

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1101101
BOARD DATE: 20121012

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20041006

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (63H10, Track Vehicle Mechanic) medically separated for bilateral foot and ankle pain. He developed bilateral foot pain in 1999 soon after entering the Army. This was treated with orthotics, but continued to worsen over the ensuing years. Podiatry could offer no surgical remedy, and provided the various diagnoses listed below. The conditions did not respond adequately to further conservative measures to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The following five conditions were separately forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501: bilateral pes planus, "abnormal pronation," bilateral plantar fasciitis, bilateral posterior tibial tendonitis, and gastrocnemius equinus (contracture of the calf muscle). An additional combined condition, "secondary low back and bilateral knee pain" was forwarded as "not boardable." The PEB (via an Informal Reconsideration following an appeal) conceded aggravation of the congenital podiatric conditions; and, consolidated three of the MEB submitted conditions (as specified in the PEB's DA Form 199 language quoted below) as a single unfitting condition characterized as "Painful feet on [*sic*] ankles due to plantar fasciitis and posterior tibial tendonitis with equinus deformity from gastroc shortening." The condition was rated 10% under a muscle disability code IAW criteria of the Veteran's Administration Schedule for Rating Disabilities (VASRD). The pes planus, "abnormal pronation" and combined low back/bilateral knee conditions were determined to be not unfitting. The CI made no further appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The application states simply, "Lumbosacral strain, bilateral retropatellofemoral syndrome, bilateral plantar fasciitis." He does not elaborate further or specify a request for Board consideration of any additional conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in 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 rating for the unfitting foot/ankle condition(s) is addressed below. The application implies a request for Board consideration of separate ratings for lumbar spine and bilateral knee conditions. Since these (combined) conditions were identified and adjudicated as not unfitting by the PEB, they are within the DoDI 6040.44 defined purview of the Board; and are accordingly addressed below. The pes planus and "abnormal pronation" conditions identified by the PEB were not requested for consideration; e.g., they do not satisfy scope requirements. The above conditions, or any condition or contention 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 PEB (Reconsideration) – Dated 20040910			VA* – Effective 20041007			
Condition	Code	Rating	Condition	Code	Rating	Exam
Feet/Ankles...Plantar Fasciitis... Tibial Tendonitis... Gastroc Equinus	5399-5310	10%	Bilateral Patellar Fasciitis...Tibial Tendon...Equinus Deformity...Pes Planus	5271-5020	10%	STR*
Bilateral Pes Planus	Not Unfitting		No VA Entry			STR
Abnormal Pronation	Not Unfitting		Lumbosacral Strain	5299-5237	0%	STR
Secondary Low Back and Bilateral Knee Pain	Not Unfitting		RPS, Left Knee	5299-5257	0%	STR
			RPS, Right Knee	5299-5257	0%	STR
Combined: 10%			Combined: 10%			

* STR = Service Treatment Record. CI failed to report for VA rating examinations; earliest post-separation evidence is 2008.

ANALYSIS SUMMARY: The Board acknowledges the CI's contention for ratings for his lumbar spine and bilateral knee conditions which were determined to be not unfitting by the PEB, and notes that its recommendations in that regard must comply with governance for the Disability Evaluation System (DES). While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short the member's career; and the Board's assessment of fitness determinations is premised on the MOS-specific functional limitations in evidence at the time of separation. The Department of Veterans' Affairs (DVA) is empowered to compensate 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. Should the Board judge that any contested condition was most likely incompatible with MOS requirements; a disability rating IAW the VASRD will be recommended. It is also noted by the Board that there is a significant interval (4 years) between the date of separation and the next available medical evidence. DoDI 6040.44 specifies a 12-month interval for special consideration to post-separation findings; therefore, the only probative evidence relevant to the Board's recommendations is that obtained from the records.

Bilateral Foot/Ankle Condition(s). The CI's armed forces entry physical documented no podiatric pathology, but he was diagnosed with pes planus less than a year later and prescribed inserts. He was subsequently fitted for orthotics and was placed on an L2 profile in 2002. Without surgical indications, he was followed by Podiatry with a dominant diagnosis of plantar fasciitis; and, failed to respond to local injections and various other non-invasive modalities. Eleven months prior to separation a bilateral foot X-rays were reported as "normal anatomic alignment" with normal bones and joint spaces. The narrative summary (NARSUM) described the clinical course and referred to the proximate podiatric consultation for further detail and examination; and, all of the MEB submitted podiatric diagnoses were derived from this evaluation. The functional status was documented as, "Presently the patient is in moderate pain daily with difficulty sleeping. Difficulty with performing in his MOS. Difficulty with soldiering skills and problems with daily activities. His functional status is considered poor." The referenced podiatric examination documented bilateral medial plantar and heel tenderness, low arch height, abnormal gait with excessive pronation (right > left), and "severe pain to palpation" over the posterior tibial tendon (Achilles') insertion with pain on recruitment or stretch of the tendon. Neurovascular findings were normal and motor strength was documented as 5/5. Bilateral ankle dorsiflexion was recorded as 5 degrees (normal 20 degrees), and there is no full goniometric range-of-motion (ROM) evaluation of the ankle in evidence. It was also noted that dorsiflexion was equal with the knees extended and flexed; raising doubt as to the association of the ROM limitation with the plantar fasciitis, posterior tibial tendon, or gastrocnemius (calf) diagnoses.

The Board directs attention to its rating recommendation based on the above evidence. The PEB combined the bilateral plantar fasciitis, tendonitis, and gastrocnemius equinus diagnoses as the single unfitting and solely rated condition. IAW VASRD §4.7 (higher of two evaluations), the Board must consider separate ratings for PEB bilateral joint adjudications; although, separate fitness assessments must justify each disability rating. In this case, both feet were considered to fail retention standards; both were implicated by the NARSUM and in the commander's statement; and, both were profiled. Members agreed, therefore, that separate disability ratings were justified in this case if advantageous to rating under the VASRD. Furthermore IAW VASRD §4.56 (evaluation of muscle disabilities) the PEB's choice of analogous code, 5310 (muscle group X, plantar aponeurosis), must be applied to *each* affected muscle group rather than bilaterally. The VA's analogous code 5020 (synovitis) defaults to general 5003 (degenerative arthritis) criteria, and does permit its 10% rating for two or more joints; although, the criterion for degenerative changes by X-ray was not met. Members concurred that separate ratings for the separate MEB podiatric diagnoses or a separate rating for the ankle would not be compliant with VASRD §4.14 (avoidance of pyramiding).

The Board first considered if any of the foot codes under VASRD §4.71a which do permit bilateral rating were applicable to this case. Consideration was given to analogous application of 5276 (acquired pes planus), since it offers bilateral ratings of 10% (not advantageous) and 30%. The 30% rating requires "marked deformity (pronation, abduction, etc.)" and "pain [severe] on manipulation and use," in addition to other markers which were not present. Although one might argue that 'marked' deformity and 'severe' pain were evidenced, conceding reasonable doubt, there are significant objections to application of the pes planus code. The criteria under VASRD §4.57 (static foot deformities) are dubiously met in justification of *acquired* pes planus; and, the condition of pes planus itself was adjudicated as not unfitting by the PEB. It would be difficult to argue that pes planus was intrinsically unfitting, especially given normal x-ray alignment, in this case. It was rather the pain from plantar fasciitis and the other diagnoses that was unfitting. Furthermore, the DoDI 6040.44 scope requirements for a rating based on pes planus were not met. Therefore the Board rejected application of the 5276 code, and there were no other applicable codes amendable to bilateral rating. The Board then considered the most favorable code for separate ratings of the feet; and, concluded that since there was no significant difference in the clinical features or severity; coding and rating choices should logically be identical. Analogous coding as 5299-5284 (foot injuries, other) was entertained, but this offers no rating advantage over the PEB's choice of 5310 which is more clinically compatible and best aligned with the disability in evidence. The 5310 muscle disability code is in common use for plantar fasciitis, and is quite acceptable when applied unilaterally. It yields ratings based on 'slight', 'moderate', 'moderately severe', and 'severe' muscle disability; rated 0%, 10%, 20%, and 30% respectively. Many of the VASRD §4.56 (rating muscle disability) criteria are written for penetrating missile injuries, and are not applicable to analogous application of the muscle disability codes. Deliberations settled on the applicable criteria for 'moderate' vs. 'moderately severe' as defined by §4.56. Differentiation between the two ratings is essentially the severity and number of the "cardinal signs" of muscle disability which are present; the latter specified as "loss of power, weakness, lowered threshold of fatigue, fatigue-pain, and impairment of coordination and uncertainty of movement." Fatigability and pain were clearly present; weakness may have been present subjectively, but was not demonstrated objectively; and, there was no indication of a lack of coordination. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), members agreed that the disability was best aligned with the §4.56 'moderate' criteria; and the Board accordingly recommends a disability rating of 10% for each foot (including ankle) under the code 5399-5310.

Contended Lumbar Spine and Bilateral Knee Conditions. In 1999, the CI developed an early history of bilateral knee pain which was diagnosed variously as retropatellar pain syndrome and "overuse syndrome." This was treated conservatively, and was never profiled (albeit possibly

sheltered by the foot profile). Similarly the back pain surfaced in 1999 (diagnosed as “mechanical low back pain”), although this condition was mostly clinically silent throughout the military career until the MEB period. It was likewise never profiled. The MEB podiatrist opined that the knee and back problems were a consequence of the anatomical factors inherent in the foot pathology.

The Board’s main charge with respect to these conditions is an assessment of the fairness of the PEB’s determinations that they were not unfitting. 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. Neither of these conditions was profiled; neither was implicated in the commander’s statement; and, it was judged by the MEB examiner that neither of them was subject to medical boarding. The lumbar spine and knee conditions were reviewed by the action officer and considered by the Board. There was no performance based evidence from the record that either condition 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 lumbar spine and knee conditions; thus 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. 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 bilateral foot/ankle condition, the Board unanimously recommends that each foot be rated as separately unfitting at 10%, coded 5399-5310, IAW VASRD §4.73. In the matter of the lumbar spine and bilateral knee conditions, the Board unanimously recommends no change from the PEB determination 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:

UNFITTING CONDITION	VASRD CODE	RATING
Plantar Fasciitis with Posterior Tibial Tendonitis and Gastrocnemius Equinus, Left Foot/Ankle	5399-5310	10%
Plantar Fasciitis with Posterior Tibial Tendonitis and Gastrocnemius Equinus, Right Foot/Ankle	5399-5310	10%
COMBINED (w/ BLF)		20%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101110, 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, AR20120019354 (PD201101101)

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

XXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA