

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX  
CASE NUMBER: PD1200724  
BOARD DATE: 20121219

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20030213

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve PV1/E-1 (Basic Trainee), medically separated for a left lower leg condition (stress fracture left tibia). She did not respond adequately to conservative treatment and was unable to resume basic training. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Left tibia stress fracture condition was forwarded to the Physical Evaluation Board (PEB) IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated the stress fracture left tibia condition as unfitting, rated 0% with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with that disability rating.

**CI CONTENTION:** “Left tibial stress fracture along with right wrist cyst at bend of wrist. The leg pain is still an annoyance today and Motrin 600 mg taken regularly for the pain. Every day my legs both L&R ache after being on them. When the weather changes, standing becomes painful. Most afternoon’s [sic] shins feel as if they are coming out of being asleep and sensation sometimes lasts for hours. Wrist sometimes immobilizes the use of right hand, which Im [sic] right handed would love to have it removed if possible. “

**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 right leg and right wrist conditions 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 PEB – Dated 20030121			VA (2 Mos. Post-Separation) – All Effective Date 20030214			
Condition	Code	Rating	Condition	Code	Rating	Exam
Stress Fracture Left Tibia	5099-5003	0%	Left Tibial Stress Fracture with Limitations	5099-5010	10%	20030409
↓No Additional MEB/PEB Entries↓			Ganglion Cyst, Right Wrist	8799-8716	10%	20030409
<b>Combined: 0%</b>			<b>Combined: 20%</b>			

**ANALYSIS SUMMARY:** The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. The 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 (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI's contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance.

Left Lower Leg Condition. In August 2002 the CI sought care for left leg pain in the second week of basic training. She was diagnosed with a tibial stress fracture and moved to the Physical Therapy Rehabilitation Platoon (PTRP). Serial X-rays over the next 4 months confirmed a healing stress fracture and remained positive for fracture up to 2 months prior to separation. At the MEB exam, the CI reported left leg pain 2 of 10 in intensity with walking and 9 of 10 in intensity with running, and worsened with jumping, marching, squatting, or any type of strenuous activity. The MEB physical exam demonstrated tenderness of the mid aspect of her left tibia, medially, soft calf, and no skin changes. Most proximate X-rays, 2 months prior to separation, revealed abundant callus formation about the stress fracture and a bone scan was still positive for fracture. At the VA Compensation and Pension (C&P) exam, referenced in the VARD after separation, the CI reported pain in the left leg after standing for 30 minutes lasting for about an hour and that she used the nonsteroidal, Motrin, intermittently for pain. The C&P exam again referenced in the VARD of April 2003, demonstrated tenderness of the left tibia, no swelling and no Deluca observations.

The Board directs attention to its rating recommendation based on the above evidence. This rating includes consideration of functional loss IAW VASRD §4.10 (functional impairment), §4.40 (functional loss), §4.45 (DeLuca), and §4.59 (painful motion). The PEB and VA chose different coding options for the condition, but this did not bear on rating and both rated IAW §4.71a—Schedule of ratings—musculoskeletal system. The PEB's DA Form 199 reflected application of the USAPDA pain policy for rating and its 0% determination was consistent with §4.71a standards. The VA assigned a 10% rating coded analogous to 5010 which defaults to the 5003 VASRD criteria and cited a 10% may be applied once to multiple joints if there is no limited or painful motion. Deliberations ensued regarding whether or not a compensable rating could be supported under the analogous 5003 or any coding alternative. With no limitation of motion due to pain documented in either the VA and MEB exams, a rating under any ROM code could only be justified with application of §4.40 (functional loss). VASRD §4.40 states "a part which becomes painful on use must be regarded as seriously disabled;" and, both the MEB and VA examiners documented a consistent complaint of pain on use. Likewise, the PEB cited unable to resume training due to pain on use. All members agreed that a minimal compensable rating under the analogous 5003 code was therefore supported by application of §4.40. The Board considered the VASRD code 5022 code for its clinical specificity and notes this also defaults to the 5003 criteria without achieving a higher rating. The Board agreed there was no evidence of incapacitating episodes to support additional or a 20% rating under the 5003 code. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the left lower leg condition and the action officer prefers an analogous code to 5022 for clinical specificity.

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**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. As discussed above, PEB likely reliance on the USAPDA pain policy for rating left lower leg condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left lower leg condition, the Board unanimously recommends a disability rating of 10%, coded 5099-5022 IAW VASRD §4.71a. There were no other conditions within the Board's scope of review for consideration.

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**RECOMMENDATION:** The Board recommends that the CI's prior determination be modified as follows, effective as of the date of her prior medical separation:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Left Tibial Stress Fracture with Limitations	5099-5022	10%
	<b>COMBINED</b>	<b>10%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120703, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF  
Director  
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for XXXXXXXXXXXXXXXX, AR20130002245 (PD201200724)

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 10% 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)