

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1101065
BOARD DATE: 20120926

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20051216

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty 1LT/O-2 (11A/Infantry Officer), medically separated for a chronic foot pain condition and a low back condition. He did not respond adequately to conservative treatment for either condition and was unable to fulfill the physical demands within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Chronic bilateral foot pain and lower back pain with compression fracture were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. One other condition, as identified in the rating chart below, was forwarded on the MEB submission as a medically unacceptable condition. The PEB (PEB) adjudicated chronic foot pain secondary to hallux valgus, pes planus and hammertoes and chronic back pain secondary to a L2 compression fracture condition as unfitting, rated 10% and 10% respectively, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The foot condition and back condition were determined to have existed prior to service (EPTS), were permanently aggravated and no deduction was made. The remaining MEB condition was determined to be not unfitting. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “Original board did not take into account the severity of my PTSD/depression or complications with feet or back. I am currently rated 70% by the VA for PTSD/Depression.

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 unfitting foot and low conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The PTSD/Depression condition is not within the Board’s purview. 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 20051108			VA (1 Mos. Post-Separation) – All Effective Date 20051217			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Foot Pain	5284	10%	Hammer Toes, Right Foot	5282	10%	20050927
			Hammer Toes, Left Foot	5282	10%	20050927
Chronic Back Pain	5235	10%	Lumbar Disc Degeneration L1-L2 with History of L2 Compression Fracture	5235-5243	0%*	20050927
Left Shoulder Trauma w/Superior Glenoid Labral Lesion	Not Unfitting		Left Shoulder Strain w/Superior Glenoid Labral Lesion	5099-5024	10%	20050927

↓No Additional MEB/PEB Entries↓	Tinnitus	6260	10%	20050927
	Major Depression, Single Episode	9434	10%*	20050930
	0% X 1 / Not Service-Connected x 5			
Combined: 20%		Combined: 40%		

*VARD 20100407 increased rating to 10% effective 20091222 (evidence reflects rating of 20%)

**VARD 20100407 increased rating to 70% effective 20091222

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which his service-incurred condition continues to burden him. 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 DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veteran Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI's contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance.

Back Condition. The CI sustained an injury during airborne operations in the summer of 2003, with magnetic resonance imaging (MRI) findings of L-2 compression fracture. He went to ranger school, but was unable to complete due to back pain. He was cleared to duty to deploy to Iraq for a year and while there sought treatment for worsening back pain due to the wearing of his combat gear which responded to nonsteroidal and muscle relaxant medications. Upon his return he was seen by Chiropractic Care and Physical Therapy with some relief however, he continued to have problems with low back pain, exacerbated with heavy lifting, straining, and wearing load bearing equipment, Kevlar and other combat gear or ruck sack. Lumbosacral X-rays revealed no acute fracture or subluxation, but degenerative changes involving the inferior end-plate of L-2. Orthopedics documented there was no surgical indication for his back and recommended continued conservative treatment. The profile limitations included unable to lift more than 40 lbs, no sit-ups, and an AFPT aerobic alternate event of either swimming or biking. The commander's statement additionally documented he was unable to road march, dig a fighting position, and perform many other strenuous infantry tasks; all of these which were critical to his survival in combat. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Thoracolumbar ROM	MEB ~7 Mo. Pre-Sep	VA C&P ~3 Mo. Pre-Sep
Flexion (90° Normal)	90°	90°
Ext (0-30)	30°	30°
R Lat Flex (0-30)	25°	30°
L Lat Flex 0-30)	25°	30°
R Rotation (0-30)	>30°	30°
L Rotation (0-30)	>30°	30°
Combined (240°)	230°	240°
Comment	+ Tenderness; painful motion	+ Tenderness
\$4.71a Rating	10%*	0%

*Conceding painful motion \$4.59

The MEB physical exam documented tenderness to palpation of the lumbosacral spine musculature, normal heel, toe and tight rope walk, normal squat, normal neuromuscular findings and negative Waddell signs. The medical examiner diagnosed back pain that continued to require restriction of activity and limitation of function and opined a pain scale severity of slight and constant. At the VA Compensation and Pension (C&P) exam, the CI reported constant pain, 4 to 6 of 10 in intensity, increased with activity, relieved with rest and he could function without medication. He reported his back pain did not cause incapacitations or any time lost from work. The C&P exam documented normal gait, no noted muscle spasm, tenderness, and negative straight leg raise (SLR) bilaterally.

The Board directs attention to its rating recommendation based on the above evidence. The Board directs attention to its rating recommendations based on the above evidence which includes consideration of functional loss IAW VASRD §4.10, §4.40, §4.45 and §4.59. The Board notes that both the MEB and VA exams were complete, well documented, and compliant with VASRD §4.46 (accurate measurement) and similar in terms of ratable data and therefore the Board assigns both exams equal probative value. The PEB and VA chose different coding options for the condition, but this did not bear on rating and both were IAW §4.71a—Schedule of ratings—musculoskeletal system under the general rating formula for diseases and injuries of the spine. The PEB rated 10% coded 5235 (Vertebral fracture or dislocation) based on painful motion which is consistent with a rating IAW §4.59. The VA rated 0% based on normal ROMs and no evidence of pain on motion. The Board considered VASRD §4.7 (higher of two evaluations) during its deliberation which directs the evaluator to assign the higher of two valid ratings if the disability picture more nearly approximates the criteria. The Board agreed the functional impairment of the CI's back condition due to pain more nearly approximates the 10% criteria. The Board considered the VA analogous code to 5243 (Intervertebral disc syndrome) which allows for consideration of incapacitating episodes however agreed the evidence lacked either physical or radiographic signs of this condition or evidence of incapacitation episodes. There is no evidence of ratable peripheral nerve impairment in this case. 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.

Chronic Foot Pain Condition. The CI first noted some symptoms with his feet with numbness and tingling in basic training in 2002 but these symptoms resolved until his return from Iraq in March 2004. After an increased in his running mileage, the CI noted pain across his toes, with progression of pain to bottom of the foot, into the heels and ankles. He was treated with inserts nonsteroidal medications and limited profiles. Podiatry evaluated him in January 2005 with X-rays and an exam. The examiner noted hammertoes and bunions, along with plantar fasciitis and recommended surgery. After surgical counseling the CI opted for an MEB. The profile and commander's statement corroborated his bilateral foot pain condition with limitations preventing running, jumping, climbing, standing for long periods, or impact activities on the feet. The MEB physical exam demonstrated abnormal anatomy with bilateral bunions (Hallux valgus), pes planus (flat feet) and hammertoes diffusely of toes 2-5, pain elicited by motion of the feet with first toe joint ROM, no swelling or erythema, and minimal tenderness to palpation of the feet. X-rays revealed left foot mild hallux valgus and right foot normal study. The medical examiner diagnosed chronic pain and dysfunction of feet and opined a pain scale severity of slight and constant. At the C&P exam prior to separation, the CI reported a similar history, diagnoses and additionally noted he had not had any time lost from work. The exam bilaterally demonstrated; no tenderness, weakness, edema, atrophy or disturbed circulation. Pes planus was not present. He had hammer toes of the right and left foot, including toes 2, 3, 4, 5. He did not have any limitation with standing or walking. He required arch supports. The symptoms and pain were relieved by the previously noted corrective shoe wear. X-rays of the right and left foot (non weight bearing) revealed hammertoes, 2,3,4,5 digits. The examiner diagnosed hammertoes and did not have findings of bunions or plantar fasciitis.

The Board directs attention to its rating recommendation based on the above evidence. The PEB did not specifically adjudicate the bilateral foot condition as it was presented in the MEB and evidenced before the PEB but rather adjudicated chronic foot pain with a unilateral VASRD code. The Board agreed there was no specific evidence to elucidate if this was an erroneous error on behalf of the PEB or if the PEB did consider the foot condition as bilateral. All members agreed that the bilateral foot condition, as an isolated right and left foot condition, would have rendered the CI incapable of continued service within his MOS, and accordingly merits a bilateral foot VASRD code or separate service rating for each foot with a unilateral code with consideration of VASRD §4.7 (higher of two evaluations). The PEB and VA chose different coding options for the condition and both were IAW §4.71a—Schedule of ratings—musculoskeletal system. The PEB chose code 5284 (foot injuries, other), a VASRD unilateral code, and rated 10% for moderate. The VA chose to rate each foot 10% with code 5282 (hammertoes) for the symptomatic hammertoes and further noted there was no current pathology consistent with hallux valgus, pes planus or plantar fasciitis. The Board considered the 5310 plantar muscle code which is commonly used for plantar fasciitis but agreed this is not the predominant disabling diagnosis at the time of separation. The Board agreed while there were multiple foot conditions contributing to the CI’s bilateral foot pain, IAW §4.14, avoidance of pyramiding, the Board agreed the hammertoes and hallux valgus were the dominant disabling conditions and the evidence most closely approximated moderate pain impairment of the left and right foot. The Board considered the 5181 code (hallux valgus) however the evidence reflects mild hallux valgus on the MEB which would rate at 0% and further no evidence of this condition on the VA exam. Finally, IAW §4.7, all Board members agreed both exams reflect bilateral hammertoes and the CI is functionally impaired due to painful feet. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for each foot condition.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the low back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right and left foot condition, the Board unanimously recommends a disability rating of 10% each, coded 5282 IAW VASRD §4.71a. 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Back Pain	5235	10%
Chronic Left Foot Pain	5282	10%
Chronic Right Foot Pain	5282	10%
COMBINE (w/ BLF)		30%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111104, 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

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, AR20120018958 (PD201101065)

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 recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 30% 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 30% 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.

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

XXXXXXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA