

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200913
BOARD DATE: 20121219

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020418

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-4 (91B/Medical Specialist), medically separated for chronic pain, due to bilateral lower extremity stress fractures. This condition was first noted in January 2001 while the CI was in training. Pain associated with this condition could not be adequately controlled or rehabilitated with repeated attempts at conservative treatment. Therefore, the CI was unable to meet the physical requirements of her Military Occupational Specialty or to satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Mild scoliosis and osteopenia as, identified in the rating chart below, were also identified and forwarded by the MEB as existing prior to service. The Physical Evaluation Board (PEB) adjudicated the chronic pain, due to bilateral lower extremity stress fractures condition as unfitting, rated 10%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining condition(s) were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Because the condition continues to become worse and has caused more injuries including a broken foot & Bone Spurs in neck and spine which will continue to become even worse. The condition has become very debilitating at times and has caused job loss because of further injuries."

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 unfitting bilateral stress fractures and the contended not unfitting mild scoliosis and osteopenia are within the Board's scope of review. 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 20020117			VA (STR) – All Effective Date 20020419			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Pain due to Bilateral Lower Extremity Stress Fractures	5299-5003	10%	Residuals of Status Post Stress Fracture, Right Lower Extremity	5299-5262	10%	STR
			Residual of Status Post Stress Fracture, Left Lower Extremity	5299-5262	10%	STR
Mild Scoliosis	Not Unfitting		No VA Entry			
Osteopenia	Not Unfitting		Osteopenia	5299-5295	NSC	STR
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 5			
Combined: 10%			Combined: 20%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which her service-incurred condition continues to burden her. 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. The Board further acknowledges the CI's contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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 DVA, however, is empowered to compensate 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.

Chronic Pain, due to Bilateral Lower Extremity Stress Fracture Condition. The CI first complained of bilateral lower extremity pain to the top of her feet and hips in January 2001, during advanced individual training. She was diagnosed with bilateral stress fractures and was continued on duty with an activity as tolerated profile, and non-steroidal anti-inflammatory medications. Because of her lack of response to conservative treatment, she was referred to the MEB in August 2001. At that time, she reported no relief of her symptoms and described her pain to be at a baseline 4-5/10 on a constant and daily basis, with exacerbations to 9-10/10 with activities requiring bed rest and cessation of all activity. She reported being unable to lift more than 20 pounds, or stand for more than 20 minutes at a time. The MEB physical exam indicated that she had a normal gait, 5/5 motor in all extremities without atrophy. Hip range-of-motion (ROM) was full with tenderness to palpation, but without painful motion. Knee ROM was equal bilaterally, 0-130 degrees (normal 0-140 degrees). Neurovascular exam was within normal limits. Bone scan was positive for Grade I stress changes to the bilateral lesser trochanter, bilateral knees, ankles, and feet. There were no VA Compensation and Pension exams prior to or after separation.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were mild scoliosis T1-L2 at 13 degrees and osteopenia. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. The MEB narrative summary (NARSUM) states that the scoliosis is congenital in nature and asymptomatic without neurological compromise. It was not incurred or aggravated by active duty and produced no pain. Additionally, with regard to the osteopenia, the NARSUM states that there is no evidence to conclude that it was incurred or aggravated by active duty service. This too was felt to be asymptomatic although it was acknowledged to have contributed to the CI's unfitting stress fractures. Neither of these conditions was profiled; neither was implicated in the commander's statement; and, neither was judged to fail retention standards. Both were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for either of the contended conditions and, therefore, no additional disability ratings can be recommended.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the bilateral lower extremity stress fractures under the single analogous 5003 degenerative arthritis code and relied on AR 635.40 (B.24 f.), or invoked the USAPDA pain policy; therefore, not applying separately compensable VASRD codes, combining the left lower extremity stress fracture, and right lower extremity stress fracture as a single unfitting condition assigned a rating of 10%. This coding approach is countenanced by AR 635-40 (B.24 f.), but 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 affected extremity 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. The Board judges that two separate ratings are warranted in this case, and that the requirement that each “unbundled” condition was unfitting in and of itself is satisfied. The Board first considered whether the right and left extremity conditions were separately unfitting when considered alone. The Board concluded the evidence of the record indicated the extremities were equally affected, and each alone would have limited duty performance. Therefore, all members agreed both lower extremities were unfitting for continued military duty. The Board next considered a rating recommendation for each extremity. The Board noted the normal examination including normal ROM, normal strength, normal gait, and absence of atrophy at the time of the MEB NARSUM, and concluded that a separate 10% rating for each extremity, coded 5299-5262 for slight disability, was supported by the evidence of the record and conceded application of VASRD §4.59 (Painful motion) with application of §4.45 (The joints) and §4.40 (Functional loss). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board recommends a disability rating of 10% for the left lower extremity stress fracture condition and 10% for the right lower extremity stress fracture with bilateral factor of 1.9% for a combined total disability rating of 20%.

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 stress fractures was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the bilateral stress fractures condition, the Board unanimously recommends that it be rated for two separate unfitting conditions as follows: Left lower extremity coded 5299-5262 and rated 10% and right lower extremity coded 5299-5262 and rated 10%; both IAW VASRD §4.71a. In the matter of the contended mild scoliosis and osteopenia conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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
Stress Fractures Left Lower Extremity	5299-5262	10%
Stress Fracture Right Lower Extremity	5299-5262	10%
	Combined (w/BLF)	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

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, AR20130001039 (PD201200913)

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

XXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA