RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX
CASE NUMBER: PD1200392
BOARD DATE: 20121212

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20090312

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SFC/E-7 (68W/Medical Specialist), medically separated for chronic left ankle pain. The CI initially fractured his left ankle at age 13 in a tractor accident, then reinjured his left ankle during Basic Training. Despite a left ankle arthroscopic debridement and lateral ligament repair; three steroid injections, stiff leather and plastic brace; and non steroidal anti inflammatory drugs (NSAIDS) the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3, L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic left ankle pain secondary to posttraumatic arthritis and obstructive sleep apnea (OSA) on the DA Form 3947 to the Informal Physical Evaluation Board (IPEB) as failing retention standards. Depressive disorder not otherwise specified (NOS), gastro esophageal reflux (GERD) with hiatal hernia, chronic mid-back pain, seasonal allergies, mechanical hip pain and hyperlipidemia conditions, identified in the rating chart below, were also identified and forwarded by the MEB as meeting retention standards. The IPEB adjudicated the chronic left ankle conditions as unfitting, rated 20%. OSA was considered by the IPEB, and determined to be not unfitting since the condition was "effectively been treated with C-PAP and this condition is expected to resolve with therapy." The remaining conditions were determined to be not unfitting. The CI appealed to the Formal PEB (FPEB) and received an Informal Reconsideration PEB, which affirmed the PEB findings. The CI was thus medically separated with a 20% disability rating.

CI CONTENTION: "DOD Rating 20% VA Rating 60% currently. It is my belief that all injuries and illnesses, that make me unfit to continue in my job as a NCO were not accounted for in the final rating from the Army. The rating received did not account for the surgeries for things that the Army deemed as service connected that still were not stabilized and needed surgery within a year of separation or the totality of my overall medical state. In addition I was actively being paid for approximately a year in an INCAP status and was not accruing retirement points due to IDARNG J-I Medical Policy that anyone on INCAP status was not allowed to drill to receive retirement points at all. My final statement for retirement points showed me to be less than 6 months short of 15 good years. If I had not followed the instruction we received at Fort Lewis on demobilization to trust the system and go to our VA hospital in Boise for the follow up care on Iraq caused or aggravated issues, I would have received care within the 6 months post release from active duty. Within a month of returning home I was registered in the system, but had to wait well over a year before space was opened up to see an orthopedist for my primary issue being my L ankle. Going thru surgical recovery they did not have many of the options available in the way of statuses to put me in due to time period that I had to wait for an appointment after separation from active duty. Looking back I should have never have led the way and set the example as a leader to follow the advice of the demobilization and upper command advice on how to proceed. My advice to soldiers that have deployed since my nightmare has been do not leave active duty until you have had all of the issues from deployment fixed, not just evaluated. This previous mentality has bled over into the VA system as well in their evaluation that things are not service connected due to time periods when treatment or official diagnosis became finally became available. As a medic we often shorted

ourselves with documenting our own issues in country, as we were focused on our mission to our patients first causing issues on home front."

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 OSA, depressive disorder NOS, GERD, hiatal hernia, chronic mid-back pain, seasonal allergies, mechanical hip pain and hyperlipidemia 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 left ankle condition. 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 Reconsideration PEB – Dated 20090129		
Condition	**Code**	**Rating**
Chronic Left Ankle Pain	5271	20%
OSA	Not Unfitting	
Depressive Disorder NOS	Not Unfitting	
GERD with Hiatal Hernia	Not Unfitting	
Chronic Mid-back Pain	Not Unfitting	
Chronic Bilateral Knee Pain	Not Unfitting	
Seasonal Allergies	Not Unfitting	
Mechanical Hip Pain	Not Unfitting	
Hyperlipidemia	Not Unfitting	
↓No Additional MEB/PEB Entries↓		
Combined: 20%		

VA (11 Mo. Pre-Sep & 6 Mo. Post-Sep) – All Effective Date 20071217			
Condition	**Code**	**Rating**	**Exam**
Degenerative Arthritis Left Ankle	5271	20%	20080408
Sleep Disorder	6847	NSC	
Depression	9434	50%*	20090917
GERD	7346	NSC	
No VA Entry			
No VA Entry			
Allergies	8865-6522	NSC	
No VA Entry			
No VA Entry			
Bronchitis	6600	10%	20080408
Headaches	8100	0%	20080408
Not Service-Connected (NSC) x 10			
Combined: 60%*			

* Left ankle, 5271, temporary 100% from 20100302 to 20110101.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application, that the gravity of his condition and predictable consequences which merit consideration for a higher separation rating. It is a fact, however, that the Disability Evaluation System (DES) 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.

The Board further notes that the applicant asks the Board for specific correction of records and specified consequential entitlements (retirement points/etc.). By law the Board authority is limited to making recommendation on correcting disability determinations. The actual correction of records and consequential entitlement determinations is the responsibility of the applicable Secretary and Accounting service. The applicant's request will of course remain with the application as it is processed. The Board will review all evidence at hand to assess the

fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Chronic Left Ankle Pain Condition. The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Left Ankle ROM	VA C&P ~11 Mo. Pre-Sep	MEB ~9 Mo. Pre-Sep	MEB ~8 Mo. Pre-Sep
Dorsiflexion (0-20°)	0°	~5° "not quite 5°"	2° ,3°, 3°
Plantar Flexion (0-45°)	20°	~10°	12°, 13°, 12°
Comment: Surgery ~20 Mo. Pre-Sep	Brace; stiffness; instability; antalgic gait	Stiff leather/plastic brace; antalgic gait; "essentially no tibiotalar motion"; good subtalar motion; deformity great toe/5th toe; mechanical limitation; ligaments stable; negative anterior drawer sign	
§4.71a Rating	20%	20%	20%

The CI underwent a left ankle arthroscopic debridement and lateral ligament repair in July 2007, 20 months prior to separation. The MEB examinations 8 and 9 months prior to separation indicated chronic pain. The examiner recommended a rocker–bottom shoe to assist with his gait and a continuation of the left ankle brace. The examiner indicated a plan for continued brace use, steroid injections every few months to delay surgery, but stated "this injury has a 100% chance of going on to the need for tibiotalar fusion." X-ray demonstrated significant left ankle tibiotalar arthritis and destruction of joint space. The physical exam findings are summarized in the chart above. The commander's statement indicated "(the CI) is fully capable of performing his duties as a medic, despite his left ankle condition. He is also our unit's only fully trained System Administrator. Even though his left ankle prevents him from being deployed, I feel he should most definitely be retained in the National Guard, as he is a valuable asset to the MEDDET. …" The VA C&P examination performed 11 months prior to separation, preceded the MEB exams, and indicated that the CI had functional limitations of standing for more than a few minutes; an inability to walk more than ¼ mile with moderate painful flare-ups weekly causing pain and decreased endurance one to two days a week. The C&P physical exam findings are summarized in the chart above. VA records indicated the CI underwent left ankle surgery in September 2010, 18 months post-separation, with a temporary convalescent 100% rating from September 2010 to January 2011; with a projected return to a 20% rating in 2011.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and the VA chose the same disability code 5271 (Ankle, limited motion) and both rated at 20% (Marked); which is the highest rating under that code. All exams demonstrated severe limitation of dorsiflexion and plantar flexion which caused marked functional limitations. The remaining ankle ROM and function did not approach ankylosis of the ankle, or equivalency to actual loss of use of the foot for higher rating. 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 chronic left ankle pain condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were OSA, depressive disorder NOS, and GERD with hiatal hernia, chronic mid-back pain, seasonal Allergies, Mechanical Hip Pain and Hyperlipidemia. 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. The commander's statement

considered the CI fully capable of doing his job and recommended retention, even though the CI could not deploy due to his ankle: "Even though his left ankle would potentially prevent him from deploying, I feel that his experience, training and knowledge are a great asset to the State of Idaho Medical Detachment. Losing this soldier would be a detriment to the Medical Detachment, and the Idaho Army National Guard as a whole."

Obstructive Sleep Apnea (OSA). The CI underwent pulmonary function testing (PFT) and a Methacholine Challenge Test in June 2008 which resulted in normal results. The MEB examination 8 months prior to separation indicated that the CI may have had sleep apnea while in Iraq in 2005. The CI had complaints of daytime fatigue and somnolence along with difficulty awakening in the morning hours from sleep. The CI did not pursue a diagnosis of OSA until the MEB exam and a subsequent consultation for a polysomnogram confirmed the diagnosis of OSA. The CI was issued a continuous positive airway pressure (CPAP) machine and noted some improvement in his overall energy throughout the day. He was further advised that it would take at least 3 weeks before a more noticeable constant improvement from use of the CPAP machine. The CI was granted a P3L3 profile for the OSA (and ankle) with restriction of "must have access to an electrical outlet while sleeping for CPAP machine." The Board directs attention to its rating recommendation based on the above evidence. The PEB adjudicated the OSA condition as not unfitting and the VA adjudicated the condition as not service-connected. The MEB determined the OSA condition (with CPAP required) failed Army standards AR 40-501. The PEB's DA Form 199 specifically addressed and adjudicated the OSA as not unfitting, and based the fitness determination on the evidence that the CI was "effectively treated with C-PAP and this condition was expected to resolve with therapy." Routinely OSA is not considered unfitting solely on the basis of field and operational impediments to the use of CPAP. There is no evidence in this case that OSA was associated with any unfitting impairments not corrected by CPAP, and the CI was adequately performing duties with regard to daytime drowsiness or other OSA-related symptoms prior to referral into the DES IAW DoDI 1332.38. The PEB's fitness adjudication was therefore expected and reasonable. 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 OSA condition.

Depressive Disorder NOS condition. The depressive disorder condition was not profiled nor was it indicated in the commander's statement. However, the CI underwent a MEB exam for this condition. The narrative summary (NARSUM) mental health consult for history of adjustment disorder, was accomplished 9 months prior to separation. It indicated a year history of mild depression with anxiety, significant stress, and irritability and sleep abnormalities. The examiner noted that the CI had been followed by a counselor at the VA starting in November 2005 through to November 2006 and had also had seen a psychiatrist two to three times per year with an assessment of "a service member with mild depression and anxiety adjustment issues from his deployment." Mental status exam (MSE) indicated no thought disorder, or suicidal/homicidal ideations. "Mood was described as stressed by multiple recent events to include his wife moving out, the medical board and the recent loss of his grandfather." There were no other abnormalities noted. The final diagnosis was depressive disorder, NOS and the Global Assessment of Functioning (GAF) was 70, in the range of some mild symptoms. Impairment for further military duty was "minimal." The commander's statement recommended retention, within the confines of the CI's ankle limitations and profile which included an S-1. The VA Mental Health C&P examination performed 6 months after separation noted that the CI endorsed occasional suicidal thoughts, feelings of irritation, loss of interest in others, decreased libido, constant sadness and difficulties with work, school and family relationships. The psychosocial stressors were marital problems, financial difficulties and medical issues. The GAF was 50, in the range of serious symptoms.

The Board directs attention to its recommendation for the depressive disorder NOS based on the above evidence. The PEB adjudicated this condition as not unfitting and there was no

performance based evidence from the record that depressive disorder or any other mental health condition significantly interfered with satisfactory duty performance. The VA-noted increase in symptoms was post-separation and was considered post-separation worsening. 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 depressive disorder NOS condition.

GERD with Hiatal Hernia, Chronic Mid-Back Pain, Seasonal Allergies, Mechanical Hip Pain and Hyperlipidemia. None of these conditions were profiled; none were implicated in the commander's statement; and, none were judged to fail retention standards. All were reviewed by the action officer and considered by the Board. Hyperlipidemia is an abnormal laboratory test and is not a physical disability. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. The Board concluded therefore that these conditions could not be recommended for additional disability rating. 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 GERD with hiatal hernia, chronic mid-back pain, seasonal allergies, mechanical hip pain and hyperlipidemia 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. In the matter of the left ankle condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended OSA, depressive disorder NOS, GERD with hiatal hernia, chronic mid-back pain, seasonal allergies, mechanical hip pain and hyperlipidemia conditions, 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, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Left Ankle Pain	5271	20%
	COMBINED	**20%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120508, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXX, AR20120022740 (PD201200392)

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

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA