

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200128
BOARD DATE: 20121212

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20011019

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard Soldier, SPC/E-4(02J/Band Member, Clarinet Player), medically separated for fibromyalgia. The CI's back and neck pains started in April 1997, after carrying rucksacks and rifles, a week into basic training. Despite medication, a trigger point injection, physical therapy (PT), orthopedic consults, rheumatology consults and neurology consults the CI failed to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). The MEB included fibromyalgia, with pain of constant frequency and moderate pain intensity; and reduced cervical mobility as medically unacceptable conditions IAW AR 40-501 on the DA Form 3947. The CI filed a non-concurrence with the MEB's findings and an addendum to the MEB was issued identifying bilateral knee pain; which was deemed to be "not a career ending condition ... at most, requiring a P2 profile for no running." The MEB forwarded no other conditions for Informal Physical Evaluation Board (IPEB) adjudication. The IPEB adjudicated possible fibromyalgia with specific pain complaints involving the neck, back and knees for which soldier appears to be intermittently using medications as unfitting, rated 0%, with likely application of the Department of Defense Instruction (DoDI) 1332.39 (this unfitting condition/rating included the MEB reduced cervical mobility diagnosis). The IPEB adjudicated the bilateral knee pain as not unfitting. The CI then filed a non-concurrence with the IPEB findings and requested a Formal PEB (FPEB). The FPEB adjudication changed the disability description and increased the rating to 20% for the fibromyalgia, with specific pain complaints involving the neck, back and knees, and found the bilateral knee pain as not unfitting. The CI concurred with the FPEB and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: "My condition continues to affect my ability to perform basic life activities and most physical activity. I continue to be unable to maintain regular employment. I currently have a combined rating of 60%, but am 100% due to unemployment."

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 bilateral knee pain and reduced cervical mobility conditions are considered as requested for consideration and 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 FPEB – Dated 20010724			VA (9 Mos. Post-Separation) – All Effective Date 20010621*			
Condition	Code	Rating	Condition	Code	Rating	Exam
Fibromyalgia ... with specific pain complaints involving the neck, back and knees (incl MEB cervical dx)	5099-5025	20%	Fibromyalgia (Claimed as cervical condition to include pain radiating down Left Arm to hand; myofascial pain; and, low back condition	5025	40%	20020710
Bilateral Knee Pain	Not Unfitting		No VA Entry			
↓No Additional MEB/PEB Entries↓			0% X 0 / Not Service-Connected x 1			20020710
Combined: 20%			Combined: 40%			

*VA effective date is based on date of VA Application received more than one year after separation as active duty time is identified on VARD as time in Basic Training. Dry eyes (5025-6025 at 20%) and urinary frequency (7599-7515 at 10%), both associated with fibromyalgia, granted effective 20050906 (combined 60%). Individual Unemployability granted from 20060428.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred conditions continue to burden her. It is a fact, however, that the Disability Evaluation System has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). 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 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Fibromyalgia Condition (including the MEB reduced cervical motion condition). The CI was initially diagnosed with upper back and neck pain after carrying rucksacks and rifles in April 1997. The CI was evaluated by orthopedics in August 1998 for neck pain and pain radiating to the right elbow. An electromyogram (EMG) performed in September 1998 demonstrated a normal left ulnar and median nerve conduction study (NCS). The CI was seen several times by Physical Medicine and Rehabilitation (PM&R) from 1998 to 2001 for evaluation and treatment of fibromyalgia-like symptoms. The CI was given a permanent U3 profile for fibromyalgia in February 1999. A rheumatology consult in May 1999 noted tender point exam with 4/18 mostly in the upper back and a trigger point exam with several trigger points over the neck, upper back and spine. These results led the rheumatologist to diagnose “pain amplification syndrome manifested by neck and upper back trigger and tender points associated with paresthesias”... “presentation is most consistent with fibromyalgia.” The CI was referred to neurology in August to determine whether the symptoms of left arm weakness and paresthesias were of neurological origin. Based on a normal left arm EMG/ nerve condition study (NCS) and an improvement in the symptoms, the CI was diagnosed with myofascial pain syndrome. The MEB examination performed 16 months prior to separation indicated that the CI’s pain condition was initially treated with low dose tricyclic antidepressants (Pamelor and Prozac), aerobic exercises, stretching and education and showed some improvement; however the symptoms began to worsen. The examiner indicated that the CI complained of constant aching pain since initial onset, along with symptoms of occipital headaches throughout the day, restless sleep (3 to 4 hours a night), morning fatigue, tiredness, morning stiffness and alternating bouts of constipation with diarrhea all interfering with activities of daily living. The examiner further noted 11/18 tender points, a failure of a trigger point injection and a failure of adjusted doses of Pamelor and Prozac. Cervical spine range-of-motion (ROM) showed limitations in left sided head tilt lacking 75% on that motion and limitations on left sided rotation lacking 25% on that motion. Magnetic resonance imaging (MRI) of the neck was reported as normal. The

commander's statement noted that the CI could not perform within her MOS due to her physical condition limitations. At the time of the first narrative summary (NARSUM) and MEB, the diagnosis was fibromyalgia on PM&R treatment notes, on the profile, NARSUM and MEB DA Form 3847; however, rheumatology diagnosis was as stated above 'physical pain amplification syndrome with a presentation most consistent with fibromyalgia.' An MEB Addendum 7 months prior to separation stated the CI's "medical condition has not changed" and had diagnoses of "Lumbar Disk Degeneration, Chronic Pain due to Fibromyalgia."

The VA Compensation & Pension (C&P) examination performed 9 months after separation documented a history of headaches, diarrhea alternating with constipation, anxiety, chronic musculoskeletal pain, back and neck pain and spasms; weakness in both hands and an inability to lift any heavy objects; numbness and tingling in the legs; constant tiredness and weakness; and difficulty walking with refractory to therapy. The examiner further noted that the CI was taking Ultram one to two tablets daily for pain.

The Board directs attention to its rating recommendation based on the above evidence. The FPEB coded Fibromyalgia condition 5099 analogous to 5025 rated at 20% and the VA used the same code 5025 rated at 40%. Both the PEB and the VA included the (MEB-diagnosis of) reduced cervical motion condition, as being included in the rating for the unfitting fibromyalgia condition. In considering the rating, the Board readily agreed that there was no evidence that the CI's symptoms were readily controlled by medications and therefore the 10% rating was well exceeded. The deliberation focused on the 20% rating ([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) vs. 40% ([symptoms] that are constant or nearly so and refractory to therapy).

In the matter of the contended reduced cervical motion condition, the Board unanimously recommends no change from the PEB determination as being included in the rating for the unfitting fibromyalgia condition. The Board majority considered that the CI had daily pain with an ineffective response to medications and that the irritable bowel symptoms were all part of the fibromyalgia constellation of symptoms which supported the 40% rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends a disability rating of 40% for the fibromyalgia condition.

Contended PEB Condition. The contended condition adjudicated as not unfitting by the PEB was bilateral knee pain. The Board's first charge with respect to this condition 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. This condition was not specifically profiled; nor was this condition implicated in the commander's statement; and, was not judged to fail retention standards. An MEB Addendum a year prior to separation noted the bilateral knee condition as chondromalacia patella, at most requiring a P2 profile and not a career ending condition. This condition was reviewed by the action officer and considered by the Board. There was no indication from the record that this 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 bilateral knee condition 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 condition, the Board, by a vote of 2:1, recommends a disability rating of 40%,

coded 5099-5025 IAW VASRD §4.71a. The single voter for dissent (who recommended adopting the PEB rating at 20%) did not elect to submit a minority opinion. In the matter of the contended reduced cervical motion condition, the Board unanimously recommends no change from the PEB determinations as being included in the rating for the unfitting fibromyalgia condition. In the matter of the contended bilateral knee pain condition, 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Fibromyalgia, with specific pain complaints involving the neck, back and knees	5099-5025	40%
	COMBINED	40%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120131, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXX, DAF
 President
 Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
 for XXXXXXXXXXXXXXXX, AR2013000030 (PD201200128)

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 40% 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 40% 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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA