

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1200594
BOARD DATE: 20121206

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020918

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4, (31S/Satellite Communications Systems Operator/Maintainer), medically separated for a right hip condition. The CI did not respond adequately to conservative treatment and was unable to perform within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Right avulsion fracture of lesser trochanter was forwarded to the Physical Evaluation Board (PEB) IAW AR 40-501. No other conditions appeared on the MEB's submission. The PEB adjudicated the right hip condition as unfitting, rated 10%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Flexibility was the only criteria for assessment. I will never be able to run or play sports from my condition." The CI elaborated no specific contention in his application.

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 20020530			VA (18 Mos. Post-Separation) – All Effective Date 20031031			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Hip s/p avulsion fx lesser trochanter	5099-5003	10%	Residuals, lesser trochanter avulsion of right hip	5010-5252	10%	20040318
↓No Additional MEB/PEB Entries↓			0% X 0 / Not Service-Connected x 0			
Combined: 10%			Combined: 10%*			

*Effective date is date of application, not day after separation

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application that only flexibility was considered in the rating and also regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. That role and authority is granted by Congress to the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its

recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. It is noted for the record that the Board recognizes the significant interval (18 months) between the date of separation and the DVA evaluation. DoDI 6040.44, under which the Board operates, specifies a 12-month interval for special consideration to VA findings. This does not mean that the VA information was disregarded, as it was a valuable source for clinical information and opinions relevant to the Board's evaluation. In matters germane to the severity and disability at the time of separation, however, the information in the service record was assigned proportionately more probative value as a basis for the Board's rating recommendations.

Right Hip Condition. The CI sustained an injury to his right hip while performing in a karate class which resulted in chronic residual pain. Extensive evaluations were performed by the specialties of physical therapy, surgery, orthopedics, pain management, and manipulative therapy and included the following radiographs, plain X-ray and bone, computer tomography (CT) and magnetic resonance imaging (MRI) scans. The plain X-ray revealed an avulsion fracture of the lesser trochanter and the remaining radiographs were normal. Thus he was diagnosed by orthopedics with chronic hip pain with no surgical intervention recommended. Despite pain medications, physical therapy, trigger point injections and pool therapy, he had only 25% improvement and temporary relief with heat and ice. The permanent profile limitations included; no running, marching for more than 2 miles, sit-ups, or physical fitness testing. The commander's statement corroborated his limitations and the inability to perform any of a number of simple physical tasks required of his MOS. There were 3 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.

Right Hip (Thigh) ROM	MEB ~12 Mo. Pre-Sep	PM&R ~6 Mo. Pre-Sep	VA C&P ~18 Mo. Post-Sep
Flexion (0-125°)	0-110°	90°	95°
Extension (0-20°)	silent	Full range	Approx 20°
External Rotation (0-45°)	30°	Full range	70°
Abduction (0-45°)	40°	Full range	45°
Adduction (0-45°)	10°	10°	20°
Comment	Mild discomfort with IR and loading, 30°(IR)	Painful motion	
§4.71a Rating	10%	10%	10%

At the MEB exam, the CI reported constant non radiating groin pain, 2 of 10 in intensity at rest, worsened to 9 of 10 in intensity with walking, running or jumping and sit-ups, and relieved temporarily with transcutaneous electrical nerve stimulation (TENS) treatment, heat and ice. The MEB physical exam demonstrated tenderness of the right groin, negative special testing for active hip disease (Patrick testing), 4/5 motor testing with hip flexion due to pain with a remaining normal motor exam and normal sensory and reflex findings. At the VA Compensation and Pension (C&P) exam after separation, the CI reported; able to walk for two miles yet was unable to run and took over the counter medications for pain. The C&P exam demonstrated no new additional findings from the MEB exam. X-ray of the right hip revealed early degenerative changes.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB's DA Form 199 reflected application of the USAPDA pain policy for rating, but its 10% determination is consistent with §4.71a standards under the analogous diagnostic code 5003 (arthritis, degenerative). The VA assigned a 10% rating analogous to 5252 (Thigh, limitation of flexion of) for non compensable pain limited motion and degenerative changes on X-ray which is also consistent with §4.71a standards. The Board agreed there is no evidence of

incapacitating episodes to support additional or a 20% rating under the 5003 code. There are no other viable approaches to a higher rating for the right hip which are countenanced by the VASRD. 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 hip 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. As discussed above, PEB reliance on the USAPDA pain policy for rating right hip condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right hip 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
Right Hip s/p avulsion fx lesser trochanter	5099-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120601, 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

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXX, AR20130000271 (PD201200594)

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