

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
BRANCH OF SERVICE: ARMY

CASE: PD-2024-00048
SEPARATION DATE: 20081227

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E4, Infantryman, medically separated for "injury to right knee with anterior cruciate ligament (ACL) tear," with a disability rating of 20%.

CI CONTENTION: Requests medical retirement due to mental health condition. 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 - 20081025			VARD - 20090513			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Knee Injury with ACL Tear	5257	20%	S/P Right Knee ACL Repair with Retained Hardware	5260-5010	10%	20090309
Chronic PTSD	Not Unfitting		Post Traumatic Stress Disorder	9411	10%	20090313
COMBINED RATING: 20%			COMBINED RATING OF ALL VA CONDITIONS: 70%			

ANALYSIS SUMMARY:

Right Knee Injury with ACL Tear. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI underwent a right knee ACL reconstruction on 3 August 2007. The 19 August 2007 MEB physical therapy (PT) range of motion (ROM) measurements, 4 months prior to separation, showed right knee flexion of 130 degrees (normal 140) and extension of 0 degrees (normal), after repetition and with associated painful motion. There was no swelling, muscle atrophy, or deformity. The examiner did not address knee stability.

At the 15 September 2008 MEB NARSUM examination, 3 months before separation, the CI complained of right knee pain with twisting, rotating, standing longer than 30 minutes, and navigating stairs. He rated baseline pain at 3-4/10 and could no longer tolerate any exercises involving flexion and extension against resistance. It was painful to swim more than a pool lap and he could no longer run. Physical examination showed no erythema, edema, or warmth.

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

There was soft tissue hypertrophy over the medial aspect of the right knee visible in active extension, and Lachman's testing revealed anterior tibial translation of 6-10mm. There was tenderness over the medial, inferior, and posterior knee. Goniometrically measured right knee ROM, after repetition, was from 0-120 degrees, with painful motion during flexion.

During a 23 October 2008 medical examination (requested by the PEB), 2 months prior to separation, the CI reported wearing a brace 2-3 times a week, predominantly due to pain, but also for instability as well as catching. Physical findings showed no quadriceps atrophy, but there was tenderness especially over the tibial hardware, inferior patella, and superior tibia, without effusion. The examiner documented a Grade 2 Lachman and anterior drawer as well as crepitus with squatting.

On 10 February 2009, during a VA primary care examination, the CI reported "quite a bit" of unresolved right knee pain, which improved with activity and rest. Physical examination showed a bony abnormality along the tibial chin on the left side. Pressure applied to the patella caused pain, and the examiner recorded "full [ROM]" with pain at "approximately 165 to 180 degrees range of motion." At a VA orthopedic examination on 4 March 2009, the CI's gait was normal, and he was able to walk "pretty briskly without any problems at all." The examiner documented no effusion, patellofemoral joint tenderness or crepitus. Lachman's and anterior drawer tests showed 1+ laxity with good endpoint, and ROM was from 0-130 degrees. The right knee was neurovascularly intact distally, with negative Apley's and Thessaly signs. However, the examiner noted palpable proximal and medial tibia hardware that was "really quite painful to touch."

At the 9 March 2009 VA Compensation and Pension (C&P) examination, 2 months after separation, the CI reported right knee pain and stiffness. Physical examination showed tenderness in the line of the ACL ligament, but no swelling, effusion, or laxity. Right knee ROM, following repetition, was from 0-132 degrees, with painful motion.

In May 2009, during a VA telephone consult, the CI reported pain primarily at the ACL graft site and thought he felt a screw coming out. He denied any new injury and reported constant pain rated at 6/10. During another telephone consult in July 2009, he stated he was trying to get on staff with the US Border Patrol. Although the VA C&P office provided him a letter stating he could return to work without restriction, the CI needed to present more documentation regarding his knee condition. On 14 September 2009, the VA orthopedic examiner provided the CI with an assessment for future Border Patrol employment, noting that although he had previous complaints of painful tibia hardware, he was currently asymptomatic, and hardware removal was not indicated. The examiner further stated, "The Practical Exercise Performance Requirements (PEPR) have been reviewed and based on examination and discussion with this patient, I have no reservations of his ability to perform required duties."

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the right knee condition 20%, coded 5257 (other impairment of knee), citing continued knee pain and instability (2+ Lachman and anterior drawer due to ACL laxity) with "consideration of functional loss due to factors such as pain, including pain on repeated use and painful motion, fatigability, incoordination, weakness with repetitive use, and flare ups." The VA rated the right knee condition 10%, dual-coded 5260-5010 (limitation of flexion of leg - arthritis, due to trauma, substantiated by X-ray findings), based on the C&P examination, citing objective evidence of painful and limited right knee motion.

Panel members noted the PEB referenced both pain and instability in its 20% disability rating for the right knee and concluded that dual coding was appropriate for consideration. In accordance with DoDI 6040.44, the panel may not recommend a lower combined rating than that conferred by the PEB. While the MEB NARSUM examination documented 6-10mm of movement during a Lachman's test, and the VA primary care examination reported +1 Lachmans with good endpoint,

the VA C&P examiner noted completely stable ligaments. Also, in September 2009, the VA orthopedic examiner stated the CI was asymptomatic and cleared him to execute the duties of a US Border Patrol agent. Panel members deliberated over the disparity between the MEB and VA right knee instability findings. The panel majority agreed the evidence showed the steady state, long term status of the instability was best described as mild during the months proximate to separation and warranted a 10% rating under code 5257 (knee, other impairment of), along with a 10% rating for evidence of painful motion (based on §4.59), for a combined rating of 20%. However, this provided no benefit to the CI. 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 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 condition.

Contended PEB Condition: Chronic PTSD. The panel's main charge is to assess the fairness of the PEB determination that the contended condition was not unfitting. The condition was not profiled or implicated in the commander's statement, and did not fail retention standards. There was no performance-based evidence from the record that the condition significantly interfered with satisfactory duty performance at separation. After due deliberation, the panel concluded there was insufficient cause to recommend a change in the PEB fitness determination for the contended condition, so no additional disability rating is recommended.

BOARD FINDINGS: In the matter of the right knee condition and IAW VASRD §4.71a, the panel majority recommends no change in the PEB adjudication. In the matter of the contended PTSD, the panel recommends no change from the PEB determination as not unfitting. There are no other conditions within the panel's scope of review for consideration. The single voter for dissent recommends re-characterization and did not elect to submit a minority opinion. 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 20240821, 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

AR20240013334,

Dear

The Department of Defense Physical Disability Board of Review (DoD PDBR) reviewed your application and found your separation disability rating and your separation from the Army for disability with severance pay to be accurate. I have reviewed the Board's recommendation and record of proceedings (copy enclosed), and I accept its recommendation. I regret to inform you that your application to the DoD PDBR is denied.

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.

Sincerely,

Enclosure