began in Aug 2003 after a bad parachute landing during Airborne training. A cervical spine MRI in August 2004 showed diffuse cervical spondylosis and facet arthropathy, as well as a broad-based left paracentral disc bulge at C6-7 compromising the left C7 nerve root and foramen. An MRI in April 2006 revealed a small focus of increased signal in the cord just below the C1 level which may have been artifactual.

During the 17 May 2006 MEB NARSUM examination, 2 months prior to separation, the CI complained of neck pain. Physical examination showed pain to palpation, reduced range of motion (ROM), and no masses. Cervical spine ROM measurements performed by physical

therapy (PT) on 9 May 2006, showed flexion to 30 degrees (normal 45) and a combined ROM of 275 degrees (normal 340), as well as associated painful motion.

At the 1 June 2007 VA Compensation and Pension (C&P) examination, 11 months after separation, the CI described his neck pain as tightness with dull pain sharpened by movements. Physical findings revealed tenderness with no spasm, and normal posture and gait. After repetition, cervical spine flexion was to 45 degrees with a combined ROM of 260 degrees; painful motion was recorded in all planes except flexion.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the neck condition 10%, analogously coded 5299-5237 (cervical spine strain), citing pain limited ROM and tenderness. The VA also rated the neck condition 10%, coded 5237, based on the C&P examination, citing pain on motion and tenderness. Although there was insufficient limitation of cervical spine motion for a compensable rating, panel members agreed a 10% rating was justified for the presence of painful motion and tenderness. 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 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 concluded there was insufficient cause to recommend a change in the PEB adjudication for the neck condition.

Low Back Pain. According to the STR and MEB NARSUM, the CI's low back condition began in September 2003. In August 2004, an MRI noted some mild thoracic spondylosis and facet arthropathy, with no central or foramen stenosis. In April 2006, an MRI showed bilateral neural canal narrowing at L3-4 secondary to ligamentous and facet hypertrophy, and mild disc bulging and bilateral neural canal narrowing at L4-5. At L5-S1, there were bilateral pars defects without listhesis, disc bulging and bilateral neural canal narrowing (right greater than left), and what appeared to be a conjoined nerve root on the right.

The MEB NARSUM examination noted CI complaints of low back pain, and the examiner documented pain on palpation. Thoracolumbar ROM measured by during the 9 May 2006 PT examination showed flexion of 90 degrees (normal) and combined ROM of 200 degrees (normal 240), with associated painful motion.

At the VA C&P examination, the CI reported constant, dull low back pain with stiffness. The examiner recorded painful motion and spasm, but noted the muscle spasm was not severe enough "to be responsible for abnormal gait or abnormal spinal contour." Thoracolumbar ROM measurements showed flexion to 60 degrees and a combined ROM of 145 degrees, after repetition and with painful motion.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the low back condition 10%, analogously coded 5299-5242 (degenerative arthritis of the spine), citing pain limited ROM and tenderness. The VA rated the low back condition 20%, coded 5238 (spinal stenosis), based on the C&P examination, citing muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis. Panel members agreed that the MEB NARSUM examination, 2 months before separation, carried the greatest probative value for rating at separation since the VA C&P examination was completed 11 months after separation. Thus, the panel determined that a 10% rating, but no higher, was justified for limitation of combined ROM (greater than 120 degrees but not greater than 235 degrees), as reported on the MEB NARSUM. 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 concluded there was insufficient cause to recommend a change in the PEB adjudication for the low back condition.

Right Knee: According to the STR and MEB NARSUM, the CI's right knee condition began in July 2005 when he slipped on some gravel. In February 2006, an MRI revealed an extensive tear on the posterior horn and body extending into the anterior horn of the medial meniscus. There was bone bruising or bone marrow edema involving the medial tibial plateau, as well as effusion. There was also degenerative arthritis involving the medial compartment of the knee. The CI had several duty restrictions and limitations due to his medical conditions noted by his commander and had a permanent profile for his knee and back issued in January 2006.

The panel first considered if the right knee condition, having been de-coupled from the combined PEB adjudication, remained separately unfitting. Panel members agreed the evidence reasonably justified that the functional limitations of the condition contributed to the CI's inability to perform his military duties, and accordingly a separate disability rating is recommended.

The MEB NARSUM examination showed mild crepitus and pain to palpation. Right knee flexion was to 125 degrees (normal 140) and extension to 0 degrees (normal), with painful motion.

At the VA C&P examination, the CI reported moderate pain, and the examiner documented tenderness and painful movement, but a normal gait. Right knee ROM following repetitive motion showed flexion to 120 degrees and extension to degrees.

The panel directed attention to its rating recommendation based on the above evidence. The PEB bundled the right knee condition with the left elbow condition and applied a single 0% rating, analogously coded 5299-5003 (degenerative arthritis) and citing the US Army Physical Disability Agency pain policy. The VA rated the right knee condition 10%, coded 5010 (traumatic arthritis), based on the C&P examination, citing painful or limited motion of a major joint or group of minor joints. While there was no limitation of flexion or extension to support a rating under VASRD diagnostic 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, and considering all the evidence, the panel recommends a separately unfitting determination with a disability rating of 10% for the right knee condition, coded 5010.

Left Elbow: According to the STR and MEB NARSUM, the CI's left elbow (non-dominant) condition also began in July 2005. Clinical evaluation indicated chronic bursitis aggravated by repetitive motion. In March 2006, an MRI showed no abnormal anterior or posterior fat pad, and no osseous abnormality consistent with acute fracture or dislocation. The CI had several duty restrictions and limitations due to his medical conditions noted by his commander. As discussed above, the PEB bundled the right knee and left elbow conditions, and panel members agreed the evidence reasonably justified that the functional limitations of the elbow contributed to the CI's inability to perform his military duties, and accordingly a separate disability rating is recommended.

During the MEB NARSUM examination, the CI reported elbow pain rated at 7/10, despite numerous medications. Left elbow flexion was to 135 degrees (normal 145) and extension to 0 degrees (normal), with pain.

At the VA C&P examination, the CI reported "on and off" left elbow pain since 2005. Measured ROM revealed flexion to 130 degrees, and extension to 0 degrees, with pain.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the combined condition 0%, citing the US Army Physical Disability Agency pain policy. The VA rated the left elbow condition 10%, analogously coded 5299-5213 (supination and pronation, impairment), based on the C&P examination, citing limitation of supination to 30 degrees or less. Although there was no limited elbow motion to support a compensable rating, 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 recommends a disability rating of 10% for the left elbow condition, coded 5299-5003.

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**BOARD FINDINGS:** In the matter of the neck condition and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. In the matter of the low back condition and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. In the matter of the right knee condition, the panel recommends a disability rating of 10%, coded 5010 IAW VASRD §4.71a. In the matter of the left elbow condition, the panel recommends a disability rating of 10%, coded 5299-5003 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:

<b>CONDITION</b>	<b>VASRD CODE</b>	<b>PERMANENT RATING</b>
Chronic Neck Pain	5299-5237	10%
Chronic Low Back Pain	5299-5242	10%
Chronic Pain, Right Knee	5010	10%
Chronic Pain, Left Elbow	5299-5003	10%
	<b>COMBINED</b>	<b>30%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20240126, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20240010232, 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 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, (AHRC-DO), 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 and to the counsel you listed on your application; XXXXXXXXXX, XXXXXXXXXX LLP,