

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200342  
BOARD DATE: 20121120

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20080724

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SGT/E-5 (68W/Combat Flight Medic), medically separated for left foot hammer toes of the 2nd 3rd, and 4th toes. The CI had a long standing history of foot pain which failed conservative management and was then treated surgically in 2006. He continued conservative treatment and also had surgical removal of the screws in 2007. Despite this, he 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 Medical Evaluation Board (MEB). Chronic postoperative foot pain and hammer toes, left foot, were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Hallux valgus, myopia, and astigmatism, identified in the rating chart below, were forwarded by the MEB as medically acceptable. The PEB adjudicated left foot hammer toes of the 2nd, 3rd, and 4th toes, and the pain from his previous joint releases in toes 2 and 3 as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The PEB adjudicated the hallux valgus, myopia, and astigmatism as not unfitting. The CI made no appeals and was medically separated with a 10% disability rating.

**CI CONTENTION:** The CI states: "Rating should be changed due to the extreme amount of hardship these disabilities have created for me and my family. See attached letter." The CI attached a 1 page statement to his application which was reviewed by the Board and considered in its recommendations. In it, he also contends for his left hip and shoulder.

**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 Board determined that only the left foot hammer toe condition is within its purview in this case. 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 PEB – Dated 20080702			VA* – All Effective Date 20080725			
Condition	Code	Rating	Condition	Code	Rating	Exam
Left Foot Hammer Toes ...	5282	10%	L Foot, Hammer Toes ...	5282	0%	STRs
Hallux Valgus	Not Unfitting		Hallux Valgus, L Foot, s/p bunionectomy	5280	10%	STRs
			Hallux Valgus, R Foot	5280	0%	STRs
Myopia	Not Unfitting		Astigmatism and Myopia Bilateral Eyes	6099-6079	NSC	STRs

Astigmatism	Not Unfitting			
↓No Additional MEB/PEB Entries↓		0% X 0 / Not Service-Connected x 1		STRs
<b>Combined: 10%</b>		<b>Combined: 10%</b>		

\*CI failed to report for C&P Exam on 7/21/08.

**ANALYSIS SUMMARY:**

**Left Foot Hammer Toes and Pain.** The CI had complained of painful feet for several years when he was found to have bunions and painful toe joints. He had left foot surgery on 1 May 2006 for hallux valgus (bunion) and hammer toes of the 2nd and 3rd digits. His post-operative course was complicated only by sub-optimal compliance in keeping his foot elevated and continuing to use tobacco. He healed well after the surgery both clinically and on X-ray examination, but had persistent pain which lead to the removal of screws on 5 October 2007. Again, the post-operative course was unremarkable, but the pain persisted. Magnetic resonance imaging (MRI) performed on 28 February 2008 showed mild arthritic changes in the base of left great toe. On 11 March 2008, it was determined that he had stabilized post-operatively, but did not meet the requirements of his MOS. An orthopedic examination the next day determined that he should be given a P3 profile and referred to MEB for persistent “claw toes and bunion” of the left foot with pain. The range-of-motion was reduced in both flexion and extension for the toes of the left foot. At the MEB examination performed on 13 February 2008, the CI reported arthritis and limited use of the left foot. The MEB physical examiner noted that the toes curled upward and annotated bilateral hammer toes. The narrative summary (NARSUM) was dictated 25 June 2008, a month prior to separation. It noted that the CI had reached maximal medical improvement and could not meet the requirements of his MOS. The CI reported that his pain was tolerable unless exacerbated by activity. On examination, he was noted to have bilateral hallux valgus (bunions), bilateral hammer toes of digits 2-4, and to be tender to palpation over the plantar aspect of the left 2nd and 3rd toes. He was noted to fail retention standards for chronic post-operative pain of the left foot and left foot hammer toes. The CI did not report for the VA Compensation and Pension (C&P) exam. The Board directs attention to its rating recommendation based on the above evidence. The single unfitting condition was the painful, persistent left hammer toe condition after surgical correction. Rating the CI for both pain and for the presence of the hammer toes is not permitted under VASRD §4.3 (avoidance of pyramiding). The maximal disability for this condition is 10% under the code 5282. Both the PEB and VA used this code, but rated the condition at 10% and 0%, respectively. No other coding option better fit the condition. 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 painful left foot hammer toes 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 left hammer toes 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:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Left Foot Hammer Toes of the 2nd, 3rd and 4th Toes	5282	10%
	<b>COMBINED</b>	<b>10%</b>

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120306, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

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President

Physical Disability Board of Review

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  
XXXXXXXXXXXXXXXXXXXX, AR20120021437 (PD201200342)

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

XXXXXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
( ) DoD PDBR  
( ) DVA