

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1101075
BOARD DATE: 20121002

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20050228

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (42A/Personnel Administration), medically separated for chronic right foot pain secondary to plantar fasciitis. The CI developed chronic right foot plantar fasciitis that did not improve adequately with treatment. The CI was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Prostatitis and scrotal cellulitis, identified in the rating chart below, were also identified and forwarded by the MEB. An initial Physical Evaluation Board (PEB) adjudicated the chronic right foot pain secondary to plantar fasciitis as unfitting, rated 0%. The other conditions referred to the PEB by the MEB, prostatitis and scrotal cellulitis, were both adjudicated as not unfitting. The CI then requested to remain on active duty and his permanent profile was changed to an L2. On 9 November 2004, an Informal Reconsideration PEB determined he was fit for duty. However, he did not concur with this finding. He had just found out that he did not meet the retention standards of his MOS and he would have to reclassify. He asked to be released from active duty, a second Informal Reconsideration PEB determined on 23 November 2004 that the chronic right foot pain secondary to plantar fasciitis was unfitting, and he was separated with a 0% disability rating with possible application of the US Army Physical Disability Agency (USAPDA) pain policy.

CI CONTENTION: "At the time of my separation I could not pursued for help for what I was feeling, but I had to get out of the military I did not care if I only had four years to retired. The thought of death had taking over me and believing my future could be jeopardize if I would tell someone about me mental condition, it was the worst mistake because my life did not get better it got worst, and even though I got my disability from VA at this point it has taking me almost 3 months to have the courage to submit this application, I am not doing it for me, but for my children in the event I don't leave to see them grow they will be taking care of."

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 CI contends to add his mental illness as an unfitting condition. However, this condition was not identified or adjudicated by the PEB and is outside the scope of the PDBR. 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 IPEB – Dated 20041123			VA (1 Month Post-Separation) – All Effective Date 20050301			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Right Foot Pain Secondary to Plantar Fasciitis	5399-5310	0%	Pes Cavus with Plantar Fasciitis Right Foot	5278	10%	20041214
Prostatitis	Not Unfitting		Prostatitis	7527	0%*	20041214
Scrotal Cellulitis	Not Unfitting		Scrotal Cellulitis with Bowenoid Papulosis	7899-7822	0%	20041214
↓No Additional MEB/PEB Entries↓			0% x 1 other			20041214
Combined: 0%			Combined: 10%**			

*Increased to 10% with combined rating increased to 20% effective 20060403.

**Increased to 80% effective 20101029 when PTSD 9411 added at 70%.

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 acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented in the medical record. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veteran 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 reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should his degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Right Foot Pain secondary to Plantar Fasciitis Condition. The CI was first seen for right foot pain in July 2003. He was treated conservatively and initially responded to treatment. However, his right foot pain was aggravated by prolonged standing and physical activity in January 2004. Despite continued treatment including orthotics and activity restriction, he did not improve. He was issued a permanent profile and referred for a medical board. An MEB narrative summary (NARSUM) performed on 15 September 2007 noted decreased dorsiflexion and plantar flexion of the ankles bilaterally with normal motor strength bilaterally. He had pinpoint tenderness to the origin of the medial two-thirds of the plantar medial and plantar fascial ligament in the right foot. Plain films of the right foot were normal. At the time of the exam he was taking naprosyn and using a night splint. The results of the VA Compensation and Pension (C&P) exam performed on 15 December 2004 are not available in the chart. However the VA rating decision performed on 7 March 2005 contains sufficient information about the clinical history and physical examination for the Board to determine an appropriate rating. The

CI had pes cavus with tenderness to palpation over the plantar arch on the plantar surface with normal metatarsals and heel on the right foot.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the condition analogous to a muscle injury and applied a 0% disability rating, possibly applying the USAPDA pain policy. It is not clear why the PEB used a muscle injury code when typically plantar fasciitis is rated analogously to 5020 Synovitis. The VA diagnosed pes cavus as well as plantar fasciitis and rated the condition at 10% under 5278 Pes cavus. While the CI may have had a night arch, pes cavus was never documented in the medical treatment record. However, rating analogous to the pes cavus code appears to be a reasonable way to rate this CI's condition. 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 the chronic right foot pain secondary to plantar fasciitis 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right foot condition was possibly operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic right foot pain secondary to plantar fasciitis condition, the Board unanimously recommends a disability rating of 10%, coded 5299-5278 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, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Right Foot Plantar Fasciitis	5299-5278	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20111110, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX
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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20120018941 (PD201101075)

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 10% 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