

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1201286
BOARD DATE: 20121102

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030728

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SPC/E-4 (11B10/Infantryman), medically separated for left ankle pain secondary to inversion injury. In June 2002, while on active duty for training, CI sustained a left ankle injury while carrying a rucksack and a SAW weapon. CI stepped in a hole, and had an inversion type injury to his left ankle with significant pain and swelling. He was able to continue his road march, but afterwards had significant pain. On evaluation, an orthopedic evaluation recommended CI for Medical Evaluation Board (MEB). Left ankle pain secondary to inversion injury 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 MEB. The MEB forwarded arthritis, left ankle condition for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the left ankle pain secondary to inversion injury 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: "Because it has got worse & now causes my lower back to hurt as well. My ankle is almost impossible to stand on for a period of time, which my job requires."

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 left ankle pain secondary to inversion injury condition meets the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below. The other requested condition [lower back] is 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 20030320			VA (~6 Mos. Post-Separation) – All Effective Date 20030918			
Condition	Code	Rating	Condition	Code	Rating	Exam
Left Ankle Pain Secondary to Inversion Injury	5099-5003	10%	Subtalar Arthritis, Left Ankle	5010	10%	STR
↓No Additional MEB/PEB Entries↓			No additional VA entries			
Combined: 10%			Combined: 10%			

On initial VARD ankle condition not service connected. Subsequently rated 10% effective day after separation based on STR. 10% rating continued by VARD 20050512 based on C&P examination 20050421.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should his degree of impairment vary over time. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Left Ankle Pain Secondary to Inversion Injury Condition. At a 10 January 2003 clinic visit for left ankle pain, the CI reported he was unable to run without pain. On examination, range-of-motion (ROM) was recorded as full and gait as normal. There was no instability and strength about the ankle was normal. At the orthopedic MEB narrative summary (NARSUM) performed on 24 February 2003, 5 months before separation, the CI reported he was unable to run, jump, or participate in impact activities. He reported pain with walking greater than half a mile, standing for more than an hour, carrying more than 30 pounds, and walking on uneven surfaces or squatting. Radiographs and a magnetic resonance imaging (MRI) demonstrated significant subtalar arthritis and some minimal to moderate tibio-talar arthritis. On examination dorsiflexion was limited to 0 degrees. Plantar flexion was normal at 45 degrees. There was tenderness at the ankle joint (tibio-talar line), pain with extremes of motion (i.e. at end range) and crepitus. The gait was noted to be slightly antalgic. Strength at the left ankle was normal. The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and the VA rated the left ankle condition 10% based on the evidence of the service treatment records (STR). The PEB rated using the diagnostic code 5003 for degenerative arthritis while the VA chose the 5010 code for traumatic arthritis which directs rating analogously under code 5003. No impact on rating resulted from the different coding. The Board also considered rating under the diagnostic code 5271, limited ankle motion. The Board concluded that the limitation of dorsiflexion with normal plantar flexion and normal or slightly antalgic gait supported no more than the moderate level (10%) under this code providing no benefit to the CI. The Board also noted the VA Compensation and Pension (C&P) examination performed 22 months after separation indicated no evidence of functional limitation on standing or walking while examining CI's gait. The CI informed the examiner that he was employed as a police officer, but could not qualify for SWAT training due to the limitations imposed by his left ankle pain. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the left ankle 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 the left ankle condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left ankle pain 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
Left Ankle Pain Secondary to Inversion Injury	5099-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120706, 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 / XXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXX, AR20120022702 (PD201201286)

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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA

