

RECORD OF PROCEEDING  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX  
CASE NUMBER: PD1100993  
BOARD DATE: 20121012

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20070731

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated Army National Guard MAJ/O-4 (88A/Transportation Corps Officer), medically separated for fibromyalgia and chronic plantar fasciitis. The CI was activated as a Captain to Ft. Lewis in February 2003, injuring his back during a rucksack road march in March 2003. 35 months later the CI was separated based on a Medical Evaluation Board (MEB)/Physical Evaluation Board (PEB) process that included 16 conditions. The CI complained of numerous, intermittent orthopedic, neurologic and constitutional complaints. After extensive evaluation and treatment by several sub-specialists, the diagnosis of fibromyalgia was made by a Rheumatologist. During this same period, the CI experienced bilateral foot pain that was diagnosed as plantar fasciitis. The fibromyalgia and chronic plantar fasciitis conditions could not be adequately rehabilitated and the CI did not improve with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3/U3/L3/S3 profile and referred for an MEB. The MEB identified fibromyalgia, sleep apnea, intractable migraines, low back pain, bilateral plantar fasciitis and cognitive disorder conditions as not meeting retention standards along with 10 additional conditions (listed as meets retention standards in the rating comparison chart below) and forwarded them for PEB adjudication. The PEB initially adjudicated the fibromyalgia and chronic plantar fasciitis conditions as unfitting, rated 40% and 0% respectively, and placed the CI on the Temporary Disability Retirement List (TDRL). The CI appealed the PEB findings. Although initially upheld, the Army then held a PEB Reconsideration Board, with additional information submitted by a medical provider and the CI, that subsequently adjudicated the fibromyalgia and chronic plantar fasciitis as unfitting, rated 10% and 0% respectively, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were either stated as subsumed under the fibromyalgia rating or determined to be not unfitting. The CI was medically separated with a 10% disability rating.

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**CI CONTENTION:** "The Army rated me 10% for fibromyalgia, but the VA has rated me 60% for fibromyalgia and other related issues (cognitive disorder, migraines, sleep apnea, etc.) which are all presumptive diagnoses for Gulf War Veterans. My rating should have reflected the VASRD". The CI's remarks and statements in his congressional inquiry are also considered as contentions.

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**SCOPE OF REVIEW:** The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 conditions sleep apnea, intractable migraines, low back pain, depressive disorder, hypertension, left shoulder osteoarthritis, bilateral tinnitus, fatty liver, gastroesophageal reflux

(GERD), stable pulmonary nodules, cervical degenerative disc disease, hypertriglyceridemia, rosacea and cognitive disorder are considered as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. 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 Recon PEB – Dated 20070702			VA (6 Mos. Post-Separation) – All Effective Date 20070801			
Condition	Code	Rating	Condition	Code	Rating	Exam
Fibromyalgia	5025	10%	Fibromyalgia	5025	10%*	20080219
w/ Migraines			Migraines	8100	30%	20080219
w/ Low Back Pain			Lumbar Spine, DDD	5010-5237	10%	20080219
w/ Cognitive Disorder			No Separate VA Entry (see 9434 below and 5025 above)			
Chronic Plantar Fasciitis	5399-5310	0%	Plantar Fasciitis, Left Foot	5024-5284	10%	20080219
Sleep Apnea (OSA)	Not Unfitting		Plantar Fasciitis, Right Foot	5024-5284	10%	20080219
Depressive Disorder	Not Unfitting		Sleep Apnea (OSA)	6847	50%	20080212
Hypertension	Not Unfitting		Depressive Disorder	9434	50%	20080201
Left Shoulder Osteoarthritis	Not Unfitting		Hypertension	7101	0%	20080219
Bilateral Tinnitus	Not Unfitting		Left Shoulder Strain	5201-5024	10%	20080219
Fatty Liver	Not Unfitting		Tinnitus	6260	10%	20080206
Gastroesophageal Reflux	Not Unfitting		Fatty Liver	Not Service Connected		
Stable Pulmonary Nodules	Not Unfitting		Gastroesophageal Reflux Disease	7399-7346	10%	20080219
Cervical DDD	Not Unfitting		Pulmonary Nodules	6820	0%	20080219
Hypertriglyceridemia	Not Unfitting		Cervical Degenerative Disc	5010-5237	10%	20080219
Rosacea	Not Unfitting		No VA Entry			
<b>Combined: 10%</b>			Rosacea	7899-7806	0%	
			<b>Combined: 90%</b>			

\* VASRD code 5025 increased to 40% effective 20081208 (combined 100%)

**ANALYSIS SUMMARY:** The Board acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation, some of which were evaluated and determined not to be individually unfitting for continued service. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. 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 service career, and then only to the degree of severity present at the time of final disposition. However, the Department of Veterans' Affairs (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 is empowered to evaluate the fairness of fitness determinations, and to make recommendations for rating of conditions which it concludes would have independently prevented the performance of required duties (at the time of separation). The Board's threshold for countering DES 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.

Fibromyalgia Condition. The narrative summary (NARSUM) prepared 4 months prior to separation notes, "Fibromyalgia: In 2005, he developed left shoulder muscle pain and neck muscle pain not explained by a neurologic disorder. In 2006, he was referred to a Rheumatologist, who noted 14 out of 18 tender points and diagnosed fibromyalgia." The NARSUM also noted migraine headaches occurring 2 times per week and manifest as a throbbing pain with increased scalp sensitivity at various locations and once every 6 months causing several minutes of visual loss. These headaches are treated with prophylactic calcium channel blocker medication, oral and nasal anti-migraine "tryptan" medications acutely as needed and laying down in a dark room. At the MEB exam prepared 5 months prior to separation, the CI reported left shoulder hurts all the time, both ankles and knees – swell, hurt daily and are worse in cold weather and "sometimes do not work." Also reported were numbness/tingling left arm on 2 fingers and paresthesias both sides. The MEB physical exam noted "multiple tender skin/muscle areas on arms, buttocks, hips, lower extremities & occiput suggestive of fibromyalgia." Of significant note, is the presence of a letter prepared by the CI appealing the results of the original PEB finding of fibromyalgia as unfit, rated at 40% with TDRL adjudication. This letter is dated 25 June 2007 and states:

- "I appeal my PEB findings for the following reasons:
- a. The PEB has rated me as being temporarily disabled (TDRL) at 40% for fibromyalgia.
  - b. The 40% rating would indicate that my fibromyalgia is constant and refractory to treatment, this is NOT the case.
  - c. I do have episodes of increased pain but they are around one third of the time. NOT constant. My episodes are linked to stress or overexertion but are, for the most part, controlled.
  - d. I have learned to manage my disease. I am now able to work out on a regular basis which has helped to control a great degree of the pain. I have learned what activities affect my pain so I have significantly better coping skills.
  - e. I believe a 40% rating is not an accurate reflection of my current state."

The CI also forwarded a letter on 28 June 2007 to Senator Murray of Washington, in which he stated: "I can function with fibromyalgia, my symptoms are present maybe 25% at most."

The VA Compensation and Pension (C&P) exam performed 7 months after separation documents the diagnosis of fibromyalgia was made in December 2006. It involves the whole body with headache, easy fatigability, sleep disturbance, stiffness, depression, anxiety, and abnormal sensation like burning, pricking, tickling or tingling. Hands turn blue and become painful when exposed to cold. Symptoms occur daily at least two-thirds of the year and are precipitated by anxiety, loud noise, stress or overexertion. Treatment consisted of physical modalities along with daily pregabalin (Lyrica), non-steroidal anti-inflammatory medications (NSAID) and several narcotic medications. Examination revealed at least 12 tender points symmetrically with no generalized muscle weakness or wasting.

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and the VA utilized VASRD code 5025, fibromyalgia, and rated it at 10%. The VA rating of 10% was arrived at after "removing" and separately rating several of the conditions that the PEB combined under the fibromyalgia condition. Although this combined rating complies with the AR 635-40, B-5 definition of pyramiding, the VASRD-only definition of pyramiding IAW §4.14, Avoidance of Pyramiding, is substantially different. Therefore, each condition of back pain, cognitive disorder and migraines will be discussed below as remaining conditions.

The Board's first charge with the conditions subsumed with the unfitting fibromyalgia condition is an assessment of the appropriateness of the PEB's fitness adjudications, and/or combination under the 5025 fibromyalgia rating. Although the Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, it remains adherent to the DoDI 6040.44 "fair and equitable" standard.

Back Pain Condition: The PEB indicated back pain recurred in 2006 and there was radiographic evidence of mild degenerative changes. Neurosurgical evaluation performed in October 2004 for low back pain documented the following, "Impression: Mr. M--- suffers from multiple myofascial syndrome with multiple trigger points." The PEB considered the back pain as a manifestation of fibromyalgia and not separately unfitting. 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 back pain condition.

Cognitive disorder Condition: The PEB stated the following, "Cognitive disorder is associated with mild though measurable deficits of initial learning of novel information and poor retention of complex information; this is commonly associated with fibromyalgia and is included in rating for fibromyalgia." The commander's statement only references physical disabilities as impacting the CI's ability to perform within his MOS. The Board considered if the cognitive disorder was separately unfitting if removed from "under" the fibromyalgia condition. 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's adjudication for the cognitive disorder condition.

Migraines Condition: The reconsideration PEB made the following comment concerning the CI's migraine headaches, "...migraines are also considered manifestations of fibromyalgia and cannot be separately rated due to pyramiding. Unfit because he is unable to run, wear Kevlar or body armor. Although symptoms were refractory to multiple medications for 2 years, Soldier and treating physician now confirm that his symptoms have improved markedly on new medication regiment." Although the headaches were profiled, they were not implicated in the commander's statement. The headaches were not judged to separately fail retention standards by the PEB. The Migraine headache condition was reviewed and considered by the Board. 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's adjudication for the migraine headache condition.

After Board deliberations settled on keeping all PEB combined conditions under the fibromyalgia condition, applying the rating for VASRD code 5025 was undertaken. The rating criteria for fibromyalgia are based on the symptom frequency and their response to therapy. The board considered the totality of the documented evidence in arriving at its recommendation with particular attention to the CI's written statement to the PEB describing his condition proximate to the day of separation. While the entire record paints a somewhat different disability picture, the CI's written statement one and a half months prior to separation said, "I have learned to manage my disease. I am now able to work out on a regular basis which has helped to control a great degree of the pain. I have learned what activities affect my pain so I have significantly better coping skills." The CI's fibromyalgia did require continuous medication but was not under "control" as required for a 10% rating, so the deliberations settled on a 20% vs. 40% rating recommendation. A 40% rating for fibromyalgia requires symptoms that are constant, or nearly so, and refractory to therapy while a 20% rating requires symptoms that are episodic, with exacerbations often precipitated by environmental or

emotional stress or by overexertion, but that are present more than one-third of the time. With the Board's decision to place significant "probative" value on the CI's written statement, after due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends a disability rating of 20% for the fibromyalgia condition.

Chronic Plantar Fasciitis Condition. The NARSUM notes bilateral heel pain since December 2005. The CI was evaluated and treated by Podiatrist using arch supports, NSAIDs, immobilization and steroid injections with only temporary relief. Physical exam revealed mild pes planus with mildly tender plantar fascia bilaterally. X-rays performed in April 2006 showed small bilateral Achilles tendon spurs. Podiatry consultation performed on 9 May 2007 diagnosed bilateral plantar fasciitis that fails Army retention standards. At the MEB exam, the CI reported "But heels still hurt. Insoles, injections do not work." The MEB physical exam noted mildly tender plantar fascia. At the C&P exam, the CI reported intermittent, burning, sharp ripping pain of 8-9/10 intensity located at bottom of both feet 2-3 times daily lasting for 1-2 hours. Pain is elicited by physical activity, sleeping, or just stress and CI has to rest and take NSAID medication and use insoles. With severe pain he is unable to walk. Examination revealed no signs of abnormal weight bearing or callous formation. His gait is normal and he does not have flat feet. Palpation of the plantar surface of the feet reveals no tenderness. Examination of the Achilles tendons reveals good alignment.

The Board directs attention to its rating recommendation based on the above evidence. The VASRD does not have a specific code for plantar fasciitis and it must be rated analogously. The Board considered the options used by the PEB and VA. The PEB coded the bilateral plantar fasciitis as 5399-5310, Muscle Group X disability, and rated it 0% for slight disability. The VA coded the same condition as 5024-5284, Foot injuries other, and awarded an evaluation of 10% for each foot. With regard to the 5310 muscle code utilized by the PEB, the Board noted that there was no disorder of the muscles of the feet present, however, the 5310 code includes "other important plantar structures: plantar aponeurosis, long plantar and calcaneo-navicular ligament, tendons of posterior tibial, peroneus longus, and long flexors of great and little toes" and therefore the selection of this code by the PEB is reasonable. The ratings under this code apply separately to each foot and are based on a judgment of severity (slight 0%; moderate 10%; moderately severe 20%; and severe 30%). The Board agrees that both of the CI's feet are unfit for continued military duty and the analogous code must be applied to both feet. A judgment of slight or moderate disability was considered for each foot. Again, using the CI's written statement as the most probative document proximate to separation, his words of, "I am now able to work out on a regular basis..." indicated that his feet were not so limiting as to preclude regular exercise. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends a disability rating of 0%, slight, for each foot with the plantar fasciitis condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were depressive disorder, hypertension, left shoulder osteoarthritis, bilateral tinnitus, fatty liver, gastroesophageal reflux, stable pulmonary nodules, cervical degenerative disc disease, hypertriglyceridemia and rosacea. Fatty liver and hypertriglyceridemia are lab abnormalities and do not constitute physical disabilities. The bilateral tinnitus, GERD, pulmonary nodules and rosacea were mentioned in the review of systems without any indication of duty impairment. Hypertension was controlled on medication.

Sleep apnea was profiled. The PEB indicated obstructive sleep apnea (OSA) was well controlled by continuous positive airway pressure (CPAP), but "afternoon fatigue which is also a symptom

of fibromyalgia, persists and occasionally requires prescription stimulant.” Routinely OSA (sleep disturbance) is not considered unfitting solely on the basis of field and operational impediments to the use of CPAP. There is little evidence in this case of any unfitting impairments from sleep disturbance treated with medication and OSA treated with CPAP. The PEB’s implied fitness adjudication for OSA and inclusion of the residual sleep disturbance requiring medication was therefore reasonable. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB adjudication for the OSA and sleep disturbance conditions.

None of the other conditions were profiled proximate to separation or implicated in the commander’s statement; and, none were judged to fail retention standards at the time of separation. All were reviewed and considered by the Board. There was no indication from the record that any 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 the any 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. In the matter of the fibromyalgia and bilateral plantar fasciitis conditions, the Board, on a vote of 2-1, recommends a disability rating of 20%, coded 5025 and a disability rating of 0% for each foot, coded 5399-5310, all IAW VASRD §4.71a. The single voter for dissent, who recommended a combined 40% rating (5025 at 20%, plus each foot coded 5310-5020 at 10%), submitted the appended minority opinion. In the matter of the contended depressive disorder, hypertension, left shoulder osteoarthritis, bilateral tinnitus, fatty liver, gastroesophageal reflux, stable pulmonary nodules, cervical degenerative disc disease, hypertriglyceridemia, and rosacea 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Fibromyalgia	5025	20%
Chronic Plantar Fasciitis - Left	5399-5310	0%
Chronic Plantar Fasciitis - Right	5399-5310	0%
<b>COMBINED (w/ BLF)</b>		<b>20%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20111006, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

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President

Physical Disability Board of Review

**MINORITY OPINION:** The CI's numerous disabilities with overlapping symptoms of unfitting fibromyalgia and unfitting foot conditions should be rated as fibromyalgia 20% plus 10% for each foot condition coded 5310-5020 (combined 40%).

The medical documentation paints a disability picture that is more debilitating, active and refractory to treatment than the recommended 20% rating implies. The single piece of evidence present in the entire record that supports a 20% combined rating is the CI's written statement as that affects both fibromyalgia and feet symptoms and ratings. This statement was written after the CI was "on medical hold for 3½ years" while undergoing the medical evaluation of his condition. The PEB had just adjudicated his condition as fibromyalgia, rated 40% and placed him on TDRL. The CI indicated he "just want out of here" and submitted this statement to the PEB with similar wording in a congressional correspondence. The crux of this case and foundation for the majority recommendation was the CI's written statement of being able to "work out on a regular basis." This statement was in direct conflict with the entirety of the medical record, as noted by the PEB President upholding the 40% determination following the CI's appeal letter, and by subsequent VA records. The specialist exam of the feet documented tenderness to the plantar fascia at the heels with radiographs of mild bilateral degenerative changes in the great toe joint and probable bilateral pes planus. Symptoms increasing with walking and prescribed insoles are noted in the body of the ROP. Functional limitations included no prolonged driving and no prolonged standing/walking.

Given the separately unfitting finding for bilateral chronic plantar fasciitis "partially responsive to orthotics but still unable to march or run"; each foot and symptoms related to ambulation should be rated IAW VASRD-only guidance. The PEB coding choice of (analogous to) 5310 (muscle coding IAW §4.73 (Schedule of Ratings–Muscle Injuries) was not the most appropriate analogous coding choice and under-rated the CI's feet condition. Muscle Injury ratings rely on §4.55 (Principles of combined ratings for muscle injuries) and §4.56 (Evaluation of muscle disabilities) which emphasize gunshot wound or fragment injury patterns. The CI did not have an injury to his muscle and had additional foot pathology noted. The VA's 10% rating IAW §4.71a (Schedule of ratings–musculoskeletal system) was based on exam findings substantially similar to those in the service record. The AO strongly recommends rating each foot analogously to 5020 (Synovitis) which is equally valid to the VA's 5284 coding with granting the minimal compensable rating (10%) to each foot IAW the tenant of §4.7 (higher of two evaluations), §4.40 (functional loss) and §4.59 (painful motion). The disability picture of the CI proximate to separation clearly justifies a 10% rating for the right foot and a 10% rating for the left foot, in addition to the 20% rating for fibromyalgia.

**RECOMMENDATION:** The AO recommends that the CI's prior determination be modified as follows; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Fibromyalgia	5025	20%
Chronic Plantar Fasciitis - Left	5310-5020	10%
Chronic Plantar Fasciitis - Right	5310-5020	10%
<b>COMBINED (w/ BLF)</b>		<b>40%</b>

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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20120019890 (PD201100993)

1. 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 to modify the individual's disability rating to 20% without recharacterization of the individual's separation. This decision is final.

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.

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:

Encl

XXXXXXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
( ) DoD PDBR  
( ) DVA