

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2020-00166
SEPARATION DATE: 20041130

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E4, Unit Supply Specialist, medically separated from the Temporary Disability Retired List (TDRL) for "left foot drop" with a disability rating of 0%.

CI CONTENTION: The CI requested review of his left foot condition and contended his injuries and illnesses have gotten significantly worse. The complete submission is at Exhibit A.

SCOPE OF REVIEW: The panel's scope of review is defined in DoDI 6040.44. It is limited to review of disability ratings assigned to those conditions determined by the Physical Evaluation Board (PEB) to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the Medical Evaluation Board (MEB) but determined by the PEB to be not unfitting or non-compensable. Any conditions outside the panel's defined scope of review, and any contention not requested in this application, may remain eligible for future consideration by the Board for Correction of Military Records. The panel's authority is limited to assessing the fairness and accuracy of PEB rating determinations and recommending corrections when appropriate. The panel gives consideration to VA evidence, particularly within 12 months of separation, but only to the extent that it reasonably reflects the severity of disability at the time of separation.

RATING COMPARISON:

SERVICE PEB - 20041123			VARD - 20040604			
Condition	Code	Rating	Condition	Code	Rating	Exam
Left Foot Drop	8523	0%	Left Peroneal Nerve Palsy with Foot Drop and Chronic Pain	8523	30%	20030611
COMBINED RATING: 0%			COMBINED RATING OF ALL VA CONDITIONS: 70%			

ANALYSIS SUMMARY:

Left Foot Drop. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI underwent neurolysis of the left peroneal nerve and popliteal fossa in April 2002. Postoperatively, the foot drop persisted with loss of dorsiflexion. He used orthotics for ambulation and was placed on TDRL on 18 July 2002. At the 11 June 2003 VA Compensation and Pension (C&P) examination, the CI reported left foot drop. Physical examination showed foot drop, decreased sensation, and no motor function in the anterior tibial and extensor hallucis longus muscles. Electromyographic and nerve conduction studies (EMG/NCS), performed 16 July 2004, reportedly showed evidence of a left chronic common peroneal nerve lesion affecting both the deep and superficial branches distal to the branch enervating the short head of the biceps femoris. There was evidence of slight early muscle fiber re-innervation demonstrated by the presence of activity in the anterior tibialis muscle. Also, the peroneus longus and anterior tibial muscle demonstrated the presence of a few functioning motor units with matured axonal regeneration. The 15 September 2004 TDRL examination, 2 months prior to removal from the TDRL, noted complaints of footdrop and chronic left knee pain. Physical

examination of the left ankle showed no active extension or resistance to foot eversion, but no evidence of footdrop or left leg atrophy.

The panel directed attention to its rating recommendation based on the above evidence. The CI was removed from TDRL with a permanent disability disposition of separation with severance pay at 0%. The PEB noted the CI could ambulate without an ankle or foot orthotic and “there was no distinct evidence of foot drop.” The VA rated the left foot drop 30%, coded 8523 (complete paralysis of the anterior tibial nerve (deep peroneal), based on the C&P examination, citing decreased sensation at the dorsum of the foot, particularly in the first web space and lateral dorsum of the foot. The CI showed a positive foot drop, but no evidence of complete foot drop.

The higher rating of 10% under the 8523 code requires evidence of incomplete moderate impairment in the nerve responsible for foot dorsal flexion. The 20% rating requires evidence of severe impairment and the 30% rating requires evidence of complete nerve paralysis with loss of dorsal flexion. Although the panel noted electrophysiologic improvement of nerve reinnervation on the 2004 NCS, the TDRL examiner reported complete loss of active dorsiflexion (extension) and no resistance to eversion. The CI reported continued foot drop, and although the EMG showed the presence of a few functioning motor units which could mean the condition would improve overtime, at the time of TDRL removal there remained the loss of left foot dorsiflexion and an absence of clinical improvement. The TDRL examiner recommended continuance on the TDRL. Panel members concluded, at the time of TDRL removal, there was sufficient evidence to support the fact that dorsiflexion of the left foot had not improved and remained unchanged clinically. The CI had continued loss of left foot dorsal flexion, and therefore met the criteria for the 30% rating under code 8523. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 30% for the left foot drop, coded 8523 at the time of TDRL removal.

BOARD FINDINGS: In the matter of the left foot drop, the panel recommends a disability rating of 30%, coded 8523 IAW VASRD §4.124a, at the time of removal from TDRL and permanent disability disposition. There are no other conditions within the panel’s scope of review for consideration. The panel recommends the CI’s prior determination be modified as follows; and, that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective the date of medical separation:

CONDITION	VASRD CODE	PERMANENT RATING
Left Foot Drop	8523	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20200909, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record



DEPARTMENT OF THE ARMY

ARMY REVIEW BOARDS
AGENCY 251 18TH STREET
SOUTH, SUITE 385
ARLINGTON, VA 22202-3531

AR20230008637, XXXXXXXXXXXX

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Dear XXXXXXXXXXXX:

I accept the recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) to re-characterize your separation as a permanent disability retirement with the combined disability rating of 30% effective the date of your medical separation for disability with severance pay. Enclosed is a copy of the Board's recommendation and record of proceedings for your information.

The re-characterization of your separation as a disability retirement will result in an adjustment to your pay providing retirement pay from the date of your original medical separation minus the amount of severance pay you were previously paid at separation.

The accepted DoD PDBR recommendation has been forwarded to the Army Physical Disability Agency for required correction of records and then to the U.S. Defense Finance and Accounting Service to make the necessary adjustment to your pay and allowances. These agencies will provide you with official notification by mail as soon as the directed corrections have been made and will provide information on your retirement benefits. Due to the large number of cases in process, please be advised that it may be several months before you receive notification that the corrections are completed and pay adjusted. Inquiry concerning your correction of records should be addressed to the U.S. Army Physical Disability Agency, 1835 Army Boulevard, Building 2000, JBSA, Fort Sam Houston, TX 78234.

A copy of this decision has also been provided to the Department of Veterans Affairs.