

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1200722
BOARD DATE: 20121214

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020428

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (44B/Welder), medically separated for chronic bilateral ankle pain, due to right talar osteochondritis dissecans lesion and left ankle chondromalacia. The CI first reported right ankle pain during training in 1996. The CI developed chronic bilateral ankle pain and was treated with pain medications and physical therapy. The chronic bilateral ankle pain, due to right talar osteochondritis dissecans (OCD) lesion and left ankle chondromalacia condition could not be adequately rehabilitated. The CI did not improve adequately with treatment 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 forwarded right lateral talar osteochondritis dissecans lesion and left ankle chondromalacia conditions with no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic bilateral ankle pain, due to right talar OCD lesion and left ankle chondromalacia condition as unfitting, rated 10%, with cited 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: "My condition has worsened since my last review. My military related disability has hindered me from gaining employment of my field."

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 20020110			VA (13 Mos. Post-Separation) – All Effective Date 20020429			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Bilateral Ankle Pain	5099-5003	10%	Left Ankle Chondromalacia	5271	10%	20030611
			Right Ankle Lateral Osteochondritis Dissecans Lesion	5271	10%	20030611
↓No Additional MEB/PEB Entries↓			0% X 4 / Not Service-Connected x 1			
Combined: 10%			Combined: 20%			

No VA rating change through VARD dated August 2006

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the worsening of his service-incurred ankle conditions and the hindrance of employment. The Board wishes to clarify that it is subject to the same laws for disability

entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran's disability rating should his degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board's authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Bilateral Ankle Pain, Due to Right Talar OCD Lesion and Left Ankle Chondromalacia Condition. The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Ankle ROM	MEB ~5 Mo. Pre-Sep		VA C&P ~14 Mo. Post-Sep	
	Left	Right	Left	Right
Dorsiflexion (0-20°)	10°	10°	MEB exam and ROM used for rating	15°
Plantar Flexion (0-45°)	25°	25°		45°
Comment	Bilateral ankles: + effusion (trace); + tenderness to palpation; normal subtalar motion; (-) talar tilt & anterior drawer; motor strength 5/5; sensation intact			With pain; crepitus; x-ray right ankle subchondral lucency
§4.71a Rating	10%	10%	10%	10%

At the MEB exam performed 5 months prior to separation the CI reported a 4 year history of bilateral ankle pain with intermittent swelling. He reported pain with walking greater than 50 yards and with standing greater than 10 minutes. He reported 8/10 pain flare-ups with right greater than left. He denied improvement in pain with pain medications, bracing and physical therapy. X-rays of bilateral ankles were remarkable for evidence of right lateral talar OCD. The X-ray findings suggestive of right lateral talar OCD were confirmed by magnetic resonance imaging (MRI). The MRI also demonstrated left ankle chondromalacia. The MEB physical exam noted bilateral trace ankle joint effusions and tenderness to palpation anterolaterally and over the lateral malleolus. The motor and neurologic exams were normal and the gait was not noted. The bilateral ankle exams are summarized above. The CI was offered surgical intervention and (reasonably) declined. The examiner's description of current functional status included: "(the CI) is unable to walk over uneven terrain without significant ankle pain. Impact on duty performance: The bilateral ankle pain has significantly affected his ability to perform the duties of his MOS."

At the VA Compensation and Pension (C&P) exam performed 14 months after separation, the CI reported stiffness of the right ankle in the morning and stiffness with swelling by the end of the work day. The CI reported the use of a brace and a cane for the right ankle pain. He noted that weather and barometric pressure changes cause flare-ups. The VA exam noted painful right ankle ROM, as listed above. The examiner did not have access to the medical records. The exam is summarized above and was also significant for "crepitus around the right lateral malleolus, especially along the area of the talar bone." There was no VA exam of the left ankle.

The PEB rated the bilateral ankle conditions under the single disability analogous 5003 degenerative arthritis code. This coding approach is countenanced by AR 635-40 (B.24 f.), and was IAW the USAPDA pain policy. However, IAW DoDI 6040.44 the Board must apply only VASRD guidance to its recommendation. The Board must therefore apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a. The Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was reasonably unfitting. The Board first considered if the left and right ankle conditions, having been de-coupled from the combined PEB adjudication for both ankles, each remained reasonably unfitting. Each ankle had radiographic pathology and most treatment notes were for bilateral ankle pain on numerous and repeated occasions. Each ankle had been noted with L3 profile restrictions, but at different times within the 12-months prior to separation; with the most recent profile listing only the right ankle and the commander’s statement, following that profile, which noted only the right ankle pain as interfering with duty performance. The NARSUM indicated the right ankle was more symptomatic than the left and that each ankle separately did not meet standards. The MEB listed each ankle separately. All members agreed that the right and left ankle conditions were each reasonably unfitting. Since §4.71a criteria are met for separate joint ratings in this case, the Board is pursuing separate rating and fitness evaluations as follows. The Board directs attention to its rating recommendation based on the above evidence. As discussed above, the PEB combined the left and right ankle conditions and assigned a single 10% rating IAW the USAPDA pain policy. The VA rated the left and right ankle conditions separately as follows; coded 5271 painful limitation of ROM at 10% each for an overall rating of 20%. All exams met the 10% criteria for each ankle with consideration of VASRD §4.59 (painful motion), §4.40 (functional loss) and §4.45 (the joints).

After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of right and left ankles favor its recommendation as both separately unfitting conditions for disability rating. Considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the right ankle OCD condition coded 5299-5271, and 10% for the left ankle chondromalacia condition coded 5014-5271 IAW VASRD §4.71a.

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 bilateral ankle pain was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic bilateral ankle pain, due to right talar OCD lesion and left ankle chondromalacia condition, the Board unanimously recommends that it be rated for two separate unfitting conditions as follows: left ankle chondromalacia condition coded 5014-5271 and rated 10%, and right ankle OCD condition coded 5299-5271 and rated 10%; both 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 his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Right Ankle lateral talar osteochondritis dissecans	5299-5271	10%
Left Ankle Chondromalacia	5014-5271	10%
COMBINED (w/ BLF)		20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120613, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, 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 XXXXXXXXXXXXXXX, AR20130000107 (PD201200722)

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 20% 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