

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: X
CASE NUMBER: PD1201613
BOARD DATE: 20130221

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20020708

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sailor IS2/E-5 (MOS/Intelligence Specialist) medically separated for bilateral hip pain with associated bilateral degenerative joint disease (DJD) of the hips and ununited fracture of the right greater trochanter which was surgically treated. Despite treatment, he continued to have hip pain and did not improve adequately to meet the physical requirements of his rating or satisfy physical fitness standards. He was placed on light duty and referred for a Medical Evaluation Board (MEB). The MEB forwarded bilateral hip pain and hip arthritis as medically unacceptable. The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated each hip as individually unfitting (although designated as bilateral hip pain) and rated each hip 10% disabling for a combined rating of 20%, including the bilateral factor, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). Additionally, the PEB adjudicated the bilateral hip DJD, the surgically repaired ununited fracture of the right greater trochanter and the hip arthritis as related to the unfitting condition. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The CI submitted a three page letter to the Board in which he specifically requests unfitting ratings for the following conditions: fractured trochanter, arthritic right hip, and arthritic left hip. The letter was reviewed by the Board and considered in its recommendations.

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 the unfitting bilateral hip pain condition, to include arthritis and DJD of both hips and non-union of right greater trochanter, will be reviewed. 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 Board for Correction of Naval Records.

RATING COMPARISON:

Service PEB – Dated 20020523			VA (14 Mos. Pre-Sep & 80 Mos. Post-Sep) – All Effective 20080805*			
Condition	Code	Rating	Condition	Code	Rating	Exam
Bilateral Hip Pain: DJD; Ununited Fracture Right Greater Trochanter; Hip Arthritis	5003	10%	S/P Greater Trochanteric Acetabular Fracture of Right Hip w/DJD	5252	30%	20090312
	5003	10%	Degenerative Joint Disease, Left Hip	5010	10%	20010524*
↓No Additional MEB/PEB Entries↓			Mild Osteoarthritis, L Knee	5010	10%	20010524*
			0% x1 / Not Service-Connected x1			
Combined: 20%			Combined: 50% with Bilateral Factor			

* Effective date is date CI submitted VA application for benefits; VA used pre-separation C&P exam for two conditions.

ANALYSIS SUMMARY: The Board notes the current VA ratings listed by the CI for all of his 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 VA Compensation and Pension (C&P) examination performed in March 2009 falls well outside the 12-month window specified in DoDI 6040.44 regarding VA evaluations for Board consideration; therefore, little probative value can be assigned to the subsequent VA rating. The Disability Evaluation System (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).

Bilateral Hip Pain. There were three goniometric 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.

Hip and Thigh ROM	VA C&P 13.5 Mos. Pre-Sep		Addendum to MEB report 4 Mos. Pre-Sep		VA C&P 80 Mos. Post-Sep.	
	L: 130°	R: 115°	L: 100°	R: 100°	L: 125°	R: 20°
Flexion (0-125°)	20°	20°	-	-	30°	10°
Extension (0-20°)	40°	45°	30°	30°	45°	5°
External Rotation (0-45°)	45°	45°	45	45°	45°	10°
Abduction (0-45°)	30°	25°	-	-	25°	10°
Adduction (0-45°)	Posture normal; Gait unremarkable; No heat, redness or swelling; Pos. pain at extremes of ROM		Walked without limp; Pos. pain at extremes of ROM; Pos. tenderness at insertion of abductors into greater trochanter; neurovascular intact bilateral lower extremities		Normal Gait; Pos. tenderness & guarding of movement on right, none on left; No edema, effusion, weakness, redness or heat bilaterally; No subluxation; No additional limitation of function bilaterally	
Comment						
§4.71a Rating	10%*	10%*	10%*	10%*	10%*	30%

* IAW VASRD §4.59 Painful Motion

At the C&P exam performed 13 months prior to separation, the CI reported an injury in November 1997 when he fell off of an aircraft ladder onto the flight deck, with injury to the right hip. He stated that the right hip was sore for 2 weeks and then gradually improved. He was not aware that it was broken. He stated that over the past 2 years, the pain in the right hip had increased. He was diagnosed with a groin pull until an X-ray showed an old avulsion fracture of the right greater trochanter, as well as a fracture of the right acetabulum. The CI stated that he developed right hip pain on a daily basis, which was worse with sitting, going up stairs and walking. He also had decreased ROM of the right hip. The CI had chronic popping pain, with radiation to the right knee, as well as weakness, instability, fatigue, and lack of endurance. He stated that due to favoring the right hip, he was developing pain in the left knee. He treated his symptoms with rest, aspirin and avoidance of intense activities. Because of this injury he was unable to run. He had difficulty driving long distances due to the resultant pain and stiffness. He had not received any treatment or surgery for this joint condition and did not have any prosthetic implants. Significant physical exam findings are summarized in the chart above.

The narrative summary (NARSUM) prepared 8 months prior to separation, noted a similar history to the one noted above with the following significant additions. He was recently evaluated and X-rays showed arthritis of both hips and the aforementioned old fractures. He was evaluated by orthopedics for possible surgical intervention. Significant physical exam

findings are summarized in the chart above. Radiographs of the pelvis and hips revealed mild to moderate degenerative arthritis of both hips and perhaps subtle hip dysplasia bilaterally. He also had an old avulsion fracture from the tip of his right greater trochanter that had not united and what appeared to be an old acetabular rim fracture, also on the right. The CI's chief problem was moderate degenerative arthritis of both hips, worse on the right. His arthritis was not severe enough to justify hip replacement surgery; therefore, his only alternative was to substantially modify his lifestyle. The physician opined that his hip arthritis was not compatible with long-term military service as it was not compatible with heavy impact loading activity such as prolonged walking or running. At the MEB exam also accomplished 8 months prior to separation, the CI reported history of broken bone and bone or joint deformity. The MEB physical exam noted limited flexion of right hip and limited right lateral flexion of waist both due to pain.

Additional significant historical information was contained in the service treatment records (STRs). Seven and a half months prior to separation, the CI underwent a surgical procedure to correct the right hip pain due to the ununited avulsion fracture of the greater trochanter. This surgical procedure was performed 19 days after the MEB convened and referred his case to the PEB. That surgical procedure resulted in termination of PEB proceedings until the CI recuperated. After recuperation and receipt of the additional information requested by the PEB, the CI's case was completed with the adjudication noted above based on the Addendum to the Report of the Medical Board, accomplished 4 months prior to separation, summarized in the ROM chart above.

The Board directs attention to its rating recommendation based on the above evidence. The PEB adjudicated the bilateral hip pain as two separately unfitting hip conditions and rated each hip as 10% disabling under VASRD code 5003, degenerative arthritis. This adjudication occurred after the CI's right hip surgery and the addendum to the MEB report utilized for rating accounted for full recuperation from the procedure. There is a C&P examination accomplished 13 months prior to separation; however, that exam is not useful for rating purposes as it was accomplished well before the CI's surgical procedure and is outside the Board's 12-month period for rating consideration. The CI applied for VA benefits approximately 72 months after separation and the VA accomplished another C&P examination in March 2009. That C&P examination performed 80 months after separation is the only post-separation evidence available to the Board for consideration. Since it falls significantly outside the 12-month window specified in DoDI 6040.44 regarding VA evaluations for Board consideration, little probative value can be assigned to the subsequent VA rating. This leaves the Board with only one probative exam for rating purposes, the MEB addendum exam performed 4 months prior to separation and after the CI recuperated from his surgical procedure. There was no ankylosis, flail joint or fracture of the femoral shaft or anatomical neck present in either hip nullifying the use of VASRD codes 5250, 5254 and 5255 respectively. The MEB addendum exam documents non-compensable ROM measurements for each hip in extension and flexion as required for rating under VASRD codes 5251 and 5252 respectively. Additionally, the ROM limitations required for rating under VASRD code 5253 were also not documented proximate to the date of separation. There was no muscle injury in the record obviating the use of VASRD rating guidance under §4.73 Schedule of ratings for muscle injuries. This leaves VASRD code 5003 as the only appropriate rating option, proximate to the day of separation, for the CI's right and left hip pain condition. The VA's remote use of VASRD code 5010 for rating the CI's left hip condition also relies on the use of code 5003 for rating purposes. Application of VASRD code 5003 requires demonstrated joint limitation due to painful motion (VASRD §4.59), adequately demonstrated in this case, be granted a 10% evaluation unless incapacitating episodes were present. The presence of incapacitating episode would garner a 20% evaluation; none were evidenced in this case. Therefore, under VASRD code 5003 each hip would be separately rated as 10% disabling with evidence of non-compensable ROM measurements and adequate evidence of painful motion. There is no appropriate coding and rating scheme that would be of

greater benefit to the CI. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the left and right (bilateral) hip pain condition.

Contended PEB Conditions. The contended conditions adjudicated as related to the bilateral hip pain were arthritis and DJD of both hips and non-union of right greater trochanter. These contended conditions were found to be related to the unfitting left and right hip pain and therefore were not independently unfitting. Additionally, the disability related to impairment caused by those conditions would be rated using the same criteria as the bilateral hip pain. Under VASRD policy §4.14, avoidance of pyramiding, which states the evaluation of the same manifestation under different diagnoses is to be avoided; the Board is not allowed to assign the hip pain to more than one diagnosis for rating the hip disability. After due deliberation in consideration of the PEB adjudication and VASRD policy §4.14, the Board concluded that there was no basis to recommend a change in the PEB determination for the any of the contended conditions and, therefore, no additional disability ratings can be recommended.

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 left and right hip pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended arthritis and DJD of both hips and non-union of right greater trochanter conditions, the Board unanimously recommends no change from the PEB determination as related to the bilateral hip pain condition. 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
Left Hip Pain Condition	5003	10%
Right Hip Pain Condition	5003	10%
	COMBINED (w/ BLF)	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120714, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

X
Acting Director
Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW
BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44
(b) CORB ltr dtd 04 Apr 13

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR that the following individual's records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy's Physical Evaluation Board:

- xformer USMC
- xformer USN
- xformer USMC
- xformer USMC
- xformer USN
- xformer USMC
- xformer USMC
- xformer USN
- xformer USMC
- xformer USN
- xformer USMC

x
Assistant General Counsel
(Manpower & Reserve Affairs)