

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2022-00043
SEPARATION DATE: 20090523

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E4, Patient Administrative Specialist, medically separated for "right ankle pain and marked limitation of motion" with a disability rating of 20%.

CI CONTENTION: "During my MED board process the process was rushed and did not include all pertinent medical information. I believe that this caused bad information to be used to make a determination of how I was to be separated." 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 - 20090220			VARD - 20091109			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Ankle Pain	5271	20%	Residuals, Right Ankle Fracture and Right Leg Dislocation with Retained Hardware	5262	20%	20090316
Concussion	Not Unfitting		Headache Syndrome	8199-8100	0%	2009316
Depression			No VA Placement			
Left Foot Pain			No VA Placement			
COMBINED RATING OF ALL VA CONDITIONS: 50%						

ANALYSIS SUMMARY:

Right Ankle Pain. According to the service treatment record and MEB narrative summary (NARSUM), the CI underwent an open reduction and internal fixation surgery in October 2007 for a fractured right tibia and fibula, with screw removal in December 2007.

The 1 October 2008 MEB NARSUM examination, 7 months prior to separation, recorded complaints of frequent flares of pain and swelling caused by weight bearing activities. The examiner noted the CI was unable to perform his primary military specialty duties due to chronic right ankle pain. During the MEB examination (recorded on DD Forms 2807-1 and 2808), 6 days later, the CI reported recurrent right ankle swelling after standing for long periods. Physical examination revealed plantar flexion to 55 degrees (normal 45), the inability

to perform dorsiflexion, and “tenderness to movement of the right foot and ankle.” The following day, MEB physical therapy range of motion (ROM) measurements recorded right ankle dorsiflexion as “lacks 5 degrees from neutral” (normal 20), and plantar flexion to 50 degrees.

During the 16 March 2009 VA Compensation and Pension (C&P) examination, 2 months before separation, the CI complained of pain with weight bearing, swelling, and loss of dorsiflexion. He reported moderate, weekly flare-ups, lasting 1-2 days, as well as intermittent, but frequent use of a brace. The CI could stand for 3-8 hours, with only short rest periods, and could walk up to a mile. The examiner documented an antalgic gait but no other abnormal weight bearing. Right ankle dorsiflexion was to 5 degrees and plantar flexion to 60 degrees, with painful motion.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the right ankle condition 20%, coded 5271 (ankle, limited motion of), citing “marked ankle injury for -5 degrees dorsiflexion.” The VA rated the right ankle condition 20%, coded 5262 (tibia and fibula, impairment of: incomplete), based on the C&P examination, citing tibia and fibula malunion with moderate ankle disability. Panel members agreed the ROM examinations in evidence were consistent with “marked” limitation of motion for a maximum 20% rating under code 5271. The panel also considered code 5262 but agreed that it did not rise to the next higher “marked” level of disability, and thus provided no rating advantage. Lastly, the panel considered whether VASRD ratings for other foot injuries (5284) provided for a higher rating (§4.7) but agreed that the “severe” level (30%) was not supported. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel concluded there was insufficient cause to recommend a change in the PEB adjudication for the right ankle condition.

Contended PEB Conditions: Concussion, Depression and Left Foot Pain. The panel’s main charge is to assess the fairness of the PEB determination that the contended conditions were not unfitting. None of the conditions were profiled, or implicated in the commander’s statement, and did not fail retention standards. There was no performance-based evidence from the record that any of the conditions significantly interfered with satisfactory duty performance at separation. After due deliberation, the panel concluded there was insufficient cause to recommend a change in the PEB fitness determination for any of the contended conditions, so no additional disability ratings are recommended.

BOARD FINDINGS: In the matter of the right ankle condition and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. In the matter of the contended concussion, depression and left foot pain, the panel recommends no change from the PEB determinations as not unfitting. There are no other conditions within the panel’s scope of review for consideration. Therefore, the panel recommends no modification or re-characterization of the CI’s disability and separation determination.

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20220429, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Record

AR20230009457, XXXXXXXXX

XXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

The Department of Defense Physical Disability Board of Review (DoD PDBR) reviewed your application and found your separation disability rating and your separation from the Army for disability with severance pay to be accurate. I have reviewed the Board's recommendation and record of proceedings (copy enclosed), and I accept its recommendation. I regret to inform you that your application to the DoD PDBR is denied.

This decision is final. Recourse within the Department of Defense or the Department of the Army is exhausted; however, you have the option to seek relief by filing suit in a court of appropriate jurisdiction.