

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200314
BOARD DATE: 20121115

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030522

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, PV2/E-2(54B, NBC Specialist), medically separated for right hip and left knee condition without any specific history of injury or trauma. She did not respond adequately to treatment and was unable to perform within her Military Occupational Specialty, meet worldwide deployment standards or meet physical fitness standards. She was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Right hip and left knee pain were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Three other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the right hip and left knee condition as unfitting, bundling them, and rated 10% with application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining PEB conditions were determined to be medically acceptable. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: "Service connected disabilities were not included. Those disabilities include: hypothyroidism, degenerative joint disease: right hip, left hip right knee, and left knee and post-surgery hammertoes with continued toe numbness. I still take Synthroid for hypothyroidism. The pain from the degenerative joint disease has spread to most of my joints. I fell last year and because of the weakened condition due to degenerative joint disease my right knee tore the meniscus. I have considerable daily pain in my neck, back, hips and knees. I get debilitating muscle spasms in my upper and lower back. I have been through rounds of physical therapy for my knees and am resigned to wear braces, and I'm currently attending physical therapy for my back. Toes on both feet go numb with extended walking (walking over 500 yards). I have pain in the large toe on my left foot. A prior nuclear bone scan done in Germany in 2002 showed significant deterioration and it has gotten worse."

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 conditions hypothyroidism and mallet toes as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting conditions. 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 PEB – Dated 20030411			VA (5 Mos. Post-Separation) – All Effective Date 20030523			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Hip and Left Knee Pain	5099-5003	10%	Degenerative Joint Disease, R Hip	5003-5253	10%	20031016
			Degenerative Joint Disease, L Knee	5003-5260	10%	20031016
History of Hypothyroidism	Medically Acceptable		Hypothyroidism	7903	10%	20031016
History of Mallet Toes, S/P Surgical Correction in Feb 03	Medically Acceptable		Mild hammertoe Deformity, R Foot, Toes 2-5	5282	0%	20031016
			S/P Surgery of Hammertoes, L Foot	5282	0%	20031016
↓No Additional MEB/PEB Entries↓			Degenerative Joint Disease, L Hip	5003-5252	10%	20031016
			0% X 3 / Not Service-Connected x 0			
Combined: 10%			Combined: 40%			

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. 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 Veterans’ 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.

Left Knee and Right Hip Condition. The CI reported an onset of left knee pain for 1 1/2 years prior to her right hip pain. The right hip pain started approximately 6 to 7 months later after working on guard duty at her installation. While standing and favoring her left knee she put all her weight on her right hip and was diagnosed with a right hip tendonitis. She reported both her left knee and right hip pain were exacerbated with prolonged standing and additionally the left knee pain was exacerbated with sitting or any exertional type of activity. Anti-inflammatory medications gave her minimal relief and she had no help with physical therapy. Plain radiographs did not identify any abnormalities and a bone scan identified an area of mild increased activity on the lateral aspect of the left knee, which was not specific. Her profile limitations included; no unit physical training or testing, no rucksack, no lifting greater than 10 pounds and no use of flak gear. The commander’s statement corroborated the profile limitations and additionally that she was not worldwide deployable.

The MEB physical exam demonstrated tenderness of the greater trochanter of her right hip, full range of motion in flexion, abduction, adduction, internal and external rotation and normal motor and neurovascular findings of the lower extremity. On examination of the left knee there was some crepitus through range of motion of the patellofemoral joint, no effusion, full range of motion, ligamentously stable, and no tenderness to palpation at the joint line but some pain with compression of the patella. At the VA Compensation and Pension (C&P) exam the CI reported pain in both hips particularly in cold weather and she continued to have problems with her left knee exacerbated with walking greater than a 1/2 mile and sitting in a car for more than an hour. She used no medication for pain. The C&P exam demonstrated a normal gait, non-compensable loss of motion with right hip flexion at 110 degrees (0-125 degrees normal), abduction at 40 degrees (45 degrees normal) and adduction at 20 degrees (45

degrees normal) with painful motion. On examination of the left knee there was tenderness of the patella, crepitance, non compensable ROM loss with flexion at 120 degrees (140 degrees normal), painful motion and stable ligaments. A bone scan revealed minor degenerative changes noted in both hip regions, slightly more prominently in the right hip and both knees, more predominantly in the medial compartment region of the left knee. The examiner diagnosed degenerative joint disease knees and hips.

The Board directs attention to its rating recommendation based on the above evidence. The Board assigns the MEB exam more probative value for proximity to separation and likely the VA exam reflects worsening of the degenerative arthritis of the joints. The PEB and VA chose different coding options for the condition, which had some implications on rating and both were IAW §4.71a— schedule of ratings—musculoskeletal system. The PEB combined the left knee and right hip under a single rating, coded analogously to 5003. This coding approach is countenanced by AR 635-40; but, IAW DoDI 6040.44, the Board must apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a. When the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. All members agreed that no distinctions between the two joints could be made regarding functional limitations, and that it was reasonable to concede that either the left knee or right hip alone would have resulted in the same fitness consequences. The PEB’s DA Form 199 cited left knee and right hip pain with normal physical exams, X-rays and a positive bone scan for the left knee and “rated analogous to degenerative joint disease with full motion,” which is consistent for a 10% rating for both joints. There is no evidence of painful motion (§4.59) in the MEB exam to support separate ratings as achieved in the VA exam after separation. Neither the PEB nor the VA had evidence which suggested functional loss due to pain or flare-ups which would provide for additional or higher rating. The Board deliberated between two options for its recommendation: coding strictly under 5003 with “X-ray evidence of involvement of two or more major joints,” which would yield a single rating of 10% for the left knee and right hip; or conceding §4.40 (functional loss) to achieve the minimal compensable rating (10%) for each joint. 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 left knee and the right knee condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were hypothyroidism and mallet toes. The Board’s first charge with respect to these conditions 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. Hypothyroidism was not profiled however mallet toes was temporary profiled after surgery for 3 weeks with no further profiles in evidence. Neither condition was implicated in the commander’s statement; and, nor judged to fail retention standards. All were reviewed by the action officer 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. As discussed above, PEB

reliance on the USAPDA pain policy for rating right hip and left knee condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right hip and left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Right Hip and Left Knee Pain	5099-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120312, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXX , AR20130000260 (PD201200314)

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 and hereby deny the individual's application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA