

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1201329
BOARD DATE: 20121127

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20040117

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (13S/Field Artillery Surveyor), medically separated for hallux rigidus of left great toe. In April 2002 while on an A team run, the CI slipped producing a twisting and hyperextension injury to the left great toe. Despite orthotics, podiatry consultations, and surgery, the CI failed 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 left great toe pain to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The PEB adjudicated the left great toe condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "I was told I needed foot surgery. I went and had the surgery and then was told that having the surgery made me unfit to serve (continued) in the military. To me that was unfair. I have pain in both feet. The arthritic condition does not allow me to stand up for a long time. It's very hard to find a job that does not require me to be on my feet. I wish that I never had the surgery done."

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 hallux rigidus of left great toe condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. Any condition 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 20031008			VA (~1 Mos. Pre-Separation) – All Effective Date 20040118			
Condition	Code	Rating	Condition	Code	Rating	Exam
Hallux Rigidus, Left Great Toe	5280	10%	Left Foot Great Toe Hallux Rigidus...	5284-5281	10%*	20031212
No Additional MEB/PEB Entries			Tinnitus	6260	10%	20031212
Combined: 10%			0% X 3			
			Combined: 20%			

*No change in subsequent VARD

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application 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 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. 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.

Hallux Rigidus of Left Great Toe Condition. The 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.

Great Toe L ROM	MEB ~5 Mo. Pre-Sep	VA ~1 Mo. Pre-Sep
Flexion (Plantar) 0-45	0	0
Extension (Dorsi) 0-70	30	30
Comment:	+ spasm; abnormal contour; pain on motion; "slight limp"	+ Tenderness; painful motion; slight limp; any passive DF/PF painful
§4.71a Rating	10%	10%

The CI underwent a cheilectomy (removes bone spurs from the base of the big toe) and debridement of the left great toe in November 2002. The commander's statement noted chronic left foot pain with functional limitations of no running, jumping or marching. The MEB examination 5 months prior to separation indicated that the CI's pain prevented him from returning to fully functional status secondary to relatively unchanged pain and limitation of motion and function. The exam physical findings are summarized in the chart above. The P3 profile allowed walking, bicycling, swimming at own pace and distance and walking or running in pool at own pace and distance. The functional assessment was: "(The CI) can perform unlimited walking with a slight limp. He cannot run. He cannot stand on his feet for more than three hours at a time. He must buy extra wide shoes." Radiographs demonstrated significant bilateral 1st metatarsophalangeal (MTP) joint degenerative change with severely narrowed joint space of the great toe on the left (also on the right) on operated foot.

The VA Compensation & Pension (C&P) examination noted that the CI could not run at all without reproducing pain in both great toes and that he could not stand on his feet for more than 3 hours at a time and walking produced a limping gait. The C&P exam physical findings are summarized in the chart above. A second C&P examination 19 months remote after separation indicated that the CI still had constant pain and was unable to walk for prolonged periods.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the hallux rigidus, left great toe 5280 Hallux valgus, unilateral, rated 10% which is equivalent to "Severe, if equivalent to amputation of great toe." The VA coded the left great toe condition 5284-5281 (5284 Foot injuries, other: Moderate with 5281 Hallux rigidus, unilateral, severe) and rated at 10%. Both exams demonstrated painful motion with 0 degree of plantar flexion (normal to 45°), without other significant foot pathology. Coding using the criteria of 5280 or 5281 has a maximum rating level of 10%. The Board considered alternate coding under the criteria of 5284 (foot injury other). The Board adjudged that the CI's disability was more closely aligned with the moderate level for the foot coding, which would not rate

higher than 10%. The Board considered that the VA coding of 5284-5281 more ideally represented the CI's condition as the CI underwent a cheilectomy, not a metatarsal head removal. Either coding schema would rate at 10%, the PEB coding was not incorrect, and any modification of code would not offer any benefit to the CI.

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 great toe 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 hallux rigidus, left great toe 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
Hallux Rigidus of Left Great Toe	5280	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120723, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, 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
XXXXXXXXXXXXXXXXXXXX, AR20120022712 (PD201201329)

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