

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200526
BOARD DATE: 20121130

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20021209

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SSG/E-6, (54B/Food Service Specialist), medically separated for delusional disorder, right elbow pain and chronic left ankle pain. Symptoms of delusional disorder began in 2000 and were manifested by paranoid thoughts that people were out to ruin his career. Right elbow pain due to ulnar nerve entrapment was treated surgically in 2000, but symptoms continued post-operatively. Left ankle pain persisted after non-surgical treatment of a partial Achilles tendon tear in 1997. None of the conditions could be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3L3S4 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded delusional disorder (persecutory type), right elbow pain and chronic left ankle pain to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB's submission. The PEB adjudicated the delusional disorder as unfitting, rated 0% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD), and right elbow pain and chronic left ankle pain conditions as unfitting, rated 0% respectively, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: "I had a delusional disorder and some physical problems, but the Army only gave me a less than 30% rating."

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. 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 20020716			VA (18 Mos. Post-Separation*) – All Effective Date 20021210			
Condition	Code	Rating	Condition	Code	Rating	Exam
Delusional Disorder	9208	0%	Delusional Disorder	9203	70%	20050620
Right Elbow Pain	5099-5003	0%	Right Ulnar Neuropathy	8599-8516	10%	20040601
Chronic Left Ankle Pain	5099-5003	0%	Left Achilles Tendonitis	5299-5284	10%	20040601
↓No Additional MEB/PEB Entries↓			0% X 0 / Not Service-Connected x 1			20040601
Combined: 0%			Combined: 80%			

*Delusional disorder first rated by VA decision 20050708, based on exam 30 months after separation, effective date 20021210

ANALYSIS SUMMARY: The Board makes note that the CI's contended conditions are derived from VA evaluations performed well after separation. Although these conditions and ratings

were assigned an effective date to the time of separation, the earliest VA rating examinations underpinning them were performed 18 and 30 months after separation. The Board's operative instruction, DoDI 6040.44, specifies a 12-month interval for special consideration to VA findings. This does not mean that the later VA evidence was disregarded, but the Board's recommendations are directed to the severity and fitness implications of conditions at the time of separation. In this circumstance, therefore, the evidence from the record is assigned significantly more probative value as a basis for the Board's recommendations.

Delusional Disorder Condition. Although the PEB rating preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DoD adherence to VASRD §4.129, IAW DoDI 6040.44 and DoD guidance the Board must apply §4.129 to all relevant Board cases. The salient question before the Board is whether the CI's psychiatric condition meets the §4.129 definition of "a mental disorder that develops in service as a result of a highly stressful event [that] is severe enough to bring about the veteran's release from active military service." Although the VA Compensation and Pension (C&P) exam performed remote from separation suggests the unfitting delusional disorder condition may have resulted from exposure to stressful events while deployed in 1991, the clinical record does not provide evidence this was the case. The Board majority concludes that the application of §4.129 is not appropriate in this case, and will premise its rating recommendation on the psychiatric acuity at separation. The CI's symptoms at the time of the MEB could best be described as moderate. The NARSUM psychiatrist reported a history of self-referral in November 2001 with complaints that certain individuals were out to ruin his career. Paranoid thinking resulted in multiple congressional and IG complaints that alleged unfair treatment from multiple units. He was assigned to three different units over an 18 month year period of time. The CI related a fear that a hovering helicopter was investigating him, that his phone lines were tampered with and that scratches on his car were in the shape of eyes and were messages intended for him. He reported some symptoms suggesting possible depression, including decreased sleep, diminished appetite without weight loss and depressed mood, but declined medication for this. Mental status exam (MSE) at the time of the initial self-referral was reported to observe significant circumstantial thought processing, paranoid content, dysphoric mood, suspiciousness and flat affect. The NARSUM examiner indicated that there never was a history of suicidal or homicidal thoughts. He recently divorced his wife of 11 years and was noted to display occasional isolation behaviors such as keeping windows closed with curtains drawn, or rarely venturing far from his room or off post. He was not working in his MOS because his chain of command did not think he was capable. Once the CI was aware he would be getting out of the military, he became calm and relieved. The examiner did not perform a formal MSE. The assessment was delusional disorder, persecutory type, with definite impairment for social and industrial adaptability. The GAF was 50, connoting serious symptoms or impairment. The examiner concluded that there was no evidence of bizarre beliefs or delusions, his ability to function socially was mildly affected, mood episodes were brief, and "his functioning is not impaired other than by the direct impact of the belief system." The CI's performance report for the period August 2001 to January 2002 documented a lack of enthusiasm and inspiration, poor written communication skills, and repeated absences from formations and training. The overall assessment by the senior rater was that his performance was unacceptable. Reports from the 2 prior years indicated a successful performance; he was deemed "fully capable" with no areas of deficiency noted. The first VA evaluation in evidence was a mental health examination performed on 28 August 2004 (22 months after separation). The CI was noted to be a very poor historian and vague about his symptoms. He displayed no insight into his ongoing paranoid symptoms, and felt like there was "some kind of game going on." He experienced periods of low mood and slept 3-4 hours per night. Delusions included thinking his food was poisoned, planes flying overhead were monitoring him and the TV was sending him messages. Suicidal and homicidal ideations were absent, and he denied auditory or visual hallucinations. He had never taken psychiatric medication and was unemployed. MSE showed normal speech and orientation. Affect was blunted and concentration was poor. Short term memory was slightly

impaired, and thinking was concrete. The assessment was psychosis, rule out schizophrenia. The GAF was 45, connoting serious symptoms or impairment. An anti-psychotic medication was started. Follow-up 2 months later indicated some depression symptoms, persistent sleep difficulties because of waking up multiple times to check doors and windows, and persistence of paranoid delusions. GAF was now 39, indicating some impairment in reality testing or communication, or major impairment in several areas. The psychiatric C&P exam was not performed until 20 June 2005. The examiner noted that the CI had been unable to work since separation because of his mental health condition, and that there had never been remission in symptoms since they began in 2000. He was receiving social security disability and living with his mother. He avoided people due to his fear that they were hostile and could insert ideas in to his mind. It was reported that since his time in Desert Storm in 1991 he experienced nightmares and intrusive thoughts, but no flashbacks. He reported being easily startled, fear of crowds, irritability and constant suspiciousness. MSE revealed normal orientation, but poor concentration and short term memory. There was no evidence of hallucinations, sleep impairment or panic attacks, but there was evidence of depression. He was somewhat incoherent, but appeared to be logical and have reasonable thinking speed most of the time. The GAF was 50, and the examiner opined that some, if not all, of his symptoms were related to posttraumatic stress disorder (PTSD) stemming from his experiences in Desert Storm.

The Board directs attention to its rating recommendation based on the above evidence. There was agreement that the requirements for a 70% rating at the time of separation were not met. Although there was occupational impairment, there was not serious impairment in "most areas" as dictated by that rating description. None of the 70% threshold symptoms such as suicidal ideation or critical cognitive impairment were present and no psychiatric hospitalizations were required. The 70% rating by the VA was based on an evaluation that documented a worsening condition, but that was performed well after separation. As previously discussed, such delayed exams carry little probative value in the Board's deliberations regarding rating at the time of separation; however the Board assigns significant probative value in this case to the post-separation employment history obtained from the two VA exams. Board members agreed that the §4.130 threshold for a 10% rating were well-exceeded at the time of separation, and the deliberation settled on arguments for a 30% versus a 50% rating recommendation. The general description in §4.130 for a 50% rating is "occupational and social impairment with reduced reliability and productivity." The VA exams confirmed that the CI could not work since the time of separation because of his psychiatric condition, while his pre-separation performance was deemed "unacceptable" by a senior rater. The Board debated the inconsistency of the NARSUM examiner's statements that the CI had become "calm and relieved" and "his functioning is not impaired..." with a GAF score indicating serious impairment. The 30% rating description ("occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks") is not a convincing fit with the occupational functioning in evidence, since there is no indication that decrease in work efficiency was "occasional" or that occupational impairment was "intermittent." After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 50% for the delusional disorder condition.

Right Elbow Pain Condition. The right hand dominant CI underwent right ulnar nerve decompression surgery in November 2000 to alleviate finger numbness and elbow pain due to compression of the ulnar nerve at the elbow. Symptoms improved, but intermittent numbness in the little finger and marked tenderness at the elbow persisted. Electrophysiological testing on 26 November 2001 showed no evidence of ulnar neuropathy. An orthopedic examiner 10 months prior to separation documented ROM of the elbow as "full." On 3 April 2002, the MEB examiner reported that the CI was unable to rest his elbow on a desk, fire a weapon from the prone position or lift more than 10 pounds due to elbow pain. Examination noted a well-healed surgical incision of the inner elbow and full range of elbow motion, although specific

measurements were not provided. Tenderness of incisional area and evidence of ulnar nerve sensitivity were present. Sensation in the distribution of the ulnar nerve was normal. At the C&P exam 18 months after separation, the CI reported some weakness of his hand and elbow, numbness of the ring and little fingers and some pain around the surgical incision. Examination revealed tenderness of the scar area and normal motor strength and sensation.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 0% rating under an analogous 5003 code (degenerative arthritis) with application of the USAPDA pain policy. The VA's 10% rating using an analogous 8516 code was based on a judgment of "mild" incomplete paralysis of the ulnar nerve. Although there was no apparent limitation of elbow motion, the Board agreed that there was sufficient evidence of pain with use, supported by objective examination findings, to justify a minimal compensable rating with application of §4.40. Board members also agreed that the next higher 30% rating under the ulnar nerve rating pathway was not justified. 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 elbow pain condition.

Chronic Left Ankle Pain Condition. The CI suffered from presumed left Achilles tendinitis for several months during 1997, but a magnetic resonance imaging (MRI) study in early 1998 showed a partial Achilles tendon tear. This was treated with immobilization and resulted in complete tendon healing, as shown by a follow-up MRI in May 1998; but pain with certain activities persisted.

Left Ankle ROM	Ortho ~8 Mos. Pre-Sep	VA C&P ~18 Mos. Post-Sep
Dorsiflexion (0-20°)	"Full ROM"	20°
Plantar Flexion (0-45°)		35°
Comment	+Tenderness	+Tenderness
§4.71a Rating	10%	10%

At the NARSUM exam the CI reported constant pain at the insertion of the Achilles tendon into the heel bone. Pain and early morning stiffness improved somewhat over the course of the day. He could perform no jumping and could not complete a two mile run. Examination revealed a normal gait. Tenderness at the site of the tendon insertion was present. Strength was normal and there was no indication of tendon tear. X-rays of the ankle were normal. At the VA exam, the CI reported the persistence of moderate pain that worsened with any kind of vigorous activity. He took pain medication for flare ups. Examination revealed tenderness at the site of tendon insertion and intense pain when the tendon was tested with a reflex hammer.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 0% rating under an analogous 5003 code (degenerative arthritis) with application of the USAPDA pain policy. The VA assigned a 10% rating under an analogous 5284 code (foot injuries, other), concluding that the injury was "moderate." Although there was no compensable limitation of ankle motion, the Board agreed that there was sufficient evidence of pain with use, supported by objective examination findings, to justify a minimal compensable rating with application of §4.40. Board members agreed that there was no pathway under applicable ankle or foot codes to a rating higher than 10%. 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 chronic left ankle pain 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. As discussed above, PEB reliance on the USAPDA pain policy for rating right elbow pain and left ankle pain was operant in this case and the conditions were adjudicated independently of that policy by the Board. In the matter of the delusional disorder condition, the Board by a vote of 2:1 recommends that §4.129 should not be applied, and therefore premises its rating recommendation on the psychiatric acuity only at the time of separation. The single voter for dissent, who recommended invoking §4.129 and a 6-month constructional TDRL period, did not elect to submit a minority opinion. The Board unanimously recommends a disability rating of 50%, coded 9208 IAW VASRD §4.130. In the matter of the right elbow pain condition, the Board unanimously recommends a disability rating of 10%, coded 5099-5003 IAW VASRD §4.130. In the matter of the chronic left ankle pain condition, the Board unanimously recommends a disability rating of 10%, coded 5099-5003 IAW VASRD §4.130. 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Delusional Disorder	9208	50%
Right Elbow Pain	5099-5003	10%
Chronic Left Ankle Pain	5099-5003	10%
	COMBINED	60%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120603, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF
 President
 Physical Disability Board of Review

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, AR20120022710 (PD201200526)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 60% effective the date of the individual's original medical separation for disability with severance pay.
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:
 - a. Providing a correction to the individual's separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.
 - b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.
 - c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 60% effective the date of the original medical separation for disability with severance pay.
 - d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.
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

XXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA