

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1200348
BOARD DATE: 20121121

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20080109

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (44C/Financial Management Technician), medically separated for testicular pain and a right ankle pain. He did not respond adequately to treatment and was unable to within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was issued a permanent P3/L3/H2 profile and underwent a Medical Evaluation Board (MEB). Testicular pain and right ankle pain were forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW AR 40-501. Four other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The IPEB adjudicated the testicular pain condition as unfitting, rated 0% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The right ankle pain condition and the remaining MEB conditions which met retention standards were determined to be not unfitting. The CI appealed to the Formal PEB (FPEB). The FPEB adjudicated the testicular and right ankle pain conditions as unfitting, rated 0% and 0% respectively, and was then medically separated with a 0% combined disability rating.

CI CONTENTION: "I have since my separation been awarded V.A. service-connection of 10% for each of the two conditions listed on the enclosed DA Form 199 (PEB proceedings)".

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 unfitting conditions, testicular and chronic right ankle pain, as requested for consideration, 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 20070828			VA (2 Mos. Post-Separation) – All Effective Date 20080110			
Condition	Code	Rating	Condition	Code	Rating	Exam
Testicular Pain	8799-8730	0%	Post-Vasectomy Syndrome with Residual Pain	8799-8730	10%	20080318
Chronic Right Ankle Pain	5099-5003	0%	Right Ankle Strain	5271	10%	20080318
Hearing Loss	Not Unfitting		Hearing Loss R/L Ears	Not Service Connected (NSC)		
Bilateral Carpal Tunnel Syndrome	Not Unfitting		Carpal Tunnel Syndrome, Left Upper Extremity	8515	10%	20080328
			Carpal Tunnel Syndrome, Right Upper Extremity	8515	10%	20080328
Chronic Headaches	Not Unfitting		Migraine Headaches	8100	30%	20090106
High Blood Pressure	Not Unfitting		Essential Hypertension	7101	0%	20080318
↓No Additional MEB/PEB Entries↓			Adjustment Disorder with Depressed Mood and Obsessive Compulsive Disorder	9434	30%	20080425
			0% X 2 / Not Service-Connected x 5			
Combined: 0%			Combined: 70%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the current VA ratings for his service-connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans' Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board's threshold for countering DES 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.

Testicular Pain Condition. The CI underwent a vasectomy in January 2006 and developed postoperative constant left testicular pain which would radiate to the entire groin area on both sides. The pain was a 6-7 of 10 in intensity and was aggravated by high impact activities, sitting or standing greater than 15 minutes or lifting objects greater than 15 pounds. The pain caused a change in his gait resulting in low back pain. He reported swelling of the left testicle with a penile erection, and co-existing symptoms of urinary frequency, urgency and nocturia with normal laboratory studies. An ultrasound revealed sperm granulomas and a left varicocele for which he elected a second operation to remove without improvement of the pain. Other treatment modalities attempted to relieve the pain included physical therapy and pain management. The long acting narcotic medication, MS Contin, made the pain bearable and the short acting narcotic based medication, Percocet for breakthrough pain, brought the pain from a 9 of 10 down to a 6 of 10 in intensity. The CI was seen by multiple urologists who all opined a redo surgery was not recommended and discussed either a bilateral nerve procedure of the ilioinguinal nerve or an orchiectomy. The CI reasonably declined either surgical option. The profile limitations included; no driving if sedated, no more than an 8 hour day work day, lifting 15 pounds or less, standing 15 minutes or less, and able to wear a protective mask and chemical equipment. The commander's statement documented the CI was incapable of performing his duties in the motor pool, office, or field environment due to pain and being heavily medicated. The commander further documented he was unable to complete physical fitness testing and unable to perform any task associated with deployment. The MEB physical exam noted there were no defining abnormalities of the scrotal contents that would explain the constellation of symptoms described above. At the VA Compensation and Pension (C&P) exam performed after separation, the CI reported additionally that he had tried bilateral nerve blocks without success and worked at a desk job to avoid standing or physical activity to prevent pain. The C&P exam demonstrated the CI smiling the majority of the time although complaining of disabling pain, a soft abdomen, well healed surgical scar in the lower abdomen, extremely touchy of the testicles even with the lightest tactile palpation otherwise no palpable abnormalities and normal rectal and prostate findings. The VA examiner diagnosed post-vasectomy syndrome with residual pain and opined while the extent of his pain seems to be out of proportion to his physical findings he complained bitterly of pain.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose the same coding options for the condition and were subject to the same rating criteria IAW §4.124a—Schedule of ratings—neurological conditions and convulsive

disorders. The PEB assigned a 0% rating coded analogous to 8730 (neuralgia ilioinguinal nerve) for moderate pain and while the original VA rating decision assigned a 0% rating, a rating decision 8 months post separation increased the rating to 10% for severe pain after a request was made to reopen the case. This rating decision also cited epididymitis was included in the 10% rating. The Board agreed the evidence supports likely a neuropathic etiology, but also clinically could support the 7525 (Epididymo-orchitis, chronic only) and considered evaluating the evidence for a higher rating with either code in avoidance of pyramiding IAW VASRD §4.14. The Board notes IAW §4.124 “Neuralgia, cranial or peripheral is characterized usually by a dull and intermittent pain, of typical distribution so as to identify the nerve, is to be rated on the same scale, with a maximum equal to moderate incomplete paralysis.” IAW §4.123 “Neuritis, cranial or peripheral is characterized by loss of reflexes, muscle atrophy, sensory disturbances, and constant pain, at times excruciating, is to be rated on the scale provided for injury of the nerve involved, with a maximum equal to severe, incomplete, paralysis. The maximum rating which may be assigned for neuritis not characterized by organic changes referred to in this section will be that for moderate, or with sciatic nerve involvement, for moderately severe, incomplete paralysis.” The Board agreed the evidence supports a moderate to severe functional pain impact, at times excruciating for the 10% neuritis criteria coded analogous to the 8630 (neuritis ilioinguinal nerve). The Board also agreed the evidence supports the 10% rating analogous to code 7525 (Epididymo-orchitis, chronic only) for use of long-term drug therapy. 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 testicular pain condition.

Chronic Right Ankle Pain Condition. The CI injured his right ankle during a training exercise in February 2003. This was treated conservatively as a severe sprain. Subsequently, he sprained this ankle on several occasions and reported not being able to complete a two mile run, jump, climb or walk without pain over rough and uneven ground. Magnetic resonance imaging (MRI) performed greater than a year later was normal and specifically cited intact ligament structures. An orthopedic evaluation performed in June 2007 documented mild decrease in range-of-motion (ROM) with dorsiflexion and plantar flexion, mild ligament laxity with specific testing, normal heel rise and normal motor testing. There were two goniometric 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.

Right Ankle ROM	MEB ~8 Mo. Pre-Sep (20070501)p.108	VA C&P ~2 Mo. Post-Sep (20080318)p.154
Dorsiflexion (0-20°)	7°/7°/7°	20°
Plantar Flexion (0-45°)	30°/31°/30°	40°
Comment	stiff	Painful motion, use of a cane
§4.71a Rating	10%-20%	10%

The MEB physical exam demonstrated no defining abnormalities and ROM was thought to be normal for him as his left ankle demonstrated similar “abnormal” ROM findings. The examiner diagnosed pain and instability of the right ankle. At the VA Compensation and Pension (C&P) exam after separation, the CI additionally reported flare-ups with physical activity, intermittent use of a cane and daily use of an ankle brace. Getting off his feet and taking nonsteroidal medication relieved the pain to allow him to work as a corrections officer and he had been incapacitated 7 days at one time in the last 12-months. The C&P exam demonstrated a normal gait with the use of a cane, normal neuromuscular findings, no ligament laxity and no Deluca observations. X-rays were unremarkable without gross abnormalities.

The Board directs attention to its rating recommendation based on the above evidence. This rating includes consideration of functional loss IAW VASRD §4.10 (functional impairment), §4.40

(functional loss), and §4.59 (painful motion). The Board notes that both the MEB and VA exams were complete, well documented, and compliant with VASRD §4.46 (accurate measurement). While the dorsiflexion ROM data was significantly different than the VA exam which could connote marked ROM loss, the Board agreed the opposite ankle had similar MEB ROM measurements therefore there is some loss of dorsiflexion ROM impairment but not that of marked in this case. Both the VA and MEB exams demonstrated loss in plantar flexion. The Board agreed however to assign the VA exam more probative value for its proximity to separation. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB assigned 0% coded analogous to 5003 (arthritis, degenerative) for no significant loss of joint motion which was inconsistent with the VASRD and the MEB evidence. The VA assigned 10% coded 5271 (ankle, limitation motion of) for moderate painful limited motion. The Board agreed the evidence supports the minimum 10% for painful motion. There is no evidence of documentation of incapacitating episodes which would provide for additional or higher rating. 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 right ankle 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 testicular pain condition and IAW VASRD §4.124a, the Board unanimously recommends a disability rating of 10%, coded 7525-8630 IAW VASRD §4.124a. In the matter of the right ankle condition, the Board unanimously recommends a disability rating of 10%, coded 5271 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
Testicular Pain	7525-8630	10%
Right Ankle Pain	5271	10%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120406, 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 / XXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXX, AR20130000039 (PD201200348)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PD BR) 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

XXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PD BR
() DVA