

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1200485
BOARD DATE: 20130103

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020820

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (73D20/Accounting Specialist), medically separated for left ankle fracture status post arthrodesis. The CI fractured his left ankle in 1993. Over the next 8 years, he underwent four surgical procedures as well as extensive rehabilitation. Despite this, he did not improve adequately 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). The MEB adjudicated the left ankle pain condition as medically unfitting. It was the only condition forwarded to the Physical Evaluation Board (PEB) for consideration. The PEB adjudicated the left ankle condition as unfitting, rated 20% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 20% disability rating.

CI CONTENTION: "Full medical review was not conducted at the time of PEB proceeding. The orthopedic doctor wanted to submit to a board. RACH commander did not want to hold me past my ETS. So they processed only on the leg to speed up the process."

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 full medical review requested is 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 20020719			VA (5 Mos. Pre -Separation) – All Effective Date 20020821				
Condition	Code	Rating	Condition	Code	Rating	Exam	
Lt Ankle Fx S/P Arthrodesis	5270	20%	Arthritic Changes Lt Ankle	5271	10%	20020307	
↓No Additional MEB/PEB Entries↓			Sinusitis	6513	10%	20020307	
			Lt Shoulder...	5203	10%	20020307	
			Diverticulosis	7319	10%	20020307	
			Scar Lt Hip	7804	10%	20020307	
			Residuals of BM Asp... Back	5299-5292	10%	20020307	
			Residuals of BM Asp... Rt Hip	5251	10%	20020307	
			Residuals of BM Asp... Lt Hip	5251	10%	20020307	
			Roscea	7899-7806	10%	20020307	
			0% X 4 / Not Service-Connected x 1			20020307	
	Combined: 20%			Combined: 60%			

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. 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.

Left Ankle Condition. There were three 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.

Left Ankle ROM Degrees	VA C&P ~5 Mo. Pre-Sep	Ortho ~2 Mo. Pre-Sep	MEB 2808 ~2 Mo. Pre-Sep
Dorsiflexion (0-20)	10	0	0
Plantar Flexion (0-45)	25	0	0
Comment	No Pain	Good subtalar motion	Atrophy of gastrocnemius
§4.71a Rating	10%	20%	20%

The CI first noted problems with his left ankle on 14 December 1992 when he was treated for a sprain. Per the narrative summary (NARSUM), he fell down a set of stairs and fractured the left talar dome. He underwent open reduction and internal fixation (ORIF) on 28 December 1993 with bone grafting and an intramedullary rod. He was treated post-operatively with medications, duty limitations and physical therapy (PT). Despite this, he had persistent pain and was noted to have osteophytes at his 14 December 1994 orthopedic examination. At a 28 June 1995 orthopedic appointment, narrowed joint space and progressive talar dome sclerosis were seen on X-rays. On 16 April 1996, the CI had excision of anterior osteophytes which were causing mechanical limitation in dorsi-flexion and release of the Achilles tendon. He continued to have pain and limitations in function leading to an arthrodesis on 12 December 2000. Slow healing was noted, and on 14 February 2001 the treating orthopedist initiated an MEB. There were also numerous entries in the record that the CI continued to smoke. Because of non-union of the arthrodesis, on 24 August 2001 repeat ankle and subtalar arthrodesis with intramedullary rod and tibial bone grafting was done. Post-operative X-rays confirmed that the articular surfaces between tibia and talus were obliterated as well as the talocalcaneal joint. Again, recovery was slow and complicated by continued smoking. Alignment was good, but at the 25 February 2002 orthopedic follow-up, the fusion was still incomplete for talotibial joint although the talocalcaneal joint was fused. At the VA Compensation and Pension (C&P) examination on 7 March 2002, 5 months prior to separation, the CI reported pain, weakness, stiffness, swelling, inflammation, instability, locking, fatigue and lack of endurance. He stated that he needed to use a brace at all times and crutches 50% of the time. On examination, the feet did not show signs of abnormal weight bearing nor did he use an assistive device for walking. Posture and gait were normal and there was no limitation in walking or standing present. Swelling, instability, abnormal movement and weakness were noted. The ROM was reduced, but without pain. With repetition, the ROM was additionally limited (how much not specified) by fatigue, weakness, and lack of endurance with weakness

having the greatest functional impact. Sensation was noted to be decreased on the lateral aspect and the Achilles reflex was absent. The motor examination of the lower extremities was cited as normal, contradicting the examination specific to the ankle. The X-rays showed severe arthritic changes with a rod and screws present. At the MEB examination on 27 June 2002, 2 months prior to separation, the CI reported continued problems of the ankle without movement (in the joint). The examiner noted paresthesias of the lateral aspect of the sole of the left foot and atrophy of the gastrocnemius. The atrophy was not noted elsewhere in the record. Both flexion and extension were zero degrees. The NARSUM was dictated on 3 July 2002, 6 weeks before separation. It appears that the orthopedic surgeon who did the dictation relied on the examination he had done on 24 June 2002. The CI reported instability with stairs and difficulties with military duties as well as walking and hiking. On examination, he was noted to have normal light touch and motor function with good subtalar motion. Ankle motion was zero degrees. There was no direct comment on instability; however, the examiner noted “the remainder of the physical examination is normal.”

The Board directs attention to its rating recommendation based on the above evidence. It noted the disparity between the C&P ROM measurements and those of the orthopedist who dictated the NARSUM. The Board noted that the latter was more proximate, concordant with multiple other examinations, and was done by an orthopedist. Accordingly, this examination is given the highest probative value. The Board then considered the different coding options available for the ankle. The PEB rated the knee at 20% and coded it 5270, ankle ankylosis. The VA rated it at 10% and used the code 5271, limitation in motion. None of the coding options for the ankle allow a rating higher than the 20% awarded by the PEB. The Board considered the use of code 5262 for impairment of the tibia and fibula. It noted that for a 30% rating, marked disability must be present. The orthopedist noted good motor function and stated that “the remainder of the physical examination is normal” after commenting on ROM. The VA examiner noted a normal gait and the use of no assistive devices. Neither of these examinations supports a rating higher than moderate which provides not benefit to the CI. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the left 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 left ankle condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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
Left Ankle Fracture S/P Arthrodesis	5270	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120531, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXX, AR20130000819 (PD201200485)

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

XXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA