

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200773  
BOARD DATE: 20130205

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20011230

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (14R10/LOS-F-H Crewmember), medically separated for chronic post-surgical facial pain. The CI has a history of chronic right jaw and right ear pain since 1998 due to a large mass. The CI had a series of jaw procedures over the course of the next 2 years, but the chronic right jaw pain condition could not be adequately rehabilitated. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic post surgical facial pain condition as unfitting, rated 10%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

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**CI CONTENTION:** "I was rated for pain only to keep it at 10%. When I contested it I was told I would be put out with 0% or I could settle for the 10%. No other injuries or illness's (sic) were even considered. I suffered loss of teeth, loss of jaw bone, ongoing dental problems along with debilitating headaches. Other items that should have been considered was an ongoing back injury from an accident in 1993 at Ft. Stewart GA, an ongoing stomach and breathing issues from the combat in Desert Storm. The inability to work due to the high dose of narcotic medication for facial pain. Since I was not retired or given a higher rating I was not able to have the facial surgery followed for at least 10 years which is what I was instructed to do. VA will not look at dental due to my 80% disability."

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**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 other requested conditions by the CI and 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 20010928			VA (7 Mos. Post-Separation) – All Effective Date 20012131			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Post Surgical Facial Pain	5099-5003	10%	S/P Surgical Enucleation of Odontogenic Keratocyst from Rt Posterior Mandible	8299-8205	30%	20020717
↓No Additional MEB/PEB Entries↓			Mild Lumbar Spondylosis	5010-5243	10%	20020804
			Tinnitus	6260	10%	20020726
			GERD	7346	10%	20020728
			0% X 8 / Not Service-Connected x 2			20020816
<b>Combined: 10%</b>			<b>Combined: 50%*</b>			

\*Additional conditions added and rated effective 20040407 and 20110210. Overall combined rating increased to 80% from 20120221 VARD.

**ANALYSIS SUMMARY:** The Board acknowledges the CI’s assertions that he was told he “would be put out with 0%” or he “could settle for the 10%” rating. It is noted for the record that the Board does not have the jurisdiction to scrutinize or render opinions in reference to asserted service improprieties in the disposition of a case. The Board’s authority, as defined in DoDI 6044.40, resides in evaluating the fairness of Disability Evaluation System (DES) fitness determinations and rating decisions for disability at the time of separation. 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. This role and authority is granted by Congress to the Department of Veteran Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate 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 utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the severity of disability at the time of separation.

**Chronic Post Surgical Facial Pain.** An oral surgery evaluation in June 2000, 19 months before separation, noted “numbness as well as pain” in the area of the surgical site. Physical exam, magnetic resonance imaging and CT scan of the area did not identify a cause of the pain, but neurologic evaluation determined that injury to branches of cranial nerves V and VII as a consequence of multiple surgeries was a likely contributing cause. There was no evidence of recurrence of the cyst. An illegibly dated neurology note in 2001 stated that pain developed spontaneously, was sometimes triggered by cold, occurred 3-4 times per week and lasted for hours. He took 4-5 doses of a narcotic pain medication per week, which provided partial relief. Examination showed mild weakness of jaw muscles. At the narrative summary (NARSUM) exam performed on 16 August 2001, 4 months prior to separation, the CI reported constant right jaw and right ear pain, which worsened in cold weather and when bending forward, and could precipitate a severe headache. Physical activity and wearing protective masks or chin straps aggravated his symptoms. His pain was treated with a twice daily narcotic pain medication, and a second narcotic to be taken as needed. The physical exam described mild weakness of the masseter muscles and mild decreased sensation to pin prick along the right jaw. The ear examination noted no abnormalities. A VA Compensation and Pension neurological exam performed on 3 August 2002 (7 months after separation) reported daily pain in the jaw that would sometimes radiate behind the right eye and would last several hours to a day. Headaches were reported to occur 3-5 times per week. He was taking an “around the clock” narcotic medication for his jaw pain, and reported missing 3-4 days of work per month as a plumber due to pain. Examination revealed diminished sensation in the mandibular branch of the right trigeminal nerve. The tongue protruded normally and the palate elevated symmetrically.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition. The PEB's 10% adjudication under an analogous 5003 code (degenerative arthritis) cited the USAPDA pain policy. The VA assigned a 30% rating under an analogous 8205 code (fifth cranial nerve). In deliberating a pathway to a rating higher than 10%, the Board considered that cranial nerve injury, particularly of the trigeminal nerve, contributed to the etiology of the pain. Rating under cranial nerve codes entails a judgment call regarding the severity of incomplete paralysis, especially the moderate vs. severe distinction. The NARSUM examiner and a neurologist documented mild jaw muscle weakness, a reflection of trigeminal nerve injury. While the NARSUM examiner described the pain as constant with intermittent exacerbations, a neurologist previously reported that pain was intermittent and lasted for hours. Pain-related functional impairment while in the Army was reflected in a profile that prohibited wear of a mask or chin strap. The VA examiner also described the pain as constant and severe enough to require frequent narcotics, and which led to regular work absences. The highest 50% rating is permitted under 8205 for tic douloureux (trigeminal neuralgia, a sensory-only condition), a specific diagnosis that was not rendered by specialists in this case; however, even if the diagnosis was conceded, Board members agreed that the 50% criterion was not supported by the severity of pain reflected in the evidence above. While it was readily agreed that the degree of muscle weakness does not reflect a functional level of impairment supporting a 30% rating in this case, the severity of the sensory component was debated. In deliberating a rating, the Board considered that the CI required daily narcotic pain medication because the condition did not respond well to medication given for neuropathic pain; and the pain condition caused him to miss work 3-4 days per month. Ultimately, Board members agreed that the pain component would be fairly subsumed under the "severe" rating. The Board further considered that headaches, which began soon after the first surgery and were rated separately by the VA, were in a location consistent with trigeminal nerve distribution. Under VASRD §4.14 (Avoidance of pyramiding) assigning two separate ratings for the same disability is prohibited. However, even if a headache condition distinct from the unfitting facial pain condition is conceded, this condition must itself be independently unfitting to merit additional rating. The Board concluded that the evidence of record did not support inclusion of headaches as a separately unfitting condition. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board recommends a disability rating of 30% for the chronic facial pain condition, coded 8205.

**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 chronic post surgical facial pain condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic post-surgical facial pain condition, the Board unanimously recommends a disability rating of 30%, coded 8205 IAW VASRD §4.124a. 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Post Surgical Facial Pain	8205	30%
	<b>COMBINED</b>	<b>30%</b>

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120607, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF  
Acting 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, AR20130003053 (PD201200773)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual's original medical separation for disability with severance pay.

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:

a. Providing a correction to the individual's separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

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

XXXXXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)