

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200484
BOARD DATE: 20130116

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20040831

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty 1LT/O-2 (31A/Military Police) medically separated for fibromyalgia. She was treated, but did not improve adequately to fully perform her military duties or meet physical fitness standards. She was issued a permanent profile and underwent a Medical Evaluation Board (MEB). The MEB found her fibromyalgia condition unacceptable IAW AR 40-501, and referred her to an Informal Physical Evaluation Board (IPEB). One other condition (depression) was listed as acceptable, on DA Form 3947. The IPEB found that the fibromyalgia condition had existed prior to commissioning and was not compensable. The CI did not accept the IPEB findings, and she demanded a formal hearing. The Formal PEB (FPEB) found the fibromyalgia condition unfitting, and assigned a disability rating of 20%. Depression was found to be not unfitting and therefore not ratable. The CI accepted the FPEB findings and was medically separated with a 20% disability rating.

CI's CONTENTION: "Higher VA rating (40%) for the same condition- fibromyalgia, VA rating had same effective date as the FPEB determination."

SCOPE OF REVIEW: The Board's scope of review as defined in DoDI 6040.44 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 unfitting fibromyalgia condition meets the criteria prescribed in DoDI 6040.44, and is accordingly addressed below. No other conditions are within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

Army FPEB – dated 20040630			VA – All Effective 20040901			
Condition	Code	Rating	Condition	Code	Rating	Exam
Fibromyalgia	5025	20%	Fibromyalgia	5025	20%*	(No exam)
Depression	Not Unfitting		Not Service-Connected x 3			
↓No Additional MEB/PEB Entries↓			Combined: 20%*			

*VA rating for Fibromyalgia was later increased to 40% by a subsequent VA Rating Decision dated 20060609

ANALYSIS SUMMARY: The Board acknowledges the CI's assertion that the PEB may have compelled her to concur with their findings. For the record, the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted Service improprieties in the disposition of a case.

Fibromyalgia (fibromyalgia). The CI has a long history of multiple complaints. In May 2003, she was seen by an Army and civilian rheumatologist. Both doctors concluded that her symptoms were consistent with a diagnosis of fibromyalgia. Several treatment options were tried, but her

symptoms persisted and an MEB was initiated. Her MEB physical examination was in December 2003 and is recorded on a DD Form 2808. That exam was essentially normal; except for depression, bunions, and some discomfort upon squatting. As noted above, the CI was medically separated from the Army in August 2004 with a disability rating of 20%. She filed a claim with the VA, but failed to appear for her VA Compensation and Pension (C&P) exams. The VA granted service-connection for her fibromyalgia condition, based on the information in her service treatment record (STR). The VA initially rated her fibromyalgia condition 20%, but the fibromyalgia rating was increased to 40% in a subsequent VA Rating Decision dated 9 June 2006.

The Board carefully reviewed all evidentiary information available. In the Veterans Affairs Schedule for Rating Disabilities (VASRD) §4.71a, fibromyalgia is described as widespread musculoskeletal pain and tender points, with or without fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud's-like symptoms. The rating is based on the frequency of symptoms. A 20% rating applies when the symptoms are episodic; with exacerbations present more than one third of the time. A 40% rating applies when symptoms are constant (or nearly so), and refractory to treatment. The MEB narrative summary was dictated in February 2004, 6 months prior to separation. From that dictation, the Board could not find sufficient evidence that the fibromyalgia symptoms were constant (or nearly so), and refractory to treatment. During the 6 months prior to separation, the CI sought medical care on several occasions. From the clinical notes in the STR, the Board once again found insufficient evidence that the fibromyalgia symptoms were constant (or nearly so), and refractory to treatment.

On 29 March 2006, the CI had a C&P exam. This exam was done 19 months after separation. The Board can use VA evidence proximal to separation in arriving at its recommendations, and DoDI 6040.44 specifies a 1 year period for special consideration of VA evidence. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at separation. The Board determined that because it was done 19 months after separation, the probative value of the March 2006 C&P exam was diminished. Therefore, clinical data from that exam was given less weight by the Board, during its deliberations.

A critical component of the Board's effort to reach a fair and accurate recommendation in this case, was to determine whether the CI's fibromyalgia symptoms were "constant, or nearly so, and refractory to therapy" /or/ "episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but that are present more than one-third of the time." As noted above, the Board found insufficient evidence in the treatment record to support a conclusion that the fibromyalgia symptoms were constant, or nearly so, and refractory to therapy. 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 fibromyalgia 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 fibromyalgia 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:

UNFITTING CONDITION	VASRD CODE	RATING
Fibromyalgia Syndrome	5025	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120605, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXXXX, AR20130001369 (PD201200484)

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

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA

