RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX
CASE NUMBER: PD1200410
BOARD DATE: 20121218

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20060907

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (74D/Chemical Operations Specialist), medically separated for low back pain (LBP), bilateral leg pain and bilateral pes planus. The CI first noted the onset of bilateral leg pain while in basic training in February 2004. He also had LBP develop after doing sit ups in August 2005. Pes planus was noted on his accession examination. The LBP, bilateral leg pain and pes planus conditions did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). These conditions were determined to fail retention standards and forwarded to the Physical Evaluation Board (PEB) for adjudication. Obstructive sleep apnea (OSA) was also forwarded by the MEB as medically acceptable. The PEB adjudicated the LBP and bilateral leg pain conditions as unfitting, rated 10% each with application of the US Army Physical Disability Agency (USAPDA) pain policy. The bilateral pes planus condition was determined to have existed prior to service (EPTS) and was not permanently aggravated beyond natural progression. The OSA condition was determined to be not unfitting and therefore not ratable. The CI made no appeals and was medically separated with a 20% disability rating.

CI CONTENTION: "A. PEB CODE 7295/VA CODE 5099- 5022:BILATERAL LEG PAIN (SHIN SPLINTS) WAS RATED AT A COMBINED RATING OF 10% (L/R). BUT THE VA GAVE A 10% RATING OF LEFT LEG AND A 10% RATING OF RIGHT LEG. B. PEB CODE 327.23/ VA CODE: OBSTRUCTIVE SLEEP APNEA. THE ARMY FAILED TO RATE MY IMPAIRMENT DURING MY MEB IPEB PROCESS. BUT THE VA ON HAND GRANTED 50%. THIS CONDITIONS IS DIRECTLY REALTED TO MILITARY SERVICE. C. BILATERAL PLANTAR FASCIITIS , CONDITION WHICH WAS SUPPOSED TO BE ON MY PEB PAPERWORK WAS ACTUALLY LINKED MISTAKENLY TO MY PES PLANUS. THIS CONDITION CAUSES PAIN IN THE BOTTOM OF MY FOOT (L/R) WHICH HURTS WHEN STANDING AND WALKING ESPECIALLY DURING THE MORNING TIME. D. PEB CODE 724.2/ VA CODE 5299-5276: BILATERAL PES PLANUS. THIS CONDITION WAS AGGRAVATED FROM MILD (ENTRY) TO SEVERE (ETS)." Note: ETS is expiration, term of service.

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 OSA condition meets the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below in addition to a review of the ratings for the three unfitting conditions. The other requested condition of bilateral plantar fasciitis was not within the Board's purview. 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 IPEB – Dated 20060711		
Condition	**Code**	**Rating**
Low Back Pain	5299-5237	10%
Bilateral Leg Pain	5099-5022	10%
Bilateral Pes Planus	5299-5276	EPTS
Obstructive Sleep Apnea	Not Unfitting	
↓No Additional MEB/PEB Entries↓		
Combined: 20%		

VA (3 Mos. Pre -Separation) – All Effective Date 20060908			
Condition	**Code**	**Rating**	**Exam**
Chronic Lumbar Strain	5237	10%	20060626
Chronic Shin Splints LLE	5299-5262	10%	20060626
Chronic Shin Splints RLE	5262	10%	20060626
Pes Planus	5276	NSC	20060626
Obstructive Sleep Apnea	6847	50%	20060626
Chronic Cervical Strain	5237	10%	20060626
Plantar Fasciitis	5299-5276	10%	20060626
Tinnitus	6260	10%	20060605
Pseudofolliculitis Barbae	7800	10%	20060626
Eczema	7806	10%	20060626
0% X 1 / Not Service-Connected x 2			
Combined: 80%			

ANALYSIS SUMMARY: 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, and then only to the degree of severity present at the time of final disposition. The Board notes that the mere presence of a diagnosis does not render the condition unfitting. 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. 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 has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI's statements in the application regarding suspected DES improprieties in the processing of his case.

Low Back Condition. There were two goniometric range-of-motion (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.

Thoracolumbar ROM Degrees	PT/MEB ~5 Mo. Pre-Sep	VA C&P ~3 Mo. Post-Sep
Flexion (90 Normal)	90	80
Combined (240)	235	230
Comment	+ Constant Pain	+ After rep use limited by fatigue, lack of endurance & pain
§4.71a Rating	10%	10%

The CI first presented with LBP in August 2005, over a year prior to separation, noting a one day history of pain since doing sit ups. He was being seen for multiple other complaints on that

visit, but it was noted that there was no trauma and that the ROM and gait were normal. Over the next 6 months, he was treated conservatively with medications, duty limitations and physical therapy (PT) without adequate improvement and referred to a MEB on 27 January 2006. Plain X-rays that day were normal. A bone scan on 29 March 2006 showed no activity in the back which would indicate ongoing inflammation. At the MEB examination on 5 April 2006, the CI reported persistent LBP associated with heavy lifting. The MEB examiner noted a muscular build without further comment on the back. Magnetic resonance imaging (MRI) on 18 April 2006 showed minimal disc disease at L5-S1 and an "Essentially normal exam." was noted. A PT examination on 8 May 2006 noted a normal gait, strength and thoracolumbar curvature without spasm. A follow-up examination on 30 May 2006 noted a similar examination, but also noted tenderness over the L4-5 spinous and right transverse processes. His symptoms were noted to be improving. The narrative summary (NARSUM) was dictated on 20 June 2006 and noted that the LBP was aggravated by sit-ups. Reflexes and strength were normal; his gait was slightly antalgic. Provocative testing (straight leg raise [SLR]) for nerve root irritation was negative. Lower lumbar tenderness to palpation was noted, but no paraspinal tenderness. The ROM is above. An orthopedic addendum, on 7 July 2006, noted that the CI had very mild paraspinal tenderness, but was without midline tenderness. At the VA Compensation and Pension (C&P) exam on 26 June 2006, 2 months prior to separation, the CI reported constant pain and weakness, but denied incapacitation. He was treated with rest and a narcotic medication for the pain. On examination, he was noted to have lumbar tenderness and spasm. A SLR was negative bilaterally. Curvature and gait were normal. X-rays were normal. With repetition, the CI noted pain, fatigue and lack of endurance, but without further limitation in ROM. There were no signs of intervertebral disc syndrome or nerve root involvement.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the back at 10% and coded it 5237 for lumbosacral strain, although the PEB did so analogously. The Board noted that the limitation in ROM rates at 10%. It considered that the rating and coding assigned by both the PEB and VA were appropriate and saw no route to a 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 back condition.

Bilateral Leg Pain Condition. The CI was first seen for bilateral shin splints on 15 September 2004 when he noted a 5 month history of pain. At a subsequent internal medicine visit performed on 19 October 2004, the CI noted that they had been present since February 2004, the time of accession and basic training, and were aggravated by running over 2.5 miles. He was treated with medications and duty modification. A bone scan on 16 December 2004 was unremarkable. His symptoms initially improved, but then recurred. He was referred to PT. A normal gait and neurological examination were noted. At an orthopedic examination on 27 July 2005, he was thought to have a stress reaction. X-rays of the tibia and fibula on 27 July 2005 were normal bilaterally. He continued conservative management. A podiatry evaluation on 21 October 2005 also noted bilateral plantar fasciitis. A repeat bone scan on 29 March 2006 was positive for minimal shin splints bilaterally, but otherwise negative. The NARSUM documented persistent pain which was aggravated by walking or running. He had been on leave for 30 days with improvement in his symptoms. On examination, his gait was slightly antalgic. He was tender to palpation over the anterior tibias, but without redness, warmth or swelling. At the C&P examination, the CI reported a 2 year history of bilateral shin splints aggravated by activity and limiting him to no more than 20 minutes of standing and the inability to run or jump. On examination, gait and posture were normal. The mid-tibias were tender to palpation. X-rays were normal. An orthopedic addendum on 7 July 2006, 2 months prior to separation, noted that there was "no tenderness to palpation over either tibia, the subcutaneous portion of the tibia or of the anterolateral compartments or of the area of the leg for that matter." The impression was bilateral leg pain unrelieved by non-operative management. The Board directs

attention to its rating recommendation based on the above evidence. The PEB rated the bilateral leg pain at 10% and coded it analogously to 5022, periostitis. The VA rated each leg at 10% and utilized the coding option of 5262, impairment of the tibia and fibula. The Board noted that 'shin splints' is the common name for tibial periostitis. The Board considered these two coding options and also the other options available for the lower extremity and determined that the PEB coding of 5022 best fit the clinical findings. Under 5099-5022, the rating criteria for two or more major joints without incapacitating episodes meet the 10% disability rating level. However, the Board also noted that the orthopedic addendum, accomplished 2 months prior to separation and after the VA examination, annotated an absence of any tenderness over the tibias or lower leg. This would support a conclusion that the condition had resolved and that either no rating should be assigned or that a non-compensable rating awarded, at most. However, the Board cannot assign a rating lower than that awarded by the PEB. 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 bilateral leg pain condition.

Bilateral Pes Planus Condition. The CI was noted to have mild, asymptomatic pes planus on his entrance examination 31 October 2003, a little over 2 months prior to accession. At the 16 March 2005 evaluation for his shin splints, orthotics were prescribed. On 21 October 2005, at another appointment for the bilateral leg pain, he was noted by the podiatrist to have bilateral plantar fasciitis. A 19 April 2006 primary care note documented flat feet (pes planus), but also noted that there was no tenderness of the feet. The orthotics were adjusted and his profile modified to allow soft shoes or shoes of choice for the bilateral pain in his feet. Neither bone scan showed activity in the feet indicative of an ongoing inflammatory process. At the MEB examination, bilateral severe, symptomatic pes planus was noted. The NARSUM documented that the CI was able to wear his boots, but that his feet hurt and that the pain progressed over the course of the day. On examination, he was noted to have normal ROM and that there was no tenderness. At the C&P examination, the CI reported persistent pain aggravated by activity. He was limited in standing to 20 minutes and could not run or jump. Gait was normal and there was no evidence of abnormal weight bearing on his shoes. Both feet were tender to palpation and showed pes planus. X-rays, including weight bearing, were normal. The orthopedic addendum did not specifically address the feet. The Board directs attention to its rating recommendation based on the above evidence. The PEB determined that the pes planus condition was unfitting, but that it was an EPTS condition which had not been permanently aggravated beyond normal progression. The VA determined that the condition was not service-connected using the same reasoning. The Board considered the fact that this was noted on the accession examination and that the CI complained of lower extremity pain very early in his enlistment. There was no history of trauma other than from the increased activity attendant to a military lifestyle. The Board observed that it is not unusual for individuals with preexisting, but asymptomatic conditions to become symptomatic once they undergo the rigors of military duties. The Board also noted that the CI contended for bilateral plantar fasciitis. As already noted, this is outside of the purview of the Board. Nonetheless, the Board observed that the final profile did not include plantar fasciitis and that the NARSUM examiner noted no tenderness in the feet. It also noted that neither bone scan showed uptake in the feet. While associated with pes planus, it is a separate medical condition. 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 bilateral pes planus condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was OSA. 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.

The CI was diagnosed with OSA while in the MEB process. In this case, the CI was referred for a sleep study on 23 March 2006, 2 months into the MEB process. He was found to have mild OSA and treated with continuous positive airway pressure. This was noted on his final profile, but no limitations were placed and he remained P1. The MEB determined this to be medically acceptable. The commander did not specifically comment on this condition. The PEB determined that it did not significantly interfere with duty performance. 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 OSA condition. Therefore, no additional disability rating 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 back, bilateral leg pain and pes planus conditions and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended OSA condition, 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, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Low Back Pain	5299-5237	10%
Bilateral Leg Pain	5099-5022	10%
Bilateral Pes Planus	5299-5276	---
	COMBINED	**20%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120411, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

(TAPD-ZB / XXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXX, AR20130000007 (PD201200410)

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA