RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200394
BOARD DATE: 20121031

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20070726

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-3 (11B/Infantry), medically separated for bilateral patellofemoral pain, bilateral ankle pain, bilateral foot pain, and for chronic low back pain. The CI developed bilateral ankle and shin pain following a hard parachute landing at airborne school and he was separated from airborne school. Pain continued through training and included both feet. "He was diagnosed variously with stress reaction, stress fractures and shin splints" and he developed bilateral knee pain. Pain was predominately in the anterior knee, anterior tibia, bilateral lateral ankle, and midfoot. Back pain was not related to the initial injury proximate to the bilateral lower extremity pain, but was attributed to the gait changes from the bilateral lower extremity conditions. Bilateral patellofemoral pain, bilateral ankle pain, bilateral foot pain and chronic low back pain conditions did not improve adequately with foot inserts and extensive physical therapy treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L4 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded nonradicular pain of the lumbar spine, bilateral patella-femoral pain, bilateral ankle pain, and bilateral foot pain as four medically unacceptable conditions. There were no other conditions for Informal Physical Evaluation Board (IPEB) adjudication. The IPEB adjudicated the bilateral patellofemoral pain, bilateral ankle pain and bilateral foot pain as a single unfitting condition, and a separate chronic low back pain condition as unfitting, rated 10% and 0%, with cited application of the US Army Physical Disability Agency (USAPDA) pain policy for the combined knees, ankles and feet pain rating and with the Veteran's Affairs Schedule for Rating Disabilities (VASRD) for the back. The CI appealed to the Formal PEB (FPEB), which affirmed the IPEB findings; and was then medically separated with a 10% disability rating.

CI CONTENTION: "There was a significant difference from the decision rating of the Army Medical Board at 10% in 2007, from the VA Medical decision rating of 90% within a year of being medically separated from me US Army. Currently, as of 2012 there are still ongoing ratings of 90%."

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 remaining conditions rated by the VA at separation and listed on the DA Form 294 application are 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 FPEB – Dated 20070404			VA (10 Mos. Post-Separation) – All Effective Date 20070727			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Bilateral Patella-Femoral Pain (PFS), Bilateral Ankle Pain, Bilateral Foot Pain	5099-5003	10%	Right Lower Extremity, Medial Tibial Plateau Stress Fracture with Shin Splints and Peroneal Tendon Subluxation	5299-5262	20%*	20080114
			Left Lower Extremity, Incomplete Distal Tibia Fracture With Shin Splints	5299-5262	10%*	20080114
			Right Knee, PFS	5099-5014	NSC	20080114
			Left Knee, PFS	5099-5014	NSC	20080114
			Right Foot/Ankle, Arthropathy, Instability, Tenderness, Clicking, And Popping	5299-5271	NSC	20080114
			Left Ankle/Foot, Arthropathy, Instability, Tenderness, Clicking, And Popping	5299-5271	NSC	20080114
Chronic LBP	5237	0%	DDD w/Disc Bulges at L4-5, L5-S1 Lumbar Spine	5243	10%	20080114
↓No Additional MEB/PEB Entries↓			Sleep Apnea w/RAD	6602-6847	50%	20080114
			Adjustment Disorder	5025-9440	30%*	20080110
			Fibromyalgia	5025	20%	20080114
			Temporomandibular Joint Dysfunction	9999-9905	10%	20080114
			0% X 2 / Not Service-Connected x 6			
Combined: 10%			**Combined: 90%**			

*Adjustment disorder increased to 50% effective20100326; Right LE decreased to 10% and left LE decreased to 0% effective 20110728 (combined remained 90%)

ANALYSIS SUMMARY: Although, the VA records within 12-months of separation documented and compensated fibromyalgia (a chronic pain syndrome), fibromyalgia is outside of the Board's scope.

Patella-Femoral Pain (PFS), Bilateral Ankle Pain and Bilateral Foot Pain Condition. The PEB combined patella-femoral pain (PFS), bilateral ankle pain and bilateral foot pain as a single unfitting and rated condition, coded analogously to 5003 citing use of the USAPDA pain policy. 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. 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.

There were three-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.

Knee ROM	PT ~7 Mo. Pre-Sep		MEB ~5 Mo. Pre-Sep		VA C&P ~7 Mo. Post-Sep	
	Left	Right	Left	Right	Left	Right
Flexion (140° Normal)	142°	140°	"bilaterally with a full range of motion"		120°	114°
Extension (0° Normal)	5°	4°			13°	20°
Comment	"No (+) Lachman's test"; normal knee stability; see text		No effusion, no TTP, and a stable ligamentous exam bilaterally		Uses cane; no limp without cane; no instability; exaggerated pain behavior; see text	
§4.71a Rating	0%	0%	0%	0%	0%	0%

Ankle ROM	PT ~ 7 Mo. Pre-Sep		MEB ~5 Mo. Pre-Sep		VA C&P ~7 Mo. Post-Sep	
	Left	Right	Left	Right	Left	Right
Dorsiflexion (0-20°)	4°	2°	"full range of motion bilaterally"		4°	8°
Plantar Flexion (0-45°)	20°	36°			20°	20°
Comment	"No abnormal limitation of motion"; see text		No deformity, swelling, or crepitus; Min tender R. peroneal tendon area		Demonstrates a right lateral leg crepitus or subluxation of the peroneal muscular tendon; see text	
§4.71a Rating	0%	0%	0%	0%	0%	0-10%

The narrative summary (NARSUM) exam indicated a non-antalgic gait, with full symmetric hip ROM with minimal anterior tenderness to palpation (TTP). He had normal strength and light touch sensation throughout his lower extremities. ROMs of the ankles and knees were noted as "full range of motion" absent any specific numbers of degrees or planes tested. PT goniometric ROM measurements two months prior and appended to the NARSUM, were normal for each knee and documented <5 degrees of dorsiflexion (normal 20 degrees) for each ankle. NARSUM positive findings of the lower extremities included minimal anterior calf tenderness along the lateral border of his tibia bilaterally and on the lateral aspect of the right ankle over the peroneal tendons (non-tender left ankle). Motor, sensory, neurovascular and reflex exams were normal. The MEB DD Form 2808 exam noted "ankles pop/click, no instability" as well as moderate asymptomatic pes cavus. Plain radiographs of the right hip, bilateral knees, bilateral ankles, and right foot were normal. Bone scan in March with repeat in December 2006 indicated a final impression of: 1. Persistent radiotracer accumulation at the distal left tibia which is decreased from the prior examination and may represent an incompletely healed stress fracture. The scintigraphic findings may lag behind the patient's clinical symptoms; 2. Bilateral shin splints; 3. Likely stress and/or gait-related changes at the left proximal tibiofibular joint; and 4. No new stress fracture identified. Magnetic resonance imaging (MRI) performed in December 2006 was negative.

At the VA Compensation and Pension (C&P) exam, the CI reported an injury history similar to that in the service treatment records (STR). Symptoms included ankle popping (predominately right); shin pain knees pop and can swell; with "knees and ankles are stiff and weak and his legs can give out." The examiner stated "He has generalized and multiple symptoms regarding the lower extremities and it is difficult to sort them out specifically on taking the history." The examiner indicated there was no foot condition; there was bilateral shin pain and right ankle peroneal tendon subluxation with a normal left ankle exam, and some mild patellofemoral pain syndrome, with exam symptoms "more suggestive of knee pain being chronic pain syndrome …" The examiner noted "exaggerated pain behavior" and "unusual, non-anatomic pain symptoms." The examiner listed the formal ROMs from Kinesitherapy, which are summarized in the charts above. For the overall exam the examiner stated "The (CI) does have multiple

tender points on exam and may have fibromyalgia. … However, I am concerned that he demonstrates exaggerated pain behavior today and his complaints are far out of proportion to any objective findings on exam or imaging studies, and this may be more consistent with chronic pain syndrome."

The Board directs attention to its rating recommendation based on the above evidence. The Board first considered if any of the single components of the "Bilateral Patella-Femoral Pain (PFS), Bilateral Ankle Pain, Bilateral Foot Pain" condition, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. All members agreed that none of the specific lower extremity joints, as an isolated condition, would have rendered the CI incapable of continued service within his MOS. The Board discussed the probative values of the lower extremity exams and stated functional loss and impact on performance in light of examiner comments on "exaggerated pain behavior" and "unusual, non-anatomic pain symptoms." Given the profile limitations and treatment notes with consideration of provider-noted likely chronic pain syndrome, as well as a post-separation diagnosis of fibromyalgia, the Board majority considered the record was consistent with functional loss and impairment as noted in the profile restrictions. The Board majority adjudged that both the left lower extremity and the right lower extremity conditions rose to the level of being unfitting. The Board deliberations focused on fairly and equitably coding the CI's bilateral lower extremity symptoms IAW VASRD criteria only and absent the USAPDA pain policy. The PEB combined both lower extremities into a single 5099-5003 (analogous to arthritis) rating of 10%. The VA rated the right and left lower extremity separately coding each under 5299-5262 (analogous to Tibia and fibula, impairment) as charted above. The CI's lower extremity pain affected both the ankle and knee with primary abnormal imaging and pain in the shins. The Board majority adjudged that each extremity was at the "slight" 10% level, and that the right lower extremity (with peroneal tendon popping/crepitus), although worse than the left, did not rise to the higher "moderate" 20% level of disability.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends that the right lower leg and joint pain symptoms be separated from the left lower leg and joint pain symptoms and recommends a disability rating of 10% for the right leg condition coded 5299-5262; and 10% for the left leg condition coded 5299-5262.

Chronic Low Back Pain Condition. Low back pain was a separately rated unfit condition by the PEB. The PEB disability description stated: "Chronic low back pain Soldier reported a hard parachute landing. Physical exam notes the Soldier can touch his toes and has full ROM, as demonstrated to the NARSUM examiner. There is no tenderness noted and no spasms were reported. While the plain X-rays were normal, the MRI showed mild facet degenerative changes. Soldier was issued a cane to assist in ambulation." The goniometric 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.

Thoracolumbar ROM (in Degrees)	PT ~7 Mo. Pre-Sep	MEB ~5 Mo. Pre-Sep	VA C&P ~7 Mo. Post-Sep*
Flexion (90 Normal)	90 (85, 87, 88)	"He is able to touch his toes and has full (ROM) of his spine without any pain."	45 (43)
Extension (30)	25 (22, 25, 25)		15 (13)
R Lat Flexion (30)	20 (22, 25, 22)		30
L Lat Flexion (30)	30 (28, 30, 32)		30
R Rotation (30)	30 (26, 30, 28)		10 (11)
L Rotation (30)	30 (30, 28, 32)		5 (7)
Combined (240)	225		135

Comment:	No localized tender, muscle spasm or guarding; no abnormal gait due to spasm/guarding; increased lordotic curve	Gait non-antalgic; no tender; motor/sensory/SLR without deficit; able to heel and toe walk	+ Tender; Gait mild bilateral limp use of cane; *"ROM normal" "demonstrated exaggerated pain behavior … complaints are far out of proportion to any objective findings"; gait normal without cane
§4.71a Rating	10%	0% (PEB 0%)	10% (see text)

At the NARSUM exam, the CI reported a 4 month history of lower back pain without radicular symptoms, which the CI attributed to his "walking 'funny' from his lower extremity injuries." Pain was daily with walking and sitting. Back brace and PT were not effective and medication included occasional tramadol and Valium. The NARSUM exam is summarized above with imaging as described in the PEB description. The DD Form 2808 MEB exam indicated "mild low paraspinal tender on ext" with tandem gait, negative SLR and otherwise normal. Treatment notes following the FPEB and 2 months prior to separation indicated an epidural steroid injection for pain control, increased gabapentin medication dosage and a treatment note indicating abnormal extension on ROM testing.

At the C&P exam the CI reported back pain that was not specifically tied to his hard parachute landing noted for his other musculoskeletal conditions. He complained of constant generalized LBP with non-radicular pain in the legs, and numbness in the legs at times. Pain was "at best a 7" with flare-ups to 10/10. There was no evidence of incapacitating episodes IAW VASRD §4.71a. The examiner listed the formal ROMs from Kinesitherapy, but commented that "The (CI's) exaggerated pain behavior and lack of effort on back range of motion during my exam makes it difficult to assess his actual range of motion. However, on active duty, November 17, 2006, he had (ROM) results showed no significant loss of motion."

The Board directs attention to its rating recommendation based on the above evidence. The Board discussed the mixed picture of symptoms and complaints with considerations similar to those already discussed in the bilateral lower extremity analysis above. The PEB indicated the MEB exam was used for rating ("full ROM") and that there was mild facet degeneration and the CI was issued a cane to assist in ambulation. Numerous exams and treatment notes indicted lower back pain, painful motion, or limited lower back ROM. The Board considered the tenants of VASRD §4.7 (higher of two evaluations), §4.40 (functional loss), §4.45 (the joints) and §4.59 (painful motion) for rating the chronic low back pain condition considering the entirety of the record. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends a disability rating of 10% for the low back 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. As discussed above, PEB reliance on the USAPDA pain policy for rating bilateral patellofemoral pain, bilateral ankle pain, and bilateral foot pain condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the bilateral patella-femoral pain (PFS), bilateral ankle pain and bilateral foot pain condition, the Board majority recommends by a vote of 2:1 that it be rated for two separate unfitting conditions as follows: right PFS, ankle pain and foot pain coded 5299-5262 and rated 10% and left PFS, ankle pain and foot pain coded 5299-5262 and rated 10%; both IAW VASRD

§4.71a. The single voter for dissent (who recommended no recharacterization) submitted the appended minority opinion. In the matter of the low back pain condition, the Board by a vote of 2:1 recommends a disability rating of 10%, coded 5237 IAW VASRD §4.71a. The single voter for dissent (who recommended no recharacterization) submitted the appended minority opinion. 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Right Patella-Femoral Pain, Ankle Pain and Foot Pain condition	5299-5262	10%
Left Patella-Femoral Pain, Ankle Pain and Foot Pain condition	5299-5262	10%
Chronic Low Back Pain	5237	10%
	COMBINED (w/ BLF)	**30%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120425, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXX
President
Physical Disability Board of Review

MINORITY OPINION:

My dissent with the majority vote was on two fronts, both of which were recognized by the Board at large as areas where opposing positions were each reasonable and the attendant decisions were difficult for all members.

My first area of divergence from the majority position in this case was in regard to the suitability of "unbundling" bilateral knee, ankle and foot pain (coded analogously to degenerative arthritis of the involved joints by the PEB, and rated IAW the USAPDA pain policy) to achieve separate rating recommendations. My position is that the separately derived "conditions" were not justified as separately unfitting, and thereby are not eligible for separate rating. Along with the majority members, I carefully deliberated the option of deriving separately compensable ratings for each or any of the 6 joints/joint groups encompassed in the single unfitting condition which the PEB rated together at 10%. My conclusion based on the totality of the evidence was that no single joint (or subset of joints) could be defended as autonomously unfitting. All members agreed that none of the specific lower extremity joints as an isolated condition rendered the CI incapable of performing his MOS duties. Yet the majority concluded that the consolidated right lower and consolidated left lower extremity "conditions" each rose to the level of being separately unfitting. The majority further conceded that the right was worse than the left, but nevertheless concluded each lower extremity rose to the level of a "slight" disability for separate 10% ratings. The minority position is that no single joint was associated with distinctly separate unfitting clinical features in the STR entries. Despite radiographic evidence of old or healing bilateral stress fractures, there was no residual functional impairment that rose to the level of separately unfitting.

Given the entirety of the record, there was not reasonable justification that any of the joint conditions was separately unfitting. However, the PDBR cannot lower the PEB combined 10% rating. Therefore, the minority voter firmly concludes that there was insufficient cause to recommend a change from the PEB adjudication.

My second area of divergence from the majority position is in regards to the recommendation that the minimum compensable rating was justified for the back condition. Although the majority recommendation invokes tenants of multiple VASRD sections (as cited in the proceedings) and "the entirety of the record", the recommendation rests on assignment of considerable probative value to subjective evidence which the minority voter believes was unreasonably weighted. As per some of the evidence cited in these proceedings, as well as more un-cited evidence in the record, there is significant incongruity of the subjective evidence with the objective findings and facts in this case. With respect to such incongruity, the Board's default posture regarding the accuracy of history and severity of symptoms as reported by the applicant in the medical record is one of acceptance as fact. The Board, however, should reasonably assign limitations to that principle in cases such as the one at hand. If there are

provider notes questioning the accuracy of the history, logical inconsistencies of the reported and subjective history with the overall evidence, and/or significant inconsistencies in the history given to different medical providers, the Board should take these into account in arriving at its recommendations. The minority voter takes note that such factors were evidenced in this case. The CI's subjective reporting of the severity of his back pain symptoms was discordant with the objective findings; and, was reported in the context of an expressed loss of motivation to continue to serve in the Army, and mindful of the ongoing disability evaluations. Multiple examiners pre and post separation noted that the reported diffuse pain complaints had "no obvious basis," were disproportionate to the mild clinical abnormalities noted, or were "exaggerated far exceeding objective findings." One examiner expressly noted the CI had stated he was "unhappy" with the likely 10% disability rating he expected to receive. The VASRD principles cited by the majority, including reasonable doubt, rest on the probative value of the evidence under consideration. Since the probative value of the subjective evidence in this case is compromised to the point that all conclusions derived from it are speculative, the objective evidence should be predominantly weighed as the basis of the Board's recommendation. The objective evidence does not support a compensable rating and the minority voter finds insufficient cause to recommend a change from the PEB determination that the low back condition was appropriately rated 0%.

Having drawn these conclusions and applied these assumptions to my recommendation, the minority voter respectfully recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Bilateral Patella-Femoral Pain, Ankle Pain and Foot Pain	5099-5003	10%
Chronic Low Back Pain	5237	0%
	COMBINED	**10%**

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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120021790, (PD201200394)

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 reject the Board's recommendation and accept the Board's minority opinion as accurate that the applicant's final Physical Evaluation Board disability rating remains unchanged. There is insufficient justification to support the Board's recommendation in accordance with Army and Department of Defense regulations.

2. 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

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA