

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200562
BOARD DATE: 20121220

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020402

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (95B10/Military Police), medically separated for a right foot condition following injury to the sesamoid bone of the great toe (hallux). The CI did not improve adequately with surgical and post rehabilitative treatment to meet the physical requirements of her Military Occupational Specialty (MOS), worldwide deployment standards or physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Chronic right foot pain was forwarded to the Physical Evaluation Board (PEB) IAW AR 40-501. No other condition was forward by the MEB. The PEB adjudicated the chronic right foot pain following injury to the sesamoid bone, status post (s/p) tibial sesamoid excision with continued area pain condition as unfitting rated 0%, with likely application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “ISSUE THAT FOUND ME UNFIT WAS RESIDUALS OF RIGHT FOOT INJURY.....THIS DOESNT [SP] INCLUDE THE DAMAGE TO THE RIGHT ANKLE, LEFT ANKLE AND FOOT, RIGHT AND LEFT KNEES, BACK, RIGHT SHOULDER OR MIGRAINES.”

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 right foot condition as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. The other requested conditions [right ankle, left ankle and foot, left knee and right shoulder], and the remaining conditions rated by the VA at separation [right knee, low back and migraines] are 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 20020225			VA (~16 Mos. Post-Separation) – All Effective Date 20020403			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Right Foot Pain Following Injury To The Sesamoid Bone, Status Post Tibial Sesamoid Excision with Continued Area Pain	5299-5003	0%	Residuals of Right Foot Injury, Status Post Tibial Sesamoid Excision For Fracture of Sesamoid Bone, with Aggravation of Metatarsus Varus and Hallux Valgus With Bunion, Also Claimed As Right Great Toe Condition	5284	20%*	20030909
↓No Additional MEB/PEB Entries↓			Migraines	8100	30%	20030909
			Chronic Right Patellofemoral Syndrome with Mild Patellar Tendonitis	5261	10%	20030909

	Chronic Mild Lumbar Muscular Spasms, Secondary To Spinal Anesthesia	5295	10%	20030909
Combined: 0%		Combined: 60%		

*Initial VARD assigned a 10% then increased to 20% from 20030909 exam.

ANALYSIS SUMMARY:

Right Foot Condition. In November 2000, while on patrol, the CI stepped in a pothole and injured her right foot. She was conservatively treated by orthopedics for a confirmed fracture on a bone scan of the sesamoid bone in her right great toe. She was intermittently returned to duty but her pain persisted, especially with running, walking thus she opted for definitive surgical care with excision of fragments. The postoperative care was uneventful yet her pain persisted despite 6 more months of conservative, rehabilitative care. The permanent profile identified foot surgery as the medical condition with the following limitations; walk at own pace and distance, no walking on uneven terrain and no physical training testing. The commander's statement additionally documented her inability; to climb in and out of vehicles, do foot patrols or chase subjects which were duties of her MOS. The commander further documented she was working a desk job and had numerous appointments preventing her from completing her assigned desk duties.

At the MEB exam, 2 months prior to separation, the CI reported; right foot pain, 5 to 7 of 10 in intensity depending on her activities, she walked with a limp, wore a controlled ankle motion (CAM) walker to protect her foot, was unable to climb up or down stairs or jump without pain, and she was performing a sedentary job. The MEB physical exam demonstrated a well healed surgical scar of the right great toe with tenderness and decrease sensation near the scar and otherwise normal ankle ROM. The exam was silent to the ROM of the right great toe, gait or CAM walker use. X-rays revealed excision of the tibial sesamoid and normal bone stock. The examiner diagnosed chronic right foot pain.

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). The earliest VA Compensation and Pension (C&P) exam was performed 17 months after separation. The VA's original rating decision utilized the MEB and service treatment record (STR) as their evidence. 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. The PEB and VA chose different coding options for the condition IAW §4.71a—Schedule of ratings—musculoskeletal system which had significant implications on the rating for the Board to consider. The PEB assigned a 0% rating under the 5003 (arthritis, degenerative) for no loss of motion of the contiguous joint. While this is supported by the criteria of that code, the Board notes the evidence is silent to ROM or painful motion of the great toe and therefore IAW VASRD §4.7 (higher of two evaluations), agreed to examine the documented ratable data and its applicability to other VASRD codes which would achieve a higher rating in consideration of VASRD §4.10 and §4.40. The Board considered rating analogous to the more clinically specific code 5280 (Hallux valgus, unilateral) and recognizes a 10% rating is the maximum allowable with this code. The Board also considered the VA's chosen code 5284 (Foot injuries, other) and agreed the pain evidence does not approach the 'severe' criteria under the 5284 and clearly meets the 'moderate criteria'. The Board notes the VA's original decision assigned 10% rating for moderate pain and did not meet the threshold of 'moderately severe' symptoms with the MEB evidence. The Board further recognizes the VA rating decision retroactive to the date of separation, subsumed worsening disease with citation of further

surgery in August 2002 and subsumed the prior fracture of the sesamoid bone from the service to allow a 20% rating for 'moderate severe' symptoms. The Board deliberations surrounded 'moderate' versus 'moderate severe'. The Board notes the VA physical exam is consistent with the moderately severe criteria, however is inconsistent with her employment history as a fulltime racquetball director fulltime without loss of time from work. Therefore the Board agreed the condition at the time of separation best fits the 'moderate' criteria. 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 foot 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 right foot condition, the Board unanimously recommends a disability rating of 10%, coded 5299-5284 IAW VASRD §4.71a. 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, effective as of the date of her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Right Foot Pain Following Injury To The Sesamoid Bone, Status Post Tibial Sesamoid Excision with Continued Area Pain	5299-5284	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120606, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXX, DAF
 President
 Physical Disability Board of Review

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
 for XXXXXXXXXXXXXXXXXXXX, AR20130000633 (AR201200562)

1. 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 to modify the individual's disability rating to 10% without recharacterization of the individual's separation. This decision is final.
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.
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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA