

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200569
BOARD DATE: 20121030

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20031124

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (45B/Small Arms/Artillery Repair) medically separated for chronic hip and leg pain. She developed multiple lower extremity complaints in 2002 (basic training) which persisted throughout the balance of her career. Various stress fractures were diagnosed and she did not respond adequately to treatment for continued service within her Military Occupational Specialty. She was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The condition (bilateral extremities combined) was forwarded to the Physical Evaluation Board (PEB), characterized as “chronic hip and leg pain secondary to multiple stress fractures,” and judged to fail AR 40-501 retention standards. Also addressed by the MEB and forwarded on the DA Form 3947 were two additional conditions (as identified in the rating chart below) which were judged to meet retention standards. The PEB adjudicated the bilateral hip/leg condition as a single unfitting condition, coded analogously to 5003 (degenerative arthritis) and rated 10%, referencing the US Army Physical Disability Agency (USAPDA) pain policy. The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The application states simply: “Migraine headaches, stress fractures. Pain has gotten worse and is spreading (chronic hip and leg pain).” She does not elaborate further or specify a request for Board consideration of any additional conditions.

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 hip/leg condition is addressed below; as is the migraine headache condition specified in the application and determined to be not unfitting by the PEB. The unrequested asthma condition, as well as any condition or contention not requested in this application, remain eligible for future consideration by the Army Board for the Correction of Military Records. Also IAW DoDI 6040.44, the Board’s authority is limited to making recommendations on correcting disability determinations. The Board’s role is thus confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to Veterans Administration Schedule for Rating Disabilities (VASRD) standards, based on ratable severity at the time of separation; and, to review those fitness determinations within its scope (as elaborated above) consistent with performance-based criteria in evidence at separation. The Board acknowledges the CI’s information regarding the worsening impairment with which the service-connected condition continues to burden her; 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, operating under a different set of laws.

RATING COMPARISON:

| Service PEB – Dated 20031014 | | | VA* – Effective 20031125 | | | |
|------------------------------|---------------|--------|-------------------------------------|-----------|--------|------|
| Condition | Code | Rating | Condition | Code | Rating | Exam |
| Chronic Hip and Leg Pain | 5099-5003 | 10% | Stress Fractures, Lower Extremities | 5099-5003 | 10% | STR* |
| Migraine Headaches | Not Unfitting | | Migraine Headaches | 8100 | 0% | STR |
| History of Asthma | Not Unfitting | | Asthma | 6200 | NSC | STR |
| Combined: 10% | | | Combined: 10% | | | |

*STR = Service Treatment Record. No post-separation VA examinations in evidence until April 2012.

ANALYSIS SUMMARY:

Bilateral Hip/Leg Condition(s). After the CI was placed on crutches following her left ankle sprain in basic training, she developed contralateral leg pain as well. After resuming full weight bearing she suffered persistent bilateral lower extremity pain variously in her feet, ankles, knees, and hips. Earlier notes in the service treatment record (STR) document intermittent left ankle pain, tibial pain diagnosed as shin splints, left knee pain, and bilateral foot pain; progressing to the bilateral lower extremity multi-joint complaints described in the narrative summary (NARSUM). Multiple plain radiographs throughout the clinical course were normal. A bone scan performed in January 2003 was interpreted as stress fractures of the left foot and right tibia, and areas of uptake (inflammation) in the hips (right > left) and lateral femurs. A follow-up bone density study was normal. There are numerous outpatient primary care, orthopedic and physical therapy entries in the STR. All recorded a normal range-of-motion (ROM) for every involved joint. Two of those noted painless ROM; none recorded painful motion. Some notes describe an antalgic gait; and some record a normal gait. The NARSUM rated the CI's pain as "slight and frequent"; and, described functional limitations with running, repetitive jumping, marching, and load bearing. The NARSUM physical exam is excerpted below.

No pain on palpation of the hips, upper legs, knees, lower legs, ankles or feet bilaterally. There is full range of motion of the hips, knees and ankles. There are no abnormalities on visual examination and no leg length discrepancy. There is no edema or effusion of the lower extremities. Muscle strength is 5/5 bilaterally. Sensory is intact.

Further entries documented ligament stability of the ankles and knees, and absence of meniscal signs for the knees. As footnoted in the rating chart, there is no probative post-separation exam evidence from the VA.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and the VA (based on service evidence) applied the identical analogous code 5003 (degenerative arthritis), and arrived at the same 10% rating. Although the PEB referenced the USAPDA pain policy, the VA's rating rationale (citing criteria under VASRD §4.71a) stated, "A diagnosis of chronic hip and leg pain secondary to multiple stress fractures was shown. A higher evaluation is not warranted unless there are medical findings of limited or painful motion of individual joints on examination." As accurately portrayed in the VA's rationale, 5003 yields a 10% rating for "2 or more major joints" in the absence of "incapacitating exacerbations;" and, there is no evidence for the latter. The Board carefully deliberated the option of deriving separately compensable ratings for the 6 major joints encompassed in the single unfitting condition rated for disability. To do so, however, the Board must conclude that any rating so derived was associated with separately unfitting impairment. All members agreed that the unfitting disability was clearly on the basis of combined effect, with no single joint defensible as autonomously unfitting. No single joint was individually profiled, implicated in the commander's statement, or associated with distinctly unfitting clinical features by any STR entries. Furthermore, there is no route to a separately compensable rating for any joint even if the fitness objection was conceded. That conclusion is strengthened by the VA's failure to identify separately ratable criteria under §4.71a. 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 bilateral hip/leg condition.

Contended Migraine Headache Condition. There is a single STR entry documenting “daily” bilateral headaches associated with nausea and mild light sensitivity; diagnosed as “probable migraine.” It was managed by “patient education on triggers;” and, there are no prescribed medications for headache evidenced in the STR. The MEB physical documented “migraine under control.” The NARSUM did not elaborate on the diagnosis, other than to comment that it met retention standards. The VA rating decision stated “0 percent disability evaluation based on the evidence of one episode of headache diagnosed as probable migraine.” The Board’s main charge with respect to this condition is an assessment of the fairness of the PEB’s determination that it was not unfitting. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. The condition was not profiled; it was not implicated in the commander’s statement; and, it was not judged to fail retention standards. There was no performance based evidence from the record that the headache condition significantly interfered with satisfactory duty performance. 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 migraine headache condition; thus no additional disability rating can be recommended.

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. As discussed above, PEB reliance on the USAPDA pain policy for rating the bilateral hip/leg condition was operant in this case and it was adjudicated independently of that policy by the Board. In the matter of the bilateral hip/leg condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended migraine headache condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional disability rating. 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 Hip and Leg Pain Associated With Multiple Stress Fractures | 5099-5003 | 10% |
| | COMBINED | 10% |

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.

XXXXXXXXXXXXXXXXXXXX
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
XXXXXXXXXXXXXXXXXXXXXX, AR20120020593 (PD201200569)

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

XXXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA