

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200402  
BOARD DATE: 20130206

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20090329

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (21E10/Heavy Construction Equipment Operator), medically separated for bilateral leg pain. The CI developed an episode of “legs giving out” in January 2006. These symptoms worsened and the CI underwent a Medical Evaluation Board (MEB) and then a Physical Evaluation Board (PEB) in October for bilateral tibial shaft stress reactions. The CI was found fit for duty with recommendation for reclassification. The CI returned to his unit and underwent foot surgery for a Morton’s neuroma. However, as post-operative activity increased, this caused the leg pain to worsen. Despite non-steroidal anti-inflammatory drugs (NSAIDS), physical therapy (PT), neurology consults, orthopedic consults and podiatry consults, the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) satisfy physical fitness standards. He was issued a permanent L3 Profile and referred for a MEB. The MEB forwarded bilateral leg pain on DA Form 3947 to the PEB, as the single condition for PEB adjudication. The PEB adjudicated the bilateral leg condition as unfitting, rated (10% for the left and 10% for the right) for a combined 20% with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

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**CI CONTENTION:** “Bilateral leg pain (at the medial malleus and also posterior tibiae) has steadily increased since symptoms first presented themselves in winter 2005/2006. The Morton’s Neuroma’s and resulting excision also have become more painful; right foot starting in 2003 and left in 2006. The training and daily missions carried out with my assigned units prolonged and ultimately exacerbated these injuries, and despite several forms of pain management/treatment.”

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**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 unfitting bilateral leg pain condition was considered to include the contended Morton’s neuroma (feet) condition and meets the criteria prescribed in DoDI 6040.44 for Board purview, and both are accordingly addressed below. 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 the Correction of Military Records.

**RATING COMPARISON:**

Service IPEB – Dated 20081217				VA (1 Mos. Pre-Separation) – All Effective Date 20090330			
Condition	Code		Rating	Condition	Code	Rating	Exam
Bilateral Leg Pain	5099-5003	Left	10%	Chronic Bilateral Tibialis Tendonosis	5299-5276	10%	20090313
		Right	10%	Morton’s Neuroma, Bilateral Feet	5279	10%	20090217
No Additional MEB/PEB Entries ↓				0% X 1 / Not Service-Connected x 2			
<b>Combined: 20%</b>				<b>Combined: 20%</b>			

**ANALYSIS SUMMARY:** The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his incurred condition continues to burden him. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans Affairs (DVA). 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.

Bilateral Leg Pain Condition (Including Bilateral Tibial Tendonosis, Morton’s Neuroma, and Flat Feet). The CI has a well documented history of bilateral leg pain in the service treatment record from February 1998 through October 2008. He had right foot surgery in 2004. The CI had a flare up of left hip and thigh pain and was prescribed an NSAID in 2005; however, left hip X-rays were normal. A bone scan performed in March 2005 demonstrated mild stress reaction changes in the femurs, knees, tibial shafts, feet and ankles. In 2006 the CI was treated for recurrent bilateral lower extremity pain with running and a documented history of shin splints which required PT and custom aquaplast orthotics. In 2007, the CI went before the MOS Medical Review Board who recommended reclassification. The CI underwent the first MEB exam for bilateral lower leg pain. The PEB denied the reclassification request and found the CI fit for duty. The CI was continued in his MOS. After undergoing surgery for a left foot Morton’s neuroma in October 2007, the CI’s leg and foot symptoms increased. CI noted pain, tenderness and burning on the left foot and the examiner noted sensory abnormalities. The CI required custom feet orthotics to reduce the pain with ambulation. A repeat scan of the lower legs was abnormal. The CI was refit with a different custom orthotic to decrease bilateral leg and foot pain. An electromyogram and neurology consult ruled out right foot tarsal tunnel syndrome. In August 2008, the family practitioner noted that the CI complained of swelling and tenderness around the toes of the left foot and he required narcotic medication for pain relief. The commander’s statement noted that the CI was only able to work 6 hours per day due to medication and his physical limitations and he required breaks throughout the day due to shin pain and swelling.

The ankle, foot, and leg exams in evidence, with documentation of additional ratable criteria including goniometric range-of-motion (ROM) evaluations, which the Board weighed in arriving at its rating recommendation, are summarized in the chart below.

Bilateral Ankle ROM	MEB ~5 Mo. Pre-Sep		PT ~5 Mo. Pre-Sep		VA C&P ~1 Mo. Pre-Sep	
	Left	Right	Left	Right	Left	Right
Dorsiflexion (0-20°)	"FROM in bilateral feet and ankles"		5°	3°	8° bilaterally	
Plantar Flexion (0-45°)			45°	45°	Not listed	
Comment	Gait nml, "can toe and heel walk"; motor sensory intact; flat feet bilat; tenderness over distal medial tibia (R>L), and inferior medial malleolus (R>L) (see text)		*ROM for MEB exam; "Pain with overpressure for PROM"		Tenderness along posterior tibial tendon; subtalar joint 2° inversion, 4° eversion bilat; TTP on 3 cm incision; flatfoot; calcaneal valgus on weight bearing; toe raises intact; left heel inversion with toe raise maneuver (see text)	
§4.71a Rating	10%	10%	10%	10%	10%	10%
					(VA 10% total)	

The MEB exam performed 5 months prior to separation indicated constant sharp pain in the medial lower legs which radiates down to the medial malleolus bilaterally worse in the right leg than the left; pain with walking upstairs and with driving 2 to 3 hours. Physical exam findings are summarized in the chart above and the examiner indicated that: "Initial X-rays, bone scans, magnetic resonance imaging which showed "stress changes," the more recent X-rays done on the German economy were normal." The DD Form 2808 also noted "tenderness at the insertion of the posterior tibialis tendon on the navicular bone" (mid-foot).

The VA Compensation & Pension (C&P) examination completed a month prior to separation noted complaints of throbbing pain and swelling in both feet; functional limitations of standing approximately 20 minutes and walking approximately a mile; and that custom orthotics were required. There were exam findings of tenderness along the distribution of the posterior tibial tendon bilaterally, tenderness along the incision lines of both feet, calcaneal valgus on weight bearing and left heel inversion with toe raise maneuver. The C&P physical exam findings are summarized in the chart above. Final diagnoses were Morton's neuroma bilateral foot and bilateral posterior tibial tendinosis.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the bilateral leg pain condition analogously to arthritis (5099-5003 at 10% for each side) with application of the bilateral factor (BLF) for a rating of 20%. The VA coded the chronic bilateral tibialis tendonosis condition 5299 analogous to 5276 flatfoot, acquired: (pes planus) rated 10% and additionally coded the bilateral Morton's neuroma (feet) condition 5279 metatarsalgia, anterior (Morton's disease, unilateral, or bilateral) rated as 10% (moderate).

The Board discussed the issue of the PEB's broad diagnosis of "Bilateral Leg Pain" with a disability description that included "pes planus bilaterally;" as well as the statement that "There is no impairment of ROM, but he does have a constant pain in the medial lower legs radiating down to medial malleolus (ankle) bilaterally." Both the PT goniometric exam and the VA exam documented decreased dorsiflexion by goniometric measurements and were closer to the date of separation. Both lower legs were tender and demonstrated painful motion on the preponderance of exams. The MEB exam did not demonstrate significant mid or distal foot tenderness (although the narrative summary (NARSUM) indicated the prescription and use of custom orthotics), while the prior to separation VA exam indicated foot tenderness. There was no arthritis or pathology of either ankle joint in evidence.

The Board considered the PEB rating schema appropriately considered the tenants of VASRD §4.59 and their analogous coding was acceptable and accounted for the CI's bilateral lower extremity disability. Alternative coding using the VA rating separating the tendinosis from the Morton neuroma disabilities was also considered reasonable, but would also raise the military-

specific issue of fitness when the NARSUM did not specify duty impairment from any mid, or distal foot condition. The Board discussed the merits of adding the Morton's neuroma condition and using VA coding 5279 as a separately unfitting condition; however this would be considered pyramiding. The bilateral leg pain condition could not be reasonably rated higher than a combined 20% using any exam proximate to separation or any alternate rating schema. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the bilateral leg 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. In the matter of the bilateral leg pain condition (including flat feet and Morton's neuroma) 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>
Bilateral Leg Pain; Left	5099-5003	10%
Bilateral Leg Pain; Right	5099-5003	10%
<b>COMBINED (w/ BLF)</b>		<b>20%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120329, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF  
 Director  
 Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for XXXXXXXXXXXX, AR20130002823 (PD201200402)

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

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Deputy Assistant Secretary  
(Army Review Boards)