RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX
CASE NUMBER: PD1100863
BOARD DATE: 20121127

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20070501

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SFC/E-7 (74D40/Chemical Operations Specialist), medically separated for mood disorder and chronic radiating low back pain. The CI developed chronic back pain in 1998 and increasing depression in 2005. These conditions could not be adequately rehabilitated with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent L3/S3 profile and referred for a Medical Evaluation Board (MEB). Polysubstance abuse, personality disorder, restless leg syndrome, and history of pulmonary embolus/deep vein thrombosis, identified in the rating chart below, were also conditions forwarded as medically acceptable by the MEB. The Physical Evaluation Board (PEB) adjudicated the mood disorder and chronic radiating low back pain conditions as unfitting, rated 10% and 0%, with application of DoDI 1332.39 and the Veteran's Affairs Schedule for Rating Disabilities (VASRD) respectively. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Veteran continues to suffer from physical and mental conditions resulting in initial discharge. Veteran received an award of 80% Disability from the Veterans Affairs for the same and additional conditions."

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) "identified but not determined to be unfitting by the PEB." The ratings for unfitting conditions will be reviewed in all cases. The restless leg syndrome, and history of pulmonary embolus/deep vein thrombosis conditions, as requested for consideration, meet the criteria prescribed in DoDI 6040.44 for Board purview; and are addressed below. Polysubstance abuse and personality disorder are not physical disabilities IAW DoDI 1332.38 and will be discussed no further. Any conditions or contention not requested in this application, or otherwise outside the Board's defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

Service IPEB – Dated 20070208			VA (1 Mo. Pre-Separation) – All Effective Date 20070502			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Mood Disorder	9435	10%	Adjustment Disorder with Mixed	9440	30%*	20070427
Personality Disorder	Not Unfitting					
Chronic Radiating LBP	5299-5237	0%	Lumbar Strain w/ Degenerative Changes	5242	10%**	20070427
History of Pulmonary Embolus/DVT	Not Unfitting		Pulmonary Embolus	6899-6817	30%	20070427
Restless Leg Syndrome	Not Unfitting		Restless Leg Syndrome	8199-8103	10%	20070427
Polysubstance Abuse	Not Unfitting		No VA Entry			
↓No Additional MEB/PEB Entries↓			Right Knee Strain	5299-5024	10%	20070427
			Right Shoulder Strain	5299-5024	10%	20070427
			Hiatal Hernia w/ Pyrosis	7346	10%	20070427
			0% X 7 / Not Service-Connected x 3			20070427
Combined: 10%			**Combined: 70%****			

*increased to 70% effective 20101001; **increased to 20% effective 20081003; ***overall rating increased to 90% effective 20101001. All increases from 20110912 VARD.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However, the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Mood Disorder Condition. The CI developed increasing depression in 2005 related to marital difficulties and her father's suicide. Treatment with three different medication regimens was unsuccessful and she was admitted for inpatient psychiatry treatment, 10-24 May 2006 for increasing depression and acute suicidal ideation after a marital argument. Two subsequent psychiatric hospitalizations occurred 5-11 July 2006, for recurrent suicidal ideation related to marital separation and 12-23 August 2006, for suicidal and homicidal ideation toward her children, despite intensive outpatient treatment. The August 2006 admission occurred for increased suicidal ideation subsequent to an episode of binge alcohol use the week prior to her admission. At this August admission, the CI noted stressors to be breakup of an extramarital relationship, finances and first admission of daily marijuana ("using marijuana heavily" on a daily basis since the July hospitalization) and episodic heavy alcohol use. It was noted that she became very sad when she drank alcohol. She then underwent a three week inpatient substance abuse rehabilitation program. After completing of a subsequent inpatient rehabilitation program, the CI reconciled with her husband and family and addressed financial issues. Subsequently, she completed a work therapy program, (16 October through

6 December 2006) and attended over 30 outpatient appointments for individual, group, alcohol and substance therapy. Intermittent compliance with medication treatment was noted. At the MEB/narrative summary (NARSUM) evaluation performed segmentally 17 August and 12 December 2006, approximately 5 months before separation, the CI reported some mood lability, and intermittent suicidal ideation, but denied current intent or panic attacks. She reported abstinence from alcohol, but had started and stopped marijuana use on several occasions with varying success. On examination her mood was depressed with some anger and irritability. Thoughts were logical, linear and goal directed and the CI was noted at times to smile and use humor. Memory was normal; insight was fair and impulsivity, mild to moderate. The examiner noted the CI's symptoms of depression, mood lability and chronic suicidal ideation to be 'treated and partially improved.' Diagnoses included mood disorder partially improved, polysubstance abuse partially improved, and personality disorder not otherwise specified (manifested by unstable and intense interpersonal relationships, impulsivity, recurrent suicidal threats, and reactivity of mood). He adjured social and industrial impairment to be considerable. At the VA Compensation and Pension (C&P) examination performed on 27 April 2007, a week prior to separation, the CI reported a depressed mood 5 times a month lasting 2 days, but no suicidal ideation for 2 months. She reported being under the care of a therapist, receiving medication and being clean and sober from substance abuse, having not used marijuana, for a year. She stated she realized these drugs were worsening her mood. She noted no panic attacks, memory loss or chronic sleep impairment. The CI reported that she was working, had good relationships with supervisor and co-workers with no loss of time from work. She reported no difficulty performing activities of daily living. On examination, her behavior, conversation, judgment, memory, thought processes and abstract thinking were normal without suicidal or delusional ideation. The CI had no difficulty understanding commands. The VA C&P examiner concluded the polysubstance abuse was in remission and diagnosed chronic adjustment disorder and personality disorder not otherwise specified with dependent and borderline features. Global Assessment of Functioning (GAF) was reported 60-65 (some mild symptoms or some difficulty in social, occupational or school functioning, but generally functioning pretty well has some meaningful interpersonal relationships). Both PEB and C&P rated the condition IAW §4.130, but with different coding and results. The PEB rated at 10%, coded 9435, mood disorder and the VA. rated at 30%, coded 9440, chronic adjustment disorder. A 10% rating requires occupational and social impairment due to mild or transient symptoms which decreases work efficiency and perform occupational tasks only during periods of significant stress or symptoms controlled by continuous medication. A rating of 30% requires occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care and conversation normal), due to symptoms such as depression, anxiety, suspiciousness, panic attacks, chronic sleep impairment, mild memory loss. All members agreed that a higher rating of 50%, was not supported by the record in evidence. The Board then undertook a discussion of 10% vs. 30% rating. The Board noted the CI to have a long and complex history of psychiatric issues compounded by polysubstance abuse which worsened her symptoms. The Board agreed, based on the findings of the C&P exam, that the CI was at stable baseline condition with good occupational and social functional at the time of separation, resulting from extensive treatment, with sustained abstention from substance abuse. The Board unanimously agreed the condition best met the criteria for a 10% disability IAW VASRD §4.130. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the mood disorder condition.

Chronic Radiating Low Back Pain Condition: The CI developed mid to low back pain approximately 8 years prior to separation. There is no history of trauma. A magnetic resonance

imaging (MRI) study performed in 23 May 2005, revealed a small disc without impingement at the L5-S1 level. The CI noted occasional numbness of the right foot; electro-diagnostic studies, 15 November 2006, were normal. Additionally, the CI reported a long history of bladder incontinence with excessive stress or straining. Urologic evaluation revealed this to be an ob-gyn pelvic muscle weakness, and not of neurologic origin. At the MEB/NARSUM exam 4 October 2006, 7 months prior to separation, the CI reported intermittent mid and lower back pain, with occasional radiation to her thigh without weakness, numbness or tingling. At the C&P exam performed on 20 April 2007, a month prior to separation, the CI reported localized low back pain, rated 1-10/10 occurring with activity and relieved by rest. She noted the condition to cause no incapacitation and was able to drive a car, walk, shop, perform gardening and push a lawn mower. Findings on physical examination for both evaluations were similar with normal spinal ranges-of-motion (ROM) without pain, tenderness or spasm; normal motor, sensory and reflex functions. The Board directs attention to its rating recommendation based on the above evidence. The PEB rated 0%, code 5237, citing full ROM without tenderness or spasm. The VA rated 10%, code 5242, with application of §4.59, citing subjective history of pain not documented on examination. The Board unanimously agreed the condition was not compensable IAW §4.71a, ROM, and §4.59 was not applicable given the profound negativity of findings on both examinations. There was no evidence or ratable peripheral nerve impairment in this case, since no motor weakness was present and sensory symptoms had no functional implication. There was no evidence of incapacitating episodes for a higher rating under 5243. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the back condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB and within the scope of the Board were history of pulmonary embolus/deep venous thrombosis (DVT) and restless leg syndrome. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard.

Pulmonary embolism; The CI developed a right lung pulmonary embolus (PE) after a long airline flight in 2005. She was treated with inpatient heparin and outpatient Coumadin therapy for a year (ended 7 April 2006). Coagulation studies were negative for a hypercoagulable condition. A diagnosis of DVT was never confirmed. On 2 June 2005 the CI had a small PE in the left lung felt secondary to sub-therapeutic Coumadin therapy. This was corrected and adequate Coumadin continued until completion of therapy 7 April 2006 without difficulty. The service treatment records (STR) contained no further episodes of pulmonary difficulty or reference to pulmonary symptoms, [*viz*] shortness of breath, pleuritic pain, and cough. On the C&P examination, the CI reported for the first time chest pain on exertion, but noted this to cause no functional impairment, and to require no treatment. Chest X-rays, pulmonary function tests (PFTs) and clinical examinations revealed no evidence of pulmonary dysfunction. The Board noted the CI's report of doing gardening and mowing the lawn without chest symptoms and the profile of January 2007 permitting strenuous exercise without pulmonary restriction.

Restless Leg Syndrome; This condition was diagnosed on polysomnogram study in 1995. It is first mentioned in the record in evidence in May 2006 in association with new psychiatric medication. The CI reported increasing daytime somnolence but, this was felt related to depression and medication. Neither of these conditions was profiled, implicated in the commander's statement; nor judged to fail retention standards. Both were reviewed by the

action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for either of the contended conditions; and, therefore, no additional disability ratings can be recommended.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. As discussed above, PEB reliance on DoDI 1332.39 for rating mood disorder condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the mood disorder condition and IAW VASRD §4.130, the Board unanimously recommends no change in the PEB adjudication. In the matter of the chronic radiating low back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended pulmonary embolus/DVT and restless leg syndrome conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board's scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Mood Disorder	9435	10%
Chronic Radiating Low Back Pain	5299-5237	0%
	COMBINED	**10%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110831, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX
President
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXX, AR20120021980 (PD201100863)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board's recommendation and hereby deny the individual's application.
This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA