RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200984
BOARD DATE: 20130212

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20021017

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SGT/E-5(77F/Petroleum Supply Specialist), medically separated for right ankle pain, low back pain (LBP), and superior labral tear of the left hip. An ankle injury in 1994 resulted in a talar dome avulsion fracture. The CI injured her back in October 1998 when, during training, she fell from a two-story obstacle that was approximately 10 feet high. An August 2000 magnetic resonance imaging (MRI) showed a labral tear of her left hip. These conditions could not be adequately rehabilitated, and the CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a MOS Medical Retention Board (MMRB). The MMRB denied her reclassification, and referred her to a Medical Evaluation Board (MEB). The MEB forwarded chronic LBP with facet joint arthritis, superior labral tear of the left hip, and right ankle pain secondary to avulsion fracture of talus as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the right ankle pain, LBP, and superior labral tear of the left hip as unfitting, rated 10%, 0%, and 0% respectively, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD) and likely 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.

CI CONTENTION: The CI states: "Should be changed to retirement due the VA rating of 2009 granting 30% disability." [*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. 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 20020624			VA (2 & 4 Mos. Post-Separation) – All Effective Date 20021018			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Right Ankle Pain	5271	10%	Right Ankle Talar Dome Fracture Residuals	5271	0%	20030206
Low Back Pain	5299-5295	0%	Degenerative Changes and Facet Joint Arthritis, Lumbar Spine	5010-5295	10%*	20030206
Left Hip Superior Labral Tear	5099-5003	0%	Left Hip Superior Labral Tear	5010-5252	20%*	20030206
↓No Additional MEB/PEB Entries↓			0% X 1 / Not Service-Connected x 7			20011226
Combined: 10%			**Combined: 30%**			

*Rating decision 20090825 increased lumbar spine to 20%, changed code to 5242; and decreased left hip to 10%; combined 30% effective 20090814

ANALYSIS SUMMARY: The Board notes the current VA ratings listed by the CI for all of her service-connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The VA ratings which it considers in that regard are those rendered most proximate to separation. The Disability Evaluation System 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.

Right Ankle Pain Condition. The diagnosis of a grade 2-3 osteochondritis dissecans (OCD) lesion of the talar dome was made by an orthopedist in October 1994 after the CI sustained an inversion injury while running. Conservative treatment with physical therapy (PT) and activity modification resulted in improvement in pain. The last clinical entries regarding ankle pain prior to the MEB process were in 1996, at which time she was seen for ankle pain that was precipitated by running. The final entry on 23 September 1996 indicated that ankle pain had resolved. An orthopedic evaluation for unrelated problems on 22 February 2001 indicated that the CI experienced occasional right ankle swelling, but examination showed no swelling. There were three 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.

Right Ankle ROM	VA C&P ~10 Mos. Pre-Sep	PT ~4 Mos. Pre-Sep	VA C&P ~4 Mos. Post-Sep
Dorsiflexion (0-20°)	20°	5°	"Full"
Plantar Flexion (0-45°)	40°	60°	
Comment	+Tenderness	+Painful motion	Intermittent pain
§4.71a Rating	10%	10%	0% or 10% (VA 0%)

A commander's evaluation performed 10 months prior to separation (6 December 2001) addressed a back and hip condition, but did not mention ankle problems. A VA Compensation and Pension (C&P) exam 10 months prior to separation (20 December 2001) noted current wear of a right ankle bandage due to a recent sprain. Examination revealed a right leg limp without use of support. A second C&P exam 6 days later however reported that she used a cane for ambulation support for low back and left hip pain. She reportedly used a brace on her

right ankle during cold weather. Examination revealed ability to perform toe raises. Inversion and eversion of the ankle were completed without difficulty. Mild swelling of the ankle was present. X-rays of the ankle were normal. The examiner's assessment was that no evidence of talar dome fracture residuals existed. A third C&P examiner on the same day indicated that weather changes caused mild swelling and discomfort, and that she wore an ankle sleeve. The MEB narrative summary (NARSUM) report, dictated 8 months prior to separation (6 February 2002) listed "Right ankle pain secondary to avulsion fracture of the talus" as a diagnosis, but provided no recent historical details about ankle symptoms or impairment. A PT evaluation 4 months prior to separation (5 June 2002) reported ankle pain. During ROM testing, pain was reported in all directions tested. At the C&P exam 4 months after separation, the CI reported that right ankle pain was intermittent, but had a current complaint of pain anteriorly. Examination revealed use of a cane; she walked with a limp avoiding pressure on the left side. The ankle appeared normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and the VA used the same 5271 code (ankle, limited motion of) but arrived at different ratings. The PEB's 10% rating was based on painful, limited dorsiflexion while the VA's 0% rating was based on normal, though unmeasured, ROM. Board members agreed that a 10% rating was justified based on limitation of motion or with application of §4.59 (Painful motion), and that there was no pathway to a rating higher than 10% under other applicable codes. 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 right ankle condition.

Low Back Pain Condition. The 2002 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards on 26 September 2003, and were identical to the interim VASRD standards used by the VA in its rating decision. The ratings prior to 26 September 2003 were based on a judgment as to whether the disability was mild, moderate or severe. The current standards are grounded in ROM measurements. IAW DoDI 6040.44, this Board must consider the appropriate rating for the CI's back condition at separation based on the VASRD standards in effect at the time of separation (i.e. pre-2004 standards). The CI injured her back during a fall from a height of 8-10 feet in October 1998. An MRI evaluation on 9 August 2001 revealed degenerative changes and facet joint arthritis, but no disc herniation. Ongoing pain did not respond to PT and required narcotic medication for management. The MEB physical exam a year prior to separation noted that although the CI could not bend into a crouching or squatting position due to back pain, she was observed to bend over to robe and disrobe. As previously noted, the C&P examiner on 20 December 2001 (10 months prior to separation) reported a limp due to a recent right ankle sprain which did not require support. ROM measurements showed lumbar flexion of 80 degrees (90 degrees normal by current standards), extension of 15 degrees (30 degrees normal) and lateral flexion of 15 degrees bilaterally (30 degrees normal). Tenderness was present. A second C&P examiner on 26 December 2001 reported use of a cane for low back and left hip pain. Straight leg raise testing did not produce pain characteristic of radiculopathy. "Exquisite tenderness" of the lumbar region was noted. X-rays of the lumbar spine were normal, although minimal degenerative change of the right sacroiliac joint was present. Another C&P examiner that day reported "full range of motion, flexion, and extension of her lumbar spine." Rotation and lateral flexion were also considered "full." Moderate to severe tenderness and mild muscle spasm of the left paraspinal muscles was noted. At the NARSUM exam, the CI reported an inability to bend, crouch or squat due to back pain. She was noted to ambulate with a cane, and was observed to assist herself by leaning on furniture. Decreased ROM in all directions was reported, but measurements were not specified. The examiner referred to an Occupational

Therapy functional work capacity evaluation which noted an inability to tolerate standing for longer than 15 minutes, but could tolerate over one hour of sitting with frequent position changes. It was recommended that she not engage in occupations requiring frequent bending or stooping, and limit lifting to 10 pounds infrequently. The PT evaluation reported that pain was rated 10/10 by the CI, although a distinction between back, hip and ankle pain was not specified. Flexion was 120 degrees, extension 40 degrees and lateral flexion 30 degrees bilaterally. During ROM testing, "pain at end range" was reported in all directions, although rotation was not tested. A subjective LBP disability questionnaire scored the condition at 60% on a 0 to 100% scale (0% is completely normal). At the C&P exam the CI reported left LBP that was constant, rated at a severity of 7-8 out of 10. The purpose of a cane during ambulation was "because the leg feels weak." Examination noted the impression that she was in pain. Equilibrium and posture were good. Normal lumbar lordosis was present. She complained of severe pain with touching of the low back. Spasm was absent. Flexion was 15 degrees, extension 5 degrees, lateral flexion 10 degrees bilaterally and rotation 0 degrees bilaterally. The ROMs noted were stated in the following way: "Range of motion resisted to 5 degrees of extension out of 30 degrees with complaint of severe pain." This descriptive language was used for all ROM values. This examiner stated that ROM was inconsistent with any pathology. X-rays of the lumbosacral spine were reportedly within normal limits. A second C&P examiner on the same day stated that the CI had used a cane for the prior a year because of the back problem.

The Board must correlate the above clinical data with the 2002 rating schedule which, for convenience, is excerpted below:

5292 Spine, limitation of motion of, lumbar:
- Severe 40
- Moderate 20
- Slight 10

5295 Lumbosacral strain:
- Severe; with listing of whole' spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion 40
- With muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing' position 20
- With characteristic pain on motion 10
- With slight subjective symptoms only 0

The PEB and VA assigned respective ratings under the 5295 code (lumbosacral strain). The PEB cited pain occurring "beyond the ratable range" in their 0% adjudication, while the VA assigned a 10% rating, stating that the disability was evaluated based on clinical findings since objective ROM was "not available." Board members considered the MEB examiner's observation (that the CI could bend over to dress and undress despite a reported inability to bend or crouch) and the ROM values by the service PT that was normal by today's standards. Board members likewise agreed that the dramatically reduced ROM values reported by the C&P examiner were not consistent with other clinical observations. The Board debated if there was sufficient evidence of Functional loss (§4.40) or Pain motion (§4.59) to justify a minimum compensable rating, but the Board majority concluded that such evidence was not present. 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 LBP condition.

Left Hip Condition. There were two goniometric 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 Hip (Thigh) ROM	VA C&P ~10 Mos. Pre-Sep	PT ~4 Mos. Pre-Sep	VA C&P ~4 Mos. Post-Sep
Flexion (0-125°)	90°	90°	30°
Extension (0-20°)	"Full"	10°	0°
External Rotation (0-45°)		40°	30°
Abduction (0-45°)		16°	15°
Adduction (0-45°)		6°	0°
Comment	+Painful motion	+Painful motion	+Painful motion
§4.71a Rating	10%	10%	20%

An orthopedic note on 21 July 2001 (15 months prior to separation) reported that the hip condition was doing well. "The hip really does not bother her much." A follow-up orthopedic note 2 weeks later stated: "Hip pain is pretty much resolved." A final orthopedic note on 13 September 2001 stated she was having no groin pain. The MEB examiner on 30 October 2001 (6 weeks after the last orthopedic exam and a year prior to separation) and the NARSUM examiner (8 months prior to separation) both noted that the CI suffered from chronic left hip pain, but gave no descriptive details about the condition. The NARSUM examiner reported decreased ROM and pain with hip flexion, and decreased strength of hip flexors. A C&P exam performed 10 months prior to separation (26 December 2001) reported the use of a cane at times of increased left hip pain severity. Examination revealed full flexion, extension and internal and external rotation of the left hip. Strength was normal. Tenderness of the lateral aspect of the hip was present. A palpable click was noted during abduction and external rotation, which reproduced her pain. A second C&P exam performed that same day reported she used a cane for both back and hip discomfort. "Full ROM of the bilateral hips" was reported, although the measured flexion noted in the above table of the left hip was 90 degrees. X-rays of the hip were normal. The PT examiner who performed the ROM measurements noted pain during flexion, extension and abduction. At the C&P exam 4 months after separation, the CI reported that she injured her hip during the same incident in 1998 that caused her back issue. All ROMs noted in the table above were resisted by the CI due to reports of pain. X-rays of the hip were reported to be normal. As previously noted, this examiner opined that subjective ROM was inconsistent with any orthopedic pathology. A VA rating decision on 16 June 2004 reported that the CI underwent an arthroscopic partial labral resection and chondroplasty on 12 September 2003 (11 months after separation) as treatment for the labral tear.

The Board directs attention to its rating recommendation based on the above evidence. While the ROM at the post-separation VA exam supported the VA's 20% rating under VASRD code 5252 (thigh, limitation of flexion of), the Board assigned lower probative value to this exam due to inconsistencies noted by that examiner. The PEB assigned a 0% rating under an analogous

5003 code with likely application of the USAPDA pain policy. The Board acknowledged that limitation of motion was non-compensable but considered if a 10% rating was justified under the 5003 code, or with application of §4.40 or §4.59. The documentation of absence of hip pain for several months prior to the MEB process weighed heavily in the Board's deliberation. Ultimately, the Board majority agreed that the evidence of record did not support a rating higher than that allowed under §4.71a for non-compensable limitation of hip motion. 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 LBP 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 the low back and left hip was operant in this case and the conditions were adjudicated independently of that policy by the Board. In the matter of the right ankle pain condition, the Board unanimously recommends no change in the PEB adjudication. In the matter of the LBP condition, the Board by a vote of 2:1 recommends no change in the PEB adjudication. The single voter for dissent (who recommended a rating of 10%) did not elect to submit a minority opinion. In the matter of the left hip superior labral tear condition, the Board by a vote of 2:1 recommends no change in the PEB adjudication. The single voter for dissent (who recommended a rating of 10%) did not elect to submit a minority opinion. 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
Right Ankle Pain	5271	10%
Low Back Pain	5299-5295	0%
Left Hip Superior Labral Tear	5099-5003	0%
	COMBINED	**10%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120627, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

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Acting Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for xxxxxxxxxxxxxxxxxx, AR20130003756 (PD201200984)

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)