

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1201217
BOARD DATE: 20130215

BRANCH OF SERVICE: ARMY
TDRL ENTRY: 19981117
SEPARATION DATE: 20030219

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (12C2P/Bridge Crew Chief), medically separated for Crohn's disease. The CI had a sudden onset of right lower quadrant pain and diarrhea in 1997 and was diagnosed with Crohn's disease. He received two surgical procedures, but did not improve adequately to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). Crohn's disease was forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for IPEB adjudication. The IPEB adjudicated the Crohn's condition as unfitting, rated 30%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI was placed on Temporary Disability Retired List (TDRL) with ratings as reflected in the chart below. Nearly 4 years later, the Formal PEB (FPEB) adjudicated the Crohn's condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI appealed to the US Army Physical Disability Agency (USAPDA), which affirmed the FPEB findings; and was then medically separated with a 10% disability rating.

CI CONTENTION: "Rating was unfair for the severity of condition. I was rated 30% for 4 years on TDRL and final decision was 0% (SIC) with no change in my diagnosis and condition. It seems that at the 5 year TDRL decision mark, the Army made a decision that was beneficial to the Army and not my well being. At the time decision was made, I had 15 years of service. I appealed their decision and was told that I was unfit for retention standards, yet was given a 0% disability rating for a condition I was have (sic) the rest of my life."

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 Crohn's disease condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. Any condition 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.

TDRL RATING COMPARISON:

Service USAPDA – Dated 20030124				VA – All Effective Date 20050429*			
Condition	Code	Rating		Condition	Code	Rating	Exam
Enter TDRL (19981117)		Enter TDRL	Sep (20030219)				
Crohn's Disease	7326-7319	30%	10%	Crohn's Disease	7323	60%**	19990707 20050929
No Additional MEB/PEB Entries				Lumbar Strain w/ DDD	5010-5242	40%	20050929
Combined: 10%				Not Service Connected x 8			20050929
				Combined: 80%			

* VA rating based on exam most proximate to date of permanent separation.

** Crohn's disease effective date 19981118; VARD 20060421 (continue @ 60%); C&P (rectum and anus) exam 20050929 most proximal to DOS, no change to subsequent VARDs

ANALYSIS SUMMARY: The Board notes the CI's opinion that he had not improved over the course of TDRL; but, clarifies that subjective improvement or worsening during the period of TDRL does not provide the basis for its disability rating recommendation at the time of permanent separation. The Board assesses the fairness of the TDRL rating decision based on the evidence proximate to temporary retirement; and, assesses the fairness of the permanent rating decision based on the evidence proximate to final separation. IAW DoDI 6040.44 the Board may not recommend a lower rating (TDRL or permanent) than that conferred by PEB; and, the TDRL rating is not considered a benchmark for the Board's permanent rating recommendation. The sole basis for the Board's permanent recommendation, therefore, is its assessment of disability based on evidence proximate to the date of permanent separation compared to VASRD criteria in effect on that date.

Crohn's Disease Condition. The suspicion of Crohn's disease was made during an appendectomy procedure in 1997. Subsequent radiologic tests, colonoscopy, and a history of abdominal pain, frequent diarrhea with rectal bleeding confirmed the diagnosis. The CI developed a chronic anal fistula with intermittent leakage, as well as symptoms of pneumaturia. In April 1998, he had surgery to remove a portion of diseased small intestine and repair an abnormal connection of bowel to the bladder. His postoperative course was additionally complicated with forming a variety of lower colon/anal fistulae. His medication treatments were many and included an immunosuppressant (6-Mercaptopurine), Imuran, and prolonged use of steroids. Postoperatively, the CI continued to have frequent watery bowel movements at an average of 6-8 times per day. Approximately 3 months prior to entering TDRL, the initial MEB exam dated 5 August 1998, the CI complained of 6-7 watery stools per day with occasional mild right lower quadrant abdominal pain. Laboratory studies revealed mild anemia and his weight was approaching levels to that before surgery. The examiner concluded that the CI's condition was "relatively well controlled" and the GI examiner added relatively well controlled "...with an aggressive regimen." The physical examination listed the presence of an anal fistula. The PEB rated the CI at 30% with entry into TDRL based on this exam stating "Crohn's disease status post resection of the terminal ileum and repair of an enterovesical fistula. Service member is undergoing therapy of immunomodulating and anti-inflammatory therapy." At the second TDRL examination on 4 February 2002, approximately 12 months prior to separation, the CI complained of groin and penile pain. Medication use was intermittent with pulses of Prednisone when the CI felt he may be having a flare. "He reported having approximately 4-6 semiformal bowel movements each day, which are about the consistency of oatmeal or watery, but not bloody and never solid. As noted, the standard antidiarrheals, Lomotil and Imodium, have had no impact nor has Questran for the suspicion of his bile salt mediated diarrhea. He has no joint aches now since being off the 6-Mercaptopurine. Overall, he states that he feels much better than he did over the 1997-98-99 timeframe, but still reports

some good days and bad days.” Functional status included functioning “within his current job as a Fayetteville police officer without any missed days of work due to this Crohn's illness. He states that his employer is “understanding and accommodating with his illness.” The examiner discussed past unsuccessful medication trials as well as “He has tried an infusion of Infliximab, which is currently the state-of-the-art medication for refractory Crohn's. This medication did not influence his symptoms. We have discussed the possibility of entering a research protocol that is being approved at other military treatment facilities...;” he declined the offer. The physical examination revealed oral aphthous ulcerations and mid to lower abdominal tenderness. No labs were drawn. There was no report of a rectal exam and reference was made to a small bowel follow through completed in August of 2001 that “revealed no evidence of active Crohn’s disease.” The CI’s weight was listed as “stable at 175 pounds.” Urology evaluation including cystoscopy and voiding cystourethrogram, found no evidence of any vesicoenteric fistula. Communications from the CI’s treating Gastroenterologist (1 and 3 months pre DOS) indicated the CI was “currently able to work, he continues to have 4-6 stools a day which are loose and diarrhea on his best days. He continues to have a nagging, aching pain that radiates down into his groin and penis area which I feel is likely related to complications he had with his Crohn’s fistulizing to his bladder.” The latest physician communication indicated the CI experienced “pain and tenderness and daily diarrhea. He has recently had to leave work early due to his symptoms, but overall he has been tolerating his illness I would put him somewhere between mild and moderate as per the nomenclature used therefore.” At the VA Compensation and Pension (C&P) examination on 7 July 1999, approximately 8 months after entry into TDRL (nearly 42 months prior to date of separation), the CI complained of loose, watery and bloody diarrhea multiple times per week. Physical examination revealed palpatory tenderness in both lower abdominal quadrants without guarding or rebound pain. The VA cited “numerous attacks” in assigning their 60% rating for code 7323.

The Board directs its attention to its rating recommendations based on the evidence just described. The Army rated the condition using coding of 7326-7319 [7326 (Enterocolitis, chronic) using the criteria of 7319 (Irritable colon syndrome), while the VA coded the condition as 7323 (Colitis, ulcerative). The Board clarifies that there is a significant interval between the VA evidence and ratings and the date of permanent separation; and, the Board’s permanent rating recommendation is based on the disability in evidence at final separation. DoDI 6040.44 specifies a 12-month interval for special consideration to VA findings, and thus little probative value can be assigned to the clinical evidence rated by the VA with regards to the Board’s permanent recommendation. Since there was a paucity of clinical record evidence on or about the CI’s DOS in February 2003, the Board must rely heavily on the 12 month prior to DOS exam as well as submissions from the CI’s Gastroenterologist as the having the most probative value in its deliberation to assess the severity of symptoms relevant to its permanent rating recommendation IAW §4.114. Other service treatment records (STR’s) did not reveal any evidence of malnutrition, weight loss greater than 10%, nausea or vomiting, prolonged hospitalizations, nor the need for blood transfusions. The record at TDRL entry supported the 30% PEB rating IAW §4.114. However, predominate coding was analogous to 7323 (Colitis, ulcerative) which more nearly represented the CI’s diagnosis, pathology and disability picture. The Board then focused on the permanent separation rating at the end of the TDRL period. The Board agreed that the CI’s condition exceeds the “moderate” symptoms and “infrequent exacerbations” corresponding to the 10% rating under VASRD code 7399-7323. The Board concluded that the CI’s 6 or more watery (occasional bloody) bowel movements per day, frequent flare-ups requiring episodic immunosuppressant medication, and persistent lower abdominal pain, more nearly supported a 30% rating for code 7323. Although the CI had episodes of slight anemia, there was insufficient evidence of numerous attacks or malnutrition to support a 60% or higher rating.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.7 (higher of two evaluations), the Board recommends no change in the 30%

TDRL-entry rating, with a disability rating of 30% for the Crohn's disease condition upon termination of TDRL, coded 7399-7323 IAW VASRD §4.114.

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 Crohn's disease condition, the Board unanimously recommends a TDRL and permanent disability rating of 30%, coded 7323 IAW VASRD §4.71a. 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 to reflect a permanent combined 30% disability retirement effective as of the date of the prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Crohn's Disease	7399-7323	30%
	COMBINED	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120612, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXXXXXXXXX, DAF
Acting Director
Physical Disability Board of Review

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, AR20130003773 (PD201201217)

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

XXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)