

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
CASE NUMBER: PD1200453
BOARD DATE: 20121129

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20080930

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SPC/E-4 (27D/Paralegal Specialist), medically separated for a right and left hip condition. She did not improve adequately with conservative treatment and was unable to meet the physical requirements of her Military Occupational Specialty (MOS), meet worldwide deployment standards or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Right hip pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. One other condition, as identified in the rating chart below, was forwarded on the MEB submission as a medically acceptable condition. The PEB adjudicated the CI as "Fit for Duty." However, an Informal Reconsideration PEB, 2 months later, adjudicated right hip pain s/p healed right hip stress fracture and left hip pain, which had not been identified by the MEB, as unfitting, rated 10% and 10% respectively, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The remaining condition was determined to be not unfitting. The CI made no appeals, and was medically separated with a combined 20% disability rating.

CI CONTENTION: "Request the PDBR to review SM disability separation for accuracy and fairness."

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 condition low back pain as requested for consideration 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 unfitting right and left hip pain 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 Recon PEB – Dated 20080815			VA (~4 Years 9 Mos. Pre-Separation) – All Effective Date 20011214			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Hip Pain S/P Healed Right Hip Stress Fracture	5299-5255	10%	Residuals, Stress Fracture, Right Hip	5255-5251	10%	20031222*
Left Hip Pain	5099-5003	10%	Post Traumatic Sinusitis, Left Hip, S/P Stress Fracture Femoral Neck	5024-5251	10%	20031222*
Low Back Pain	Not Unfitting		Lumbosacral Strain	5295	10%	20031222*
			NO VA ENTRY			
↓ No Additional MEB/PEB Entries ↓			0% X # / Not Service-Connected x #			
Combined: 20%			Combined: 30%			

*Most proximate VARD to separation dated 20101007 states no STR available in evidence and fails to cite C&P Exam dated 20031222, but all ratings from this original C&P Exam are intact with no change to rating percentages.

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 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.

Right and Left Hip Condition. The CI began experiencing bilateral hip pain during basic training. She was treated with non-steroidal, anti-inflammatory (NSAIDS) and muscle relaxant medications and physical therapy with a good response yet symptoms of pain returned with strenuous activity. Bone scan was thus ordered which revealed minimal uptake at the right and left hip, consistent with stress fractures. She was placed on light duty and a repeat bone scan in 2004 revealed no lesions. The profile identified bilateral hip pain and the limitations included; no physical training or testing and the only functional activities were able to carry and fire individual assigned weapon and wear chemical defense equipment. The commander's statement corroborated these limitations and that her medical condition was affecting the readiness and morale of the unit. 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.

Goniometric ROM (Degrees)	VA C&P ~4 Years 9 Mos. Pre-Sep		Narsum ~8 Mo. Pre-Sep	
	L Hip	R Hip	L Hip	R Hip
L/R Hip (Thigh)				
Flexion (0-125)	180	120	55/50/55	60/60/57
Extension (10-20)	15	15	0/0/0	0/0/0
Abduction (0-45)	40	40	18/15/20	35/28/30
Adduction (0-45)	20	20		
External Rotation (0-45)	15	15		
Internal Rotation (0-35)	40	40		
Comment	Stable gait, painful motion		Silent to painful motion	
§4.71a Rating	10%*	10%*	10%	10%

*With application of §4.59

At the MEB exam, the CI reported occasional bilateral hip pain exacerbated by prolonged standing and walking and was relieved by rest and pain medications. The MEB physical exam demonstrated; no tenderness of the right hip, normal neurologic findings and was silent to painful motion or findings of the left hip. The examiner opined excellent response to conservative treatment for the right hip stress fracture; however the CI was at risk for reoccurrence if she continued performing military duties. At the VA Compensation and Pension (C&P) exam prior to separation, the CI reported no additionally history, specifically no flare-ups. The C&P exam demonstrated tenderness at the lateral hip, painful motion, normal squat and normal MRI of the hips. The examiner diagnosed stress fracture, lesser trochanter, right hip and stress fracture in the neck left hip, asymptomatic, healed well with mild residual pain and synovitis.

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), §4.45 (DeLuca), and §4.59 (painful motion). While the MEB exam was not completely compliant with VASRD §4.46 (accurate measurement) and the ratable data in either exam were not similar, this did not bear on the rating. The Board agreed to assign the MEB exam more probative value as it is most proximate to separation. The PEB and VA chose different coding options for the condition, but this did not bear on rating both were IAW §4.71a—Schedule of ratings—musculoskeletal system. The PEB assigned an analogous rating of 10% for the right hip coded under 5255 (femur, impairment of) for functional loss. The PEB assigned an analogous rating of 10% for the left hip under 5003 (arthritis, degenerative) for limitation of one major joint. The Board agreed both of these assignments are consistent with §4.71a, in addition the Board notes the PEB considered VASRD §4.10, §4.40, §4.45, and §4.59 in their decision. The VA assigned an analogous rating of 10% under 5251 (Thigh, limitation of extension of) for thigh limited in extension to 5 degrees for the right and left hip. The Board agreed this was not consistent with their ratable data, however is consistent with the MEB extension ratable data. The Board, however, notes the VA ratable data meets the criteria for 5253 (limitation of rotation of, cannot toe-out more than 15 degrees) and or also meets the minimum 10% for each hip for painful motion. The Board agreed there is no evidence of flare-ups or incapacitating episodes to support additional rating or a 20% rating under the 5003 code. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there is insufficient cause to recommend a change in the PEB adjudication for the right and left hip condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was low back pain. 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. This condition was profiled; was implicated in the commander's statement; however was not judged to fail retention standards. The VA in addition noted the back condition was likely related to her hip condition in its rating decision. All were 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 this 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. 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 right and left hip pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended low back pain 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
Right Hip Pain S/P Healed Right Hip Stress Fracture	5299-5255	10%
Left Hip Pain	5099-5003	10%
COMBINED (w/ BLF)		20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120523, 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 / XXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
 XXXXXXXXXXXXXXXXXXXX, AR20120022741 (PD201200453)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDDBR) 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