

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200623
BOARD DATE: 20130117

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020611

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (95B/Military Police), medically separated for chronic left ankle pain and back pain. The CI sustained a traumatic injury to her left ankle and unrelated low back pain (LBP) in 1999. Chronic left ankle pain and back pain conditions developed which could not be adequately rehabilitated with treatment to meet the physical requirements of the CI's Military Occupational Specialty or satisfy physical fitness standards. She was issued a permanent L4 and referred for a Medical Evaluation Board (MEB). Four other conditions (mood disorder, chronic pelvic pain, endometriosis, and temporomandibular joint dysfunction [TMJD]), recorded in the rating chart below, were also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the chronic left ankle pain and back pain conditions as unfitting, rated 10% and 10% with likely application of the Veterans Affairs Schedule for Rating Disabilities (VASRD) and AR 635-40. The remaining conditions were deemed not unfitting. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: "1. Chronic left ankle pain – without fracture evidence; first let me point out it was not my ankle, it was my midfoot. I had to have a midfoot fusion because there was fracture evidence; I had a lisan's injury that went mis-diagnosed for over 3 yrs as a class 5 sprain. Meanwhile I ran and kept re-injuring it. I had to have 2-3 surgeries after I was discharged not to mention nerve ablation injections. I cannot bend my toes and it precludes me from doing many everyday activities or activities I loved like hiking/running. 2. "Back pain" – I have no space between my L5-S2 discs and spinal strenuous that is only getting worse. I also have a herniated disc and can't stand or sit for long periods of time without discomfort. I feel, in an effort to push soldiers through a broken system, my injuries were not closely looked at and I have to live with them the rest of my life when I was on track to being a career soldier."

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 conditions "identified but not determined to be unfitting by the PEB." The ratings for unfitting conditions will be reviewed in all cases. The chronic pelvic pain, endometriosis and temporomandibular joint dysfunction (TMJD) conditions are requested and will be reviewed by the Board. The mood condition is not requested and is, thus, outside 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 20010910			VA (12 Mos. Pre-Separation) – All Effective Date 20020612			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Left Ankle Pain	5271	10%	Residuals of Lisfranc’s Fusion Left Foot (claimed as residuals of left ankle injury)	5283	20%	20010926
Back Pain	5299-5295	10%	Degenerative Disc Disease, Lumbosacral Spine (claimed as back pain)	5293	0%	20010926
Mood Disorder	Not Unfitting		Major Depressive Disorder	9434	10%	20011012
Chronic Pelvic Pain	Not Unfitting		Endometriosis and Peritoneal Fibrosis	7629	10%	20010926
Endometriosis	Not Unfitting		Temporomandibular Joint Syndrome with Malocclusion	9905	20%	20010926
Temporomandibular Joint Dysfunction	Not Unfitting					
↓No Additional MEB/PEB Entries↓			0% X 4 / Not Service-Connected x 2			
Combined: 20%			Combined: 50%*			

*Numerous VARD’s changed ratings, to summarize, the last VARD will be used to summaries changes. Per VARD dated 20100421 combined rating changed as follows: 50% effective 20020612; 60% effective 20040617; 80% effective 20041007; 100% effective 20050414; 80% effective 20050601; 90% effective 20051215; 100% effective 20060814; 90% effective 20061114 and finally 100% effective 20091022.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member’s medical conditions, compensation can only be offered for those medical conditions that cut short a member’s career, and then only to the degree of severity present at the time of final disposition. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However, the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. The Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected DES improprieties in the processing of her case or quality of case.

Chronic Left Ankle Pain. The CI sustained an inversion injury to the left ankle in April 1997. At ER evaluation, slight swelling of the lateral ankle was noted. X-rays were negative and a diagnosis of ankle sprain was made. On physical therapy (PT) evaluation 22 April 1999, swelling had resolved and gait was normal, but the CI had slight mid foot pain. This increased with activity and CT scan revealed a LisFranc injury to the first three metatarsal bones. Surgical fusion of these bones was undertaken in March 2000 with successful healing. Postoperatively the CI had continued mid-foot pain without evidence of instability or nonunion of the surgical repair. At the MEB narrative summary evaluation 23 August, 9 months before separation, gait was antalgic due to pain. The mid foot was stable with symmetrical range-of-motion (ROM) of 20 degrees inversion and 10 degrees eversion with tenderness. The arch of the foot was normal without change on weight bearing. X-rays revealed the healing, screw placement and weight-bearing alignment to be satisfactory. At the VA Compensation and Pension (C&P) on 26 September 2001, 8 months prior to separation, the CI reported being unable to run, requiring a cane for prolonged standing but able to comfortably walk one-quarter of a mile without pain, to sustain heavy physical activity without immediate distress and to pursue recreational activities to include weight-lifting. On physical examination there was no evidence of post-surgical complications. ROM of the foot was decreased on the left (Inversion- RT 15/LFT

5; Everson- RT 30/ LFT 10) without atrophy or sensory change. ROM of the both ankles was normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the condition 10% code 5271, ankle limited motion, moderate. Under this code a higher rating of 20% requires a marked condition. The VA rated 20% code 5283, metatarsal bones, mal-union, moderately severe. A higher 30% rating requires the condition to be severe, not supported by the record in evidence. The Board noted the PEB to rate the condition as an ankle injury but agreed that the pathology was that of a foot condition. The Board unanimously agreed that the condition was moderate given the stability of the surgical repair, presence of a normal arch with weight bearing, slightly reduced ROM of the foot expected from the surgical procedure and the mild to moderate impact on ambulation, activities of daily living and exercise. The Board opined that the condition was best rated at 10% under 5283 or 5284 but that change of coding would provide no rating benefit to the CI. 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 ankle (foot) condition.

Back Pain Condition. The CI developed LBP without trauma in 1999. Magnetic resonance imaging obtained 5 July 2001 demonstrated a small central disc at the L5 to S1 level without nerve impingement. At multiple subsequent clinic visits for pain treatment, motor and sensory concomitants were not present. At the MEB evaluation 23 August, 9 months before separation, the CI reported difficulty with bending and lifting heavy objects. On physical examination flexion was slightly reduced (80 degrees and extension 20 degrees) with pain. Motor strength, sensation and spinal reflexes were normal. At the C&P examination, the CI reported back pain with activity. On physical exam flexion and extension were normal without pain, spasm, weakness or lack of endurance. Sensation and spinal reflexes were normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the back condition 10%, coded 5295, (lumbosacral strain, characteristic pain on motion). A higher rating of 20% requires muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in the standing position, not supported by the record in evidence. The VA rated the back condition 0% coded 5293, (intervertebral disc syndrome, post-operative) (asymptomatic). The Board unanimously agreed the ROM, motor and sensory findings and absence of spasm supported a 10% rating. 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 back pain condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were chronic pelvic pain, endometriosis and TMJD. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. Chronic pelvic pain and endometriosis: the CI had a history of pelvic abdominal pain since 1995. Laparoscopy in 1998 demonstrated peritoneal endometriosis, to be the cause of the painful condition. This was surgically cauterized and successfully controlled postoperatively with specific medication allowing the CI to work without interruption. TMJD: The CI underwent jaw surgery without complication to correct a nontraumatic mal-occlusion. Post-operatively, the patient noted some decreased opening of the mouth, without effect on deglutition, enunciation or social interaction. Neither of these conditions were permanently profiled, nor was judged to fail retention standards. Both were reviewed by the action officer and considered by the Board. 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 any of the contended conditions; and, therefore, no additional disability ratings 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. In the matters of the left ankle pain and the back pain conditions and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudications. In the matter of the contended chronic pelvic pain, endometriosis and TMJD conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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 Left Ankle Pain	5271	10%
Back Pain	5299-5295	10%
	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

XXXXXXXXXXXXXXXXXXXXX, DAF
Director
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, AR20130002819 (PD201200623)

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

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Deputy Assistant Secretary
(Army Review Boards)