

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200536
BOARD DATE: 20121030

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020702

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (91W/Medic) medically separated for a right ankle condition. He developed ankle pain in 2000, which was ultimately diagnosed as osteochondritis dessicans; and, failed two attempts at surgical remedy. He was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards; was issued a permanent L3 profile; and, was referred for a Medical Evaluation Board (MEB). The condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated the right ankle condition as unfitting, rated 10%, citing criteria of the Veteran's Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with that disability rating.

CI CONTENTION: The application states: "My right ankle is in constant pain that never completely subsides. I have been on numerous pain control medication combinations both over-the-counter and prescription. I cannot run. My joint range of motion is severely limited I have a VA prescribed brace that I must wear for joint stability. There are days where just walking can be a chore." The CI's narrative continues with a description of the impairments he suffers from tinnitus (contending for separate ratings for each ear), chronic sinusitis, and "debilitating" headaches.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 rating for the unfitting right ankle condition is addressed below; and, no additional conditions are within the DoDI 6040.44 defined purview of the Board. The additionally requested conditions (tinnitus, chronic sinusitis, and headaches) were not identified by the PEB, and thus are not within the DoDI 6040.44 defined purview of the Board. Those, and any conditions or contention outside the Board's defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records.

The Board acknowledges the CI's information regarding the significant impairment with which his service-connected conditions continue to burden him; but, must emphasize 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. That role and authority is granted by Congress to the Department of Veterans' Affairs (DVA), operating under a different set of laws. The Board considers DVA evidence proximate to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. All post-

separation evidence is probative to the Board’s recommendations only to the extent that it reasonably reflects the disability at the time of separation.

RATING COMPARISON:

Service PEB – Dated 20020502			VA (1 Mo. Pre-Separation) – Effective Date 20020703			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Right Ankle Pain...	5299-5003	10%	Right Ankle Osteochondritis...	5271	10%	20020617
No Additional MEB/PEB Entries			Tinnitus	6260	10%	20020617
			0% X 1 / Not Service Connected x 4			
Combined: 10%			Combined: 20%			

ANALYSIS SUMMARY:

Right Ankle Condition. The CI experienced an onset of right ankle pain and swelling with running in May 2000. The symptoms worsened; initial radiographs were negative; and, the condition was managed conservatively. Computed tomography in August 2000 revealed an osteochondral defect of the talar dome, and orthopedics prescribed a period in a non-weightbearing (NWB) cast; but, follow-up imaging revealed a persistent defect. In January 2001 arthroscopic surgical intervention and another course of NWB was undertaken; but, was met with continued symptoms and persistent defect on imaging. A second arthroscopic intervention performed in July 2001 followed by a third trial of NWB, yielded similar results; and, the MEB was initiated. The narrative summary (NARSUM) noted persistent pain and inability “to lift and carry patients, kneel or squat, crawl, walk on uneven terrain, run, or wear a rucksack.” The physical exam noted “visible swelling” and lateral tenderness. There was no comment on gait, but outpatient notes do not reflect abnormal gait or use of assistive ambulatory device. The range-of-motion (ROM) recorded in the NARSUM was dorsiflexion 10 degrees (normal 20 degrees and plantar flexion 30 degrees (normal 45 degrees). An orthopedic addendum to the NARSUM noted a similar history and physical exam, recording dorsiflexion 10 degrees and plantar flexion 45 degrees. The VA Compensation and Pension (C&P) exam was not available for review, but was adequately summarized in the rating decision: “VA examiner noted pain on motion limiting participation in athletics, but there was no significant limitation of range of motion. You reported at the VA exam that there is continual pain and swelling in the ankle.”

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s 10% rating analogously to 5003 (degenerative arthritis) cited “loss of motion;” which complies with the VASRD §4.71a language under 5003 directing a 10% rating for “each such major joint or group of minor joints affected by limitation of motion.” The VA’s 10% rating was under code 5271 (ankle limitation of motion) for ‘moderate’ limitation. There is no available alternate ankle joint code which would yield a higher rating; in the absence of ankylosis (frozen joint), malunion, or astraglectomy (surgical removal of the talus). The only route to a higher rating would be 20% under 5271 for ‘marked’ limitation of motion. Members agreed that the preponderance of the ROM evidence was more reasonably characterized as ‘moderate.’ 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 of the right ankle 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 right ankle 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
Chronic Pain and Surgical Residuals, Right Ankle	5299-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120602, w/atchs.
- Exhibit B. Service Treatment Record.
- Exhibit C. Department of Veterans' Affairs Treatment Record.

XXXXXXXXXXXXXXXXXXXXX
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, AR20120020919 (PD201200536)

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