RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX
CASE NUMBER: PD1200335
BOARD DATE: 20121115

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20070506

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SGT/E-5, (52D/Power Generation Equipment Repairer), medically separated for right wrist (dominant). The CI fell on his outstretched right hand while playing football. He was found to have a navicular fracture and treated conservatively, initially, and then surgically over a 2 year period. He did not have improvement adequate to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). Posttraumatic stress disorder (PTSD), alcohol abuse, dyslipidemia, headaches, low back pain (LBP), mild high frequency hearing loss (HFHL) of the left ear and cervicalgia (neck pain), as identified in the rating chart below, were also identified and forwarded by the MEB as medically acceptable. The Physical Evaluation Board (PEB) adjudicated the right wrist condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). 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: "I was rated 10% by DOD-However the VA rating was 100%. I wish to have my DOD decision reviewed."

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 CI contended for all conditions adjudicated by the PEB. 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 20070322			VA (1 Mos.Post-Separation) – All Effective Date 20070507			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Right wrist(dominant)	5215	10%	Right wrist fusion	5214	30%	20070606
Headaches	Not Unfitting		Chronic Tension Headaches	8199-8100	10%	20070606
Cervicalgia	Not Unfitting					
PTSD	Not Unfitting		PTSD	9411	30%*	20070606
Low back Pain	Not Unfitting		L Spine, DDD	5243	0%*	20070606
Mild HFHL left ear	Not Unfitting		Left Hearing Loss	6100	NSC	20070606
Alcohol abuse, episodic	Not Unfitting		NO VA ENTRY			
Dyslipidemia	Not Unfitting		NO VA ENTRY			
↓No Additional MEB/PEB Entries↓			Tinnitus	6260	10%	20070606

	0% X 3 / Not Service-Connected x 5	20070606
Combined: 10%	**Combined: 60%**	

*PTSD increased to 70%; L spine increased to 10%; Total 90% - All effective 20090313

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 the 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. The Board notes that the mere presence of a diagnosis at separation is not sufficient to render the condition unfitting for duty. 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 6044.40, 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.

Right Wrist (dominant) Condition. There were two 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.

Right Wrist ROM Degrees	MEB ~4 Mo. Pre-Sep	VA C&P ~1 Mo. Post-Sep
Dorsiflexion (0-70)	0-10	0 (No extension)
Palmar Flexion (0-80)	0-17	0-50 (30 after repetition)
Ulnar Deviation (0-45)	0	0 (No ulnar deviation)
Radial Deviation (0-20)	0	0-10
Comment	Limited ROM due to fusion	Add'l loss in motion with 5 pound weight repetition
§4.71a Rating	10%	10%

The CI fell on his outstretched right (dominant) hand while playing football in 2004. He was first seen for this complaint a month later on 19 April 2004 reporting continued pain. He was found to have a navicular fracture on X-ray and treated with a cast. The fracture failed to heal and he had an excision of the fragment in October 2004. His pain persisted and he subsequently underwent two additional operations in January and July 2006 to fuse some of the wrist bones. He was noted to have bony fusion on post-operative CT scan, but with some bony fragments present also. No post-operative complications were noted. His pain still persisted despite aggressive pain management. The pain and the reduced ROM impaired duty. At the MEB exam performed on 18 January 2007, 4 months prior to separation, the CI reported that he had lost motion, used a brace and had a TENS (transcutaneous electrical nerve stimulation) unit for pain. The MEB physical exam noted decreased ROM of the right wrist, reduced rapid movement and decreased strength at 4/5. The narrative summary (NARSUM) was dictated

9 March 2007, 2 months prior to separation. The CI reported constant wrist pain at a level of 4/10. He denied any other sensory symptoms. The pain was aggravated by sit-ups, push-ups, lifting more than two pound or any "jarring" activities including fast walking. He was unable to work as a mechanic. His symptoms were improved with rest and the TENS unit. He had been started on a Lidoderm patch as well. It was noted that he had had a prior right hand fracture in 1995, prior to service. On examination, he was found to have well-healed, non-tender scars from the surgical procedures. Sensation was normal, but he was tender to palpation over the radial aspect of the right wrist. There was no effusion. A test for median nerve compression was negative. Strength was reduced in both flexion and extension at 4+/5. Although the CI wanted to remain on active duty, his commander noted that the CI could not meet the requirements of either his MOS or physical fitness standards secondary to his wrist. Otherwise, he noted that his duty performance had been superb. At the VA Compensation and Pension (C&P) examination, the CI reported that he treated the pain with a brace, Lidoderm patch and TENS unit. He was unable to use his wrist for any type of work or activity because of the discomfort that it caused. On examination, there was no heat, swelling or redness suggestive of inflammation. The ROM is above. There was no loss of motion with repetitive motion while holding a one pound weight, but flexion was reduced to 30 degrees after three repetitions with a five pound weight. Sensation and strength were noted to be normal. The scars were well healed. The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the right wrist as 5215, limited motion, and rated it at 10%. The VA coded the wrist 5214, ankylosis of the wrist, and rated it at 30%. The Board considered both coding options. It noted that while the CI did have limitations in ROM and pain, the wrist was not ankylosed. Several bones in the wrist were fused together, but motion remained. In the absence of complete fusion of the wrist, the use of this code for either a favorable or unfavorable limitation cannot be supported. The Board also considered the use of 5125, loss of use of the hand, but the level of disability did not support this. The Board then considered the use of code 5010 for traumatic arthritis. The Board determined that the limitations in use secondary to pain and limitations in motion supported the criteria of "occasional incapacitating exacerbations." The Board considered if the level of disability was sufficient for an extra-scheduler evaluation of 30% under a 5010-5214 coding option, but the majority of the Board found that it did not. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), 4.40 (loss of function) and 4.45 (the joints), the Board recommends a disability rating of 20% for the right wrist condition, coded 5010.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were PTSD, alcohol abuse, dyslipidemia, headaches, LBP, mild HFHL and cervicalgia (neck pain). 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 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. There were no records in evidence detailing treatment for PTSD. The MEB psychiatric evaluation performed on 14 February 2007, 3 months prior to separation, noted that the CI had been seen in mental health one time in 2005 and had two follow-up telephone consultations in Oct 2005 and April 2006. The CI reported that he could deploy again were it not for his wrist. He was determined to have minimal impairment for military duty. The commander noted on 19 January 2007, 4 months prior to separation, that the duty performance of the CI was superb and only noted the wrist as duty limiting. No profile was noted for the PTSD condition and the MEB found it to be medically acceptable. Uncomplicated alcohol abuse is not ratable IAW DoDI 1332.28 E5. In addition, there is evidence in the record that the CI has problems with alcohol prior to enlistment. Dyslipidemia is a laboratory finding and not a diagnosis. It is not ratable. There were several notes in the record regarding the headaches which apparently developed

during withdrawal from narcotic analgesics. The NARSUM noted that these had not interfered with functioning and that he had not been given a permanent profile for them. The commander's letter was silent for headaches. The MEB determined the headaches to be medically acceptable. There are no records in evidence indicating that the CI was treated for LBP. He was seen in 2003 for lower extremity numbness and weakness diagnosed as a peroneal neuropathy. The CI did annotate on the separation history that he had had a MRI for LBP and the C&P examiner noted that there was mild bulging of the discs at L4-5 without nerve root impingement. The commander did not comment on the back, there was no profile for the back and the MEB found the back condition to meet retention standards. The VA determined the LBP to be non-compensable. Service records do document a HFHL in the left ear. The hearing loss was not profiled by the Army and was determined by the VA to be within VA normal limits. There is no indication of duty impairment and it was determined to meet retention status. The CI had a MRI of the cervical spine performed on 13 October 2006 to evaluate leg weakness. It showed potential disk desiccation at C3-4, but was otherwise unremarkable. There are no visits for neck pain in the records in evidence. The NARSUM documented that the CI was seen for localized left sided neck pain and treated by a chiropractor. The neck pain was noted as meeting retention standards and was not profiled. The VA determined the neck pain to be related to the headaches and not a separate condition. None of these conditions were profiled; none were implicated in the commander's statement; and, none were judged to fail retention standards. All were reviewed and considered by the Board. There was no indication from the record that any 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 the any of the contended conditions and, therefore, no additional disability ratings can be recommended.

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 right wrist condition, the Board recommends, by a 2:1 vote, a disability rating of 20%, coded 5010 IAW VASRD §4.71a. The single voter for dissent (who recommended using the codes 5010-5214 at a 30% disability rating) submitted the appended minority opinion. In the matter of the contended alcohol abuse, dyslipidemia, headaches, LBP, mild HFHL and cervicalgia 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 his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Limited Motion of the Right (Dominant) Wrist	5010	20%
	COMBINED	**20%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120327, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

MICHAEL F. LoGRANDE, DAF
President
Physical Disability Board of Review

MINORITY OPINION: The CI's right wrist (dominant) condition exceeded the disability level adjudicated by the PEB. In assessing the CI's level of permanent disability at separation, I believe it more closely approximates a 30% rating (vs. the 20% rating recommended by the majority). The challenge in this case is to marry the clinical and functional picture of this CI at time of separation with an appropriate and fully descriptive disability rating level per the VASRD.

The VA used the rating code 5214, while deviating from a strict definition of ankylosis (frozen joint). Evidence in the record shows the CI's right wrist was ankylosed in dorsiflexion (that is, restricted motion for dorsiflexion was functionally equivalent to favorable ankylosis) with palmar flexion significantly degraded as well as limited range of radial deviation (and in fact, multiple bones in his wrist were surgically fused). In fact, one could argue that the CI's remaining ROM was in the unfavorable direction. The Board surmised the PEB justifiably used the VA rating criteria under code 5215 to describe limited motion in this case. However, the Board also surmised that the CI's complete disability picture (mindful of criteria under 4.40 and 4.45 of 38CFR part IV) was not fully described by the PEB (perhaps as a function of the PEB's self imposed limitation of strict adherence to rating criteria under 5215). In reaching a 20% disability "picture" of this CI, the Board determined that evidence clearly showed the CI to have "occasional incapacitating exacerbations" of his minor joint (wrist). Therefore using these criteria under VA rating code 5003 is supported by the evidence.

However, unlike the MEB examiner (approximately 4 months pre-separation), the C&P examiner (1 month post-separation) included a functional assessment of the CI's right dominant wrist with light weights (accounting for DeLuca criteria). This exam clearly demonstrated significant functional loss of the CI's dominant right wrist. Further, the CI's commanding officer described a soldier who experienced a severe functional disability due to his wrist. In his performance statement, CPT ----- stated: "the Soldier cannot lift more than 2 pounds with his right hand…he can't run, can't jump, no push-ups, no sit-ups, can't carry a weapon, and can't ruck march…he cannot grip or twist tools to fix generators… he cannot do anything that requires repetitive motion with his right hand (with emphasis)…he has lost the fine motor skills in his right hand..he cannot crawl because it puts too much pressure on his right hand…he is unable to lift anything with his right hand…his pain level at rest is 4 out of 10...when he lifts, grasps, twists, or uses his fine motor skills his pain level is 8 out of 10." The CI was issued a U4 profile and was severely restricted in his activities (limited to walking at his own pace). Clearly, the degree of functional loss in the CI's right (dominant wrist) had a significant impact on his overall level of functioning.

Using the VA rating code 5003 as the Board did in this case, does not fully account for the severity of the CI's functional loss. In addition, as used in this case, the 5003 code requires a

"minor joint" be affected. The CI's condition affected his right wrist (a minor joint) but it bears noting the CI was right hand dominant and this degree of additional impairment isn't captured under the 5003 code in this case. I believe it is fully supportable by the evidence and justice requires the Board to use an extra-schedular rating (per 38CFR 3.321 (b) which more closely approximates the CI's actual level of disability and industrial impairment at time of separation. Under the proposed extra-schedular coding below, VA code 5010 accounts for the precipitating trauma and follow on disease process after multiple surgeries to the CI's permanently disabled right (dominant) wrist, while VA code 5214 allows the Board to accurately account for the CI's overall level of functional impairment.

In considering this alternate recommendation, I call attention to several governing regulations under 38CFR. Section 4.7 of the VASRD states: "Where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be assigned." Also, section 4.21 states: "In view of the number of atypical instances it is not expected, especially with the more fully described grades of disabilities, that all cases will show all the findings specified. Findings sufficiently characteristic to identify the disease and the disability there from, and above all, coordination of rating with impairment of function (with emphasis) will, however, be expected in all instances." In addition, under section 4.69, the VASRD explicitly accounts for the "dominant hand" in assessing a given level of disability. Finally as stated above, 38 CFR 3.321 (b) makes allowance for exceptional cases: "where the schedular evaluations are found to be inadequate…The governing norm in these exceptional cases is: A finding that the case presents such an exceptional or unusual disability picture with such related factors as marked interference with employment…to render impractical the application of the regular schedular standards."

RECOMMENDATION:

As the minority voter, I recommend recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Arthritis, Traumatic Rated Extra-Schedular as Wrist, Ankylosis of: Favorable (Major Hand)	5010-5214	30%
	COMBINED	**30%**

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXX, AR20120021208 (PD201200335)

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