

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:XXXXXXXXXXXXXX
CASE NUMBER: PD1200518
BOARD DATE: 20130104

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030904

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (95C20/Corrections Specialist), medically separated for ulcerative colitis. In 2001, while the CI was 5 months pregnant, she was diagnosed with ulcerative colitis. The CI also had left knee pain which was aggravated during Basic training by a direct blow to the right knee. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent P3L2 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded ulcerative colitis for Physical Evaluation Board (PEB) adjudication. The MEB also forwarded retro patellar pain syndrome, as meets retention standards. The PEB adjudicated the ulcerative colitis condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "I don't feel that 10% was a high enough rating for the disability that has lead me to now unemployment. I also still have the conditions which I left the military with that were not recognized in my unfit for duty rating."

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 retro patellar pain syndrome condition, as requested for consideration, meets the criteria prescribed in DoDI 6040.44 for Board purview; and is addressed below, in addition to a review of the rating for the unfitting ulcerative colitis condition. 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 20030530			VA (1 Mo. Pre-Separation) – All Effective Date 20030905			
Condition	Code	Rating	Condition	Code	Rating	Exam
Ulcerative Colitis	7323	10%	Ulcerative Colitis	7323	30%	20030801
Retro Patellar Pain Syndrome	Not Unfitting		Retro Patellar Pain Syndrome, Right Knee	5299-5014	0%	20030801
↓No Additional MEB/PEB Entries↓			Right Hip Strain	5255-5019	10%	20030801
			Left Hip Strain	5255-5019	10%	20030801
			0% X 3 / Not Service-Connected x 7			20030801
Combined: 10%			Combined: 50%			

Ulcerative Colitis was increased to 100% from 20071202 and then reduced to 30% effective 20080701

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impact that her service-incurred condition has had on her current earning ability and quality of life. 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.

Ulcerative Colitis Condition. The CI had a history of ulcerative colitis which began with frequent bloody diarrheal stools while she was pregnant in August 2001. The CI was seen by a civilian GI specialist who performed a flexible sigmoidoscopy which revealed continuous areas of non bleeding ulcerated mucosa with exudates from the rectum to the sigmoid colon and diagnosed ulcerative colitis. The CI was then started on Prednisone (systemic steroid), Cortenema (a hydrocortisone enema) and Asacol (Mesalamine). The CI underwent an endoscopy in December 2001 which showed improvement in the appearance of the colon, but there were still areas of continuous ulcerated mucosa in the rectum and sigmoid colon and biopsies confirmed the ulcerative colitis diagnosis. At this visit, the medication doses were changed to decreased systemic Prednisone, increased Asacol, and to start Imuran (Azathioprine-immunosuppressive drug). In 2002, the CI was seen by a Nutritionist who recommended a low fiber/low residue diet. The CI underwent a small bowel follow through exam which demonstrated terminal ileum scattered punctuate round filling defects and mild lymphoid hyperplasia. In both January and April 2003, the CI had flare-ups of nausea, diarrhea with bloody stool requiring acute care intervention. The CI was granted a permanent P3L2 profile in March 2003 with restrictions of "no continuous duties for over 30 minutes unless restroom facilities are immediately available," no running and no sit-ups-as all of this activity exacerbated the lower abdominal cramping.

The MEB examination, 6 months prior to separation, noted 2 to 3 bowel movements per day and occasional abdominal pain specifically aggravated with activity, most notably sit-ups, but running or other activities could also aggravate the abdominal pain; mildly symptomatic and some scant rectal bleeding. The physical exam findings were mild lower abdominal tenderness without guarding or rebound. The examiner opined that the condition was stable at present; however, symptoms would continue, chronic medication therapy would be required and the condition had an unpredictable waxing and waning. The CI was seen by gastroenterology for a MEB consult 6 months prior to separation for ulcerative colitis in March 2003 who documented an initial stool pattern of eight bowel movements per day with some rectal bleeding in March 2002, an improvement in June 2002 of a reduction to 0 to 2 bowel movements per day without any blood, but with a weight gain to 190 pounds then a weight reduction to 150 pounds. At the time of this consultation, the CI noted ongoing symptoms of frequent stooling two to five times a day and occasional rectal urgency with rare rectal bleeding. The examiner also noted that the CI had difficulty performing her inmate supervision duties as she required frequent trips to the toilet. The CI also had ulcerative colitis associated symptoms of occasional lower back discomfort and hip aching; however, her vision problems were not felt to be colitis associated. The examiner found mild lower abdominal discomfort on physical exam, without rebound tenderness, hepatosplenomegaly or guarding. The gastroenterologist opined that the CI "now seems to be having some increase in symptoms." The P3 profile restriction included "No continuous duties over 30 minutes unless restroom facilities are immediately available. The commander's statement indicated that the CI could not have prolonged duty over 10 minutes without restroom facilities readily available.

The VA Compensation & Pension(C&P) examination performed a month prior to separation indicated worsening of symptoms with diarrheal stools 3 to 10 times per day, cramping 3 to 4 times per day, bloody stools once every 2 weeks; the CI was now able to recognize the symptoms of urgency and was able to prevent "accidents." On physical examination, there was diffuse tenderness to palpation throughout the abdomen. The examiner opined there were chronic diarrhea, chronic abdominal pain and rectal urgency secondary to the ulcerative colitis despite medication treatment with Imuran and Asacol. Subsequent VA ratings and evaluations indicating a temporary 100% rating from February 2007 with a decrease to a 60% rating in July 2008; this was greater than 3 years remote from separation.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and the VA coded the ulcerative colitis 7323 (colitis, ulcerative); however, the PEB rated at 10% (Moderate with infrequent exacerbations) and the VA rated at 30% (Moderately severe with frequent exacerbations).

The narrative summary indicated that the CI suffered from frequent stooling two to three bowel movements per day and occasional abdominal pain specifically aggravated with activity, it did not specify the frequency of abdominal pain flare-ups. The gastroenterology and C&P consults provided a thorough history of the CI's frequency of ulcerative colitis disease exacerbations and documented a 40 pound weight loss from the time of the gastroenterology consult. Monthly, the CI would have significant flare-ups every day with bloody stools every 2 weeks. The VA considered this to be moderately severe disease with frequent exacerbations and applied a 30% rating. The next highest rating requires severe disease with numerous attacks a year and malnutrition with health only fair during remissions. Although the CI had significant weight loss, this was attributed to a discontinuation of steroids and there was no evidence of malnutrition or ill health during periods of remission.

The Board reviewed the criteria for a 30% rating versus a 10% rating and deliberated over the level of severity and symptom frequency. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt) and §4.7 (Higher of two evaluations), the Board recommends a disability rating of 30% for the ulcerative colitis condition.

Retro Patellar Pain Syndrome Condition. The MEB examination noted that although the right knee pain waxed and waned, there was no effect on the CI's performance of activities. The CI underwent an orthopedic consult for MEB exam in which the examiner documented that the CI stated that "had she not been referred to the Orthopedist as part of her MEB, she probably would not have sought any care for her knees." The examiner further noted that the CI had a flare-up with running or rucksack marching, but her right knee usually responded to a temporary profile and conservative treatment. The orthopedic physical exam findings were of painless range-of-motion (ROM) of 0-120 degrees (normal 0-140 degrees) with some tenderness and no instability. The C&P examination a month prior to separation indicated daily retro patellar discomfort without flare-ups with occasional swelling but no locking. The C&P physical exam findings were full painless ROM with no instability.

The Board directs attention to its rating recommendation based on the above evidence. In analyzing the intrinsic impairment for appropriately coding and rating the retro patellar syndrome condition, the Board is left with a questionable basis for arguing that retro patellar syndrome condition was indeed unfitting. After due deliberation, the Board agreed that evidence does not support a conclusion that retro patellar syndrome condition, as a separate condition, would have rendered the CI incapable of continued service within her MOS Rating, and accordingly cannot recommend a separate rating for it. 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 retro

patellar syndrome condition. The Board concluded therefore that no separate disability rating could be recommended for this 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 ulcerative colitis condition, the Board unanimously recommends a disability rating of 30%, coded 7323 IAW VASRD §4.114. In the matter of the contended retro patellar syndrome condition, the Board unanimously recommends no change from the PEB determination 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Ulcerative colitis	7323	30%
	COMBINED	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Treatment Record

XXXXXXXXXXXXXXXXXX , DAF
Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXX, AR20130001991 (PD201200518)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR)

pertaining to the individual named in the subject line above to recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual's original medical separation for disability with severance pay.

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:
 - a. Providing a correction to the individual's separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.
 - b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.
 - c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.
 - d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA