

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200991
BOARD DATE: 20130116

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030930

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SFC/E-4 (95B40/Military Police), medically separated for chronic low back pain (LBP) and post-traumatic arthrosis, right ankle. The CI had greater than a 10-year history of LBP and right ankle pain that did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic lumbalgia of idiopathic origin and post-traumatic arthrosis, right ankle, secondary to injury incurred while not on active duty, for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic LBP as unfitting with a 10% rating in accordance with DoDI 1332.39. Post-traumatic arthrosis of the right ankle was determined to be unfitting but not the proximate result of duty, therefore non-compensable. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “The rating wasn’t high enough. I’m still in a lot of pain.”

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 rated conditions of chronic LBP and post-traumatic arthrosis of right ankle meet the criteria prescribed in DoDI 6040.44 for Board purview, and are addressed below. 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 20020912			VA (12 Mos. Post-Separation) – All Effective Date 20031001			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5299-5295	10%	Chronic Lumbar Strain	5243	10%	20041007
Post Traumatic Arthrosis, Right Ankle	5010	---%	Aggravation of Residuals of Right Ankle Fracture	5299-5271	NSC	20041007
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 1			20041007
Combined: 10%			Combined: 10%			

ANALYSIS SUMMARY:

Chronic Low Back Pain Condition. The CI had a long history of LBP that began after Army physical training in the early 1990s. She did not improve with treatment over several years. An examination performed on 17 June 2002 noted decreased flexion with pain. In the MEB narrative summary (NARSUM), performed on 15 August 2002, the examiner noted that X-rays

showed some mild lumbar dextroscoliosis of less than 7 degrees and that magnetic resonance imaging showed mild facet joint arthropathy at L4 and L5. On examination there was some minimal left-sided paraspinal tenderness, however there was no bony malalignment of the spine and gait was normal. Straight leg raising was negative for nerve root irritation, and strength and deep tendon reflexes (DTR) were normal. At the VA Compensation and Pension (C&P) exam performed on 7 October 2004, the lumbar spine was non-tender. She could flex the lumbar spine 90 degrees with some mild discomfort. She was able to rotate her spine to the right and to the left 30 degrees. Additionally, she could laterally flex her spine to the right and to the left 30 degrees but did feel some mild pain. Posture and gait were normal.

Post-Traumatic Arthrosis, Right Ankle Condition. The NARSUM dated 15 August 2002 noted that the CI fractured the ankle in her civilian job while working as a law enforcement officer approximately 20 years prior to the MEB. The PEB did not rate this condition because it concluded that this condition was not the proximate result of performing duty and was not permanently aggravated by military duty beyond the natural progression of the condition. The VA also did not rate this condition because it too concluded that it was not service-connected. The Board concluded that the right ankle condition was unfitting but was neither incurred in, nor permanently aggravated by, service beyond the natural progression of the condition. After due deliberation, considering all of the evidence and mindful of Veterans Affairs Schedule for Rating Disabilities (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.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the condition 10% coded 5299-5295 for chronic LBP using the VASRD guidelines for lumbosacral strain (5295) and DoD Instructions. The Board notes that the PEB used a VASRD diagnosis code that was in effect at the time of the PEB; however, this 5295 code was removed from the VASRD effective 26 September 2003, (4 days before the CI's date of separation) on 30 September 2003. The VA rated 10% citing diagnosis code 5243 for chronic lumbar strain with application of the current VASRD general formula for rating diseases and injuries of the spine. The Board's guidance is to correlate the above clinical data with the VASRD rules in effect on the date of separation (applicable diagnostic codes are 5237 lumbosacral or cervical strain, 5242 degenerative arthritis of the spine, and 5243 intervertebral disc syndrome). With reference to code 5295 in effect at the time of the PEB, the CI would be rated 10% for characteristic pain on motion. The normal findings at the NARSUM (13 months prior to separation) and at the C&P exam (12 months post-separation) would not support a higher rating under the old 5295 code. With respect to the current VASRD rating guidance (that went into effect just 4 days before separation), the range-of-motion values at the C&P examination correlate with a rating of 0% based on limitation of motion. However a 10% rating would be supported based on tenderness and painful motion in the NARSUM and C&P examinations. Although there was a disc bulge on CT scan, the CI did not have any documented incapacitating episodes and would thus rate at 0% under both the old 5293 code in effect at the time of the PEB and the current 5243 code (Intervertebral disc syndrome) based on incapacitating episodes. The Board concluded there was no route to a higher rating under either old or current VASRD guidelines. 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 chronic 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. The Board did not

surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the chronic low back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right ankle condition, the Board unanimously recommends no change in the PEB adjudication. 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 Low Back Pain	5299-5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120629, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXX, DAF
President
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
XXXXXXXXXXXXXXXX, AR20130001184 (PD201200991)

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

XXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA