

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX
CASE NUMBER: PD1200145
BOARD DATE: 20121023

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20040630

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sailor, FC3/E-4 (Fire Controlman serving as Leave/TAD Clerk), medically separated for left elbow pain. The CI sustained a displaced left radial neck fracture in September 2001 that required an open reduction and internal fixation. She developed a posttraumatic contracture that required further surgery and removal of hardware in January 2003. The CI continued to have pain and stiffness and subsequently developed pain and paresthesias in the ulnar nerve distribution. This required ulnar nerve transposition surgery in December 2003. Although her symptoms did improve they remained significant and she was unable to meet the physical requirements of her rating or satisfy physical fitness standards. She was placed on limited duty [LIMDU] and referred for a Medical Evaluation Board (MEB). The MEB forwarded left elbow pain, left elbow post traumatic arthropathy, and left elbow cubital tunnel syndrome, status post ulnar nerve transposition as medically unacceptable IAW SECNAVINST 1850.4E. The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the left elbow pain as unfitting, rated 20%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The PEB adjudicated the left elbow posttraumatic arthropathy and the left elbow cubital tunnel syndrome, status ulnar nerve transposition as Category II diagnoses. A Category II diagnosis is related to the unfitting condition and is not separately unfitting. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: "PEB only rated @ 20%--VA determination & medical records & physical/ortho exams performed while still on active duty by both VA & the Naval Hospital."

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 Category II conditions outlined in the chart below as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview and are addressed below, in addition to a review of the ratings for the unfitting condition. 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 Board for Correction of Naval Records.

RATING COMPARISON:

Service PEB – Dated 20040401			VA (3 & 4 Mos. Pre-Separation) – All Effective Date 20040701			
Condition	Code	Rating	Condition	Code	Rating	Exam
Left Elbow Pain	5099-5003-8616	20%	Left Elbow Arthritis, S/P L Elbow Proximal Radius Fracture, Open Reduction & Internal Fixation, Hardware Removal & Contracture Release	5010-5212	20%	20040304
Left Elbow Cubital Tunnel Syndrome, S/P Ulnar Nerve Transposition	Category II		Left Ulnar Neuropathy (Claimed as Cubital Tunnel Syndrome, L Arm and Hand Loss of Motion, Pain and Numbness)	8516	30%*	20040304
Left Elbow Post Traumatic Arthropathy	Category II					
↓No Additional MEB/PEB Entries↓			Tinnitus	6260	10%	20040227
			IBS & Gastroesophageal Reflux Disease	7319-7346	10%	20040226
			Left Forehead Scar	7800	10%*	20040226
			0% X 4 others / Not Service-Connected x 7			
Combined: 20%			Combined: 60%*			

*8516 increased from 20% to 30% and 7800 increased from 0% to 10%, increasing combined to 60%, all effective 20040701.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application, i.e., that the gravity of her condition and predictable consequences merit consideration for a higher separation rating. 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. 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 the 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. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Left Elbow Pain. There were four 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. The CI is right-handed.

Left Elbow ROM	MEB ~6 Months Pre-Separation	PT ~6 Months Pre-Separation	VA C&P ~4 Months Pre-Separation	VA C&P ~13 Months Post-Separation
Flexion (0-145°)	30°-135°	30°-135°	30°-120°	30°-120°
Left Forearm ROM				
Pronation (0-80°)	60°	20°	None	None
Supination (0-85°)	60°	20°	Full	Full
Comment	Tenderness to palpation and crepitation of radiocapitellar joint; no tenderness at medial or lateral epicondyles. Negative Tinel on ulnar nerve. Paresthesias in left 4 th and 5 th digits but neurovascularly intact on exam with two-point discrimination at 5mm in all digits. No intrinsic atrophy. X-rays document post-traumatic arthritis.	Tender to palpation. Grip is reduced on left compared to right secondary to elbow pain. "Has met goals of ortho doc." Will continue ADL's and ROM but will stop PT. <i>Pronation and Supination may have been 70 and 70 (90-20=70).</i>	Pain and weakness on elbow ROM exam; numbness of 4 th and 5 th digits. Left hand grip is good. Atrophy of muscle from lateral epicondyle; Left arm circumference is 9.5 inches and right is 10 inches; forearms are both 8 inches. Marked lack of endurance and no lack of coordination of left elbow. Left hand has lack of coordination but no lack of endurance.	Mild pain and mild weakness throughout ROM. Limited pronation interferes with driving. Numbness of 4 th and 5 th digits with normal intrinsic muscle function. Right forearm is 9.25 inches, left is 9 inches; right arm is 10.5 inches, left is 10 inches. No objective weakness. "Marked lack of endurance and mild lack of coordination with marked restriction of repetitive use of the left elbow and hand."
§4.71a Rating				
5010/5003	10%	10%	10% (VA rated 20%)	10% (VA rated 20%)
8616	10%	Incomplete exam	10% (VA rated 20%)	10% (VA rated 30%)

The PEB applied a 20% for left elbow pain coded as 5099-5003-8616. This rating appears to have included both traumatic arthritis and radiculopathy. The VA rated the elbow joint as left elbow arthritis, status post left elbow proximal radius fracture, open reduction and internal fixation, hardware removal & contracture release using code 5010-5212. The VA rating decision stated the left elbow arthritis condition warranted a 10% rating for painful motion and an additional 10% "because it also causes a lack of endurance in your elbow." This resulted in a 20% rating for the elbow arthritis. The VA initially rated the radiculopathy at 20% based on the March 2004 examination. As shown above this examination did not note any objective loss of muscle strength and sensory and reflex examinations were not completed. The CI reported paresthesias and numbness in left 4th and 5th digits. The VA interpreted this as moderate incomplete paralysis of the ulnar nerve on the non-dominant side. However, the CI submitted a notice of disagreement and the VA requested a re-examination by the same physician in July 2005. After this examination, the VA increased the rating to 30% for severe incomplete paralysis with the original effective date of 1 July 2004. The July 2005 examination noted no objective changes from the previous examination. However, the examiner noted limited pronation interfered with driving and stated the CI had marked restriction of repetitive use of the left elbow and hand.

The Board directs attention to its rating recommendation based on the above evidence. The PEB combined elbow pain, ulnar radiculopathy, and traumatic arthritis as a single unfitting condition, coded analogously to 5003 and 8616 and rated 20%. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD §4.71a. 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 unfitting in and of itself. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting, and that there was no need for separate fitness adjudications, not a judgment that each condition was independently unfitting. Thus 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 first considered if left ulnar neuropathy, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. No examinations note objectively decreased muscle strength. The CI complained of paresthesias and numbness in her left 4th and 5th digits but no objective testing documented any actual decreased sensation. However, the CI did report significant paresthesias which were painful and caused her to drop things and have a limited ability to lift and carry things. The VA examiner noted this as lack of coordination and endurance. All members agreed that left ulnar nerve neuropathy, as an isolated condition, would have rendered the CI incapable of continued service within her Rating, and accordingly merits a separate rating. However, no examinations support a rating greater than 10% for traumatic arthritis manifested by pain-limited motion or a rating greater than 10% for ulnar radiculopathy manifested by paresthesias without objective decreased strength or sensation or alteration of reflexes. These ratings combine to result in an overall rating of 20% with no 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 elbow pain 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. In the matter of the left elbow pain condition and IAW VASRD §4.71a and §4.124a, 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 Elbow Pain	5099-5003-8616	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120130, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

XXX
 President
 Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL
OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44
(b) CORB ltr dtd 7 Nov 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR that the following individual's records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy's Physical Evaluation Board:

- former USN
- former USN
- former USMC
- former USN
- former USMC
- former USMC
- former USMC
- former USMC
- former USN

Assistant General Counsel
(Manpower & Reserve Affairs)