

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1200614
BOARD DATE: 20121106

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030704

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SPC/E-4 (11B/Infantryman), medically separated for traumatic arthritis of left ankle. The CI required surgery after an ankle injury in 1986, but re-injured it in February 2003. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded traumatic arthritis of left ankle to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the traumatic arthritis of left ankle condition as unfitting, rated 10% with likely application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Unable to secure or follow a gainful unemployability.” [sic]

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 left ankle condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The remaining conditions rated by the VA at separation are not within the Board’s purview. 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 20030304 | | | VA (2 Mos. Post-Separation) – All Effective Date 20030705 ¹ | | | |
|---------------------------------|------|--------|--|-----------|------------------|----------|
| Condition | Code | Rating | Condition | Code | Rating | Exam |
| Traumatic Left Ankle Arthritis | 5010 | 10% | Status Post Left Ankle Fracture | 5299-5271 | 20% ² | 20030826 |
| ↓No Additional MEB/PEB Entries↓ | | | Right Achilles Tendonitis | 5299-5271 | 20% ² | 20030826 |
| | | | Lumbar Spine Deg. Joint Disease | 5003-5242 | 10% ³ | 20030826 |
| | | | Cervical Spine Deg Joint Disease | 5003-5242 | 10% ³ | 20030826 |
| | | | 0% X 1 / Not Service-Connected x 4 | | | 20030826 |
| Combined: 10% | | | Combined: 40% | | | |

¹Lumbar and cervical spine manifested within one year of discharge from service; effective date 20030826; combined 50%

²Bilateral factor of 3.6 percent for diagnostic codes 5271, 5271

³Rating decision 20080113 increased to 20% based on later exam; effective 20071004; combined 60%

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impact that his service-incurred condition has had on his 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.

Left Ankle Condition. Open reduction internal fixation (ORIF) surgery of a left ankle fracture was required in 1986 due to injuries sustained in a motorcycle accident. The CI subsequently did well until he sustained a twisting injury to the ankle on 12 February 2003 and experienced pain, swelling and decreased joint motion. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation, as summarized in the chart below.

| Left Ankle ROM | MEB ~4 Mo. Pre-Sep | VA C&P ~ 2 Mos. Post-Sep |
|-------------------------|--------------------|----------------------------|
| Dorsiflexion (0-20°) | 5° | -7° |
| Plantar Flexion (0-45°) | 5° | 40° |
| Comment | | +Tenderness, abnormal gait |
| §4.71a Rating | 20% | 20% |

The narrative summary (NARSUM) exam performed on 26 February 2003 (4 months prior to separation) was performed only 2 weeks after the injury. Examination showed the CI to move about the room without difficulty. He could toe walk without difficulty but could not heel walk. X-rays showed orthopedic hardware in place with severe arthritic changes consistent with an essentially fused joint. At the VA Compensation and Pension (C&P) exam performed on 26 August 2003 (2 months after separation), the CI reported ankle pain exacerbated by cold weather and by walking one kilometer. Flare ups resulted in an inability to walk due to pain. He was unable to participate in household chores. He was taking an anti-inflammatory pain medication and used a one-point cane for walking assistance. Examination showed no painful motion and no signs of instability. Because of limited ankle motion, ambulation resulted in abnormal weight distribution towards the front of the foot; normal heel strike and stance phase of the gait cycle did not occur. Another VA exam performed on 26 April 2004 (10 months after separation) confirmed the use of a one-point cane and a mild left lower extremity limp, and that he could walk an unlimited distance if his pace was slow.

The Board directs attention to its rating recommendation based on the above evidence. The unfitting ankle condition was designated as existing prior to service (EPTS) by the PEB, but no deduction was applied. The PEB assigned a 10% rating under the 5010 code (traumatic arthritis) with likely application of the USAPDA pain policy. The VA's 20% rating under an analogous 5271 code (ankle, limited motion of) was based on a "marked" degree of motion impairment. The Board considered that the substantial limitation of motion at the MEB exam was likely a sign of a very recent injury. The VA exam, 6 months after injury, was more detailed and more reflective of a healed state; it was therefore assigned higher probative value. Board members noted the limitation of motion at the time of separation, and the ambulation difficulty with the need for an assistive device. It was agreed that this degree of limited motion and impairment justified a 20% rating under a limitation of motion coding pathway. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the left 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. As discussed above, PEB reliance on the USAPDA pain policy for rating left ankle traumatic arthritis was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left ankle condition, the Board unanimously recommends a disability rating of 20%, coded 5010 IAW VASRD §4.71a. 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, effective as of the date of his prior medical separation:

| UNFITTING CONDITION | VASRD CODE | RATING |
|--------------------------------|-------------------|---------------|
| Traumatic Left Ankle Arthritis | 5010 | 20% |
| | COMBINED | 20% |

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120606, 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, AR20120021431 (PD201200614)

1. 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 to modify the individual's disability rating to 20% without recharacterization of the individual's separation. This decision is final.

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.

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

XXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA