RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900469 SEPARATION DATE: 20020809

BOARD DATE: 20100421

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SUMMARY OF CASE: This covered individual (CI) was a Petty Officer Second Class/PN2 (Personnelman) medically separated from the Navy in 2002 after more than five years of service. The medical basis for the separation was Left Lisfranc Injury. The CI was referred to the Physical Evaluation Board (PEB), found unfit for continued military service and separated at 20% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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CI CONTENTION: “I was rated 20% by the PEB and separated w/severance pay. Immediately after separation, I was rated 50% by DVA for the same service connected condition. I have been upgraded to 60% by the VA for the same service connected condition. (The only condition I have) After my separation was complete, I received a copy of my PEB package. The information in the package that went to the PEB was incorrect and incomplete. For example, it didn’t list correctly how the accident occurred. I believe this may have contributed to my lower rating from the PEB. I still struggle with this injury daily and thank God for this opportunity. I truly don’t care about the money, I just want to feel like my injury matters to the Navy and that I have not been forgotten.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (2 Months Before Separation)** | | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Left Lisfranc Injury Status Post Left Lisfranc Arthrodesis (Related to MEB Dx 1) | 5284 | 20% | 20020620 | Residuals Fracture, Left Foot | 5284 | 50%  Prestabilization  30%  30% | 20020628  20030529 | 20020810  20030301  20030529 |
| Lisfranc Injury w/Chronic Pain, Decrease Function, LOM of Ankle, Associated w/Fracture, Left Foot | 8524  then  8525 | 30%  30% | 20030529 | 20030301  20030529 |
| No PEB Entry | Not in DES | | | Scars, Left Foot | 7804 | 10% | 20050927 | 20030529 |
| No PEB Entry | Not in DES | | | 2 x Condition  (1. Left Knee Pain; 2. Right Foot Condition ) | NSC |  |  |  |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **50% from 20020810**  **60% from 20030529** | | | | |

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ANALYSIS SUMMARY:

Left Foot Lisfranc Fracture, status post Arthrodesis with Peripheral Neuropathy, Reflex Sympathetic Dystrophy, and Scars

The CI initially injured her left foot in November 2000 after falling on stairs. She was evaluated and had x-rays done and was treated conservatively. It seemed to be a relatively minor injury. However, she continued to have pain and swelling. She had repeat x-rays in May and July 2001 and a Magnetic Resonance Imaging (MRI) in October 2001. None of the x-ray reports were available for review. The MRI report documented a Lisfranc fracture, unstable joint, and moderate arthritic changes. She was treated with casting and continued physical therapy but ultimately required surgery and Arthrodesis was done in February 2002. She was also casted after the surgery and had a second surgery for pin removal in April 2002. She also had another surgery in February 2003 (after separation) for removal of hardware. The Arthrodesis did not lead to any resolution of her pain and swelling. She was referred to a Medical Evaluation Board (MEB) and separated from the Navy in August 2002, approximately six months after the initial surgery.

At her MEB narrative summary (NARSUM) evaluation she still had a severe antalgic gait secondary to left foot pain. She also had +2/+3 edema, mild erythema, and extensive ecchymosis. Upon palpation of the midfoot region including 1st and 2nd tarsometatarsal regions demonstrated increased sagittal motion with dorsal subluxation of the 2nd cuneiform. The CI had decreased range of motion of left ankle joint, subtalar joint, and midtarsal joint secondary to edema and pain, and +3/+4/5 muscle strength. Her pain was rated +9/10 upon range of motion and resistance and she had a positive Gap sign upon weight bearing.

Her initial VA Compensation and Pension (C&P) evaluation was completed in June 2002, two months prior to separation from service. This examination had findings very similar to that done for her MEB: significant limp and swelling and pain with any motion. It also documented weak left great toe extension and a significant droop of the left great toe.

The CI separated from service in August 2002; this was only six months after her initial surgery and four months after her second surgery. The NARSUM specifically stated the surgery appeared successful but aching pain persisted after surgery because of the nature of the extensive injury. Severe injuries can occur with Lisfranc fractures even if the mechanism of injury appears benign such as stumbling. Poor functional outcomes are common with Lisfranc injuries and fractures, especially if definitive treatment is delayed. The NARSUM stated CI would need six months to one year of convalescence for her injury to heal. She had surgery in Feb 2002, the NARSUM was completed in approximately May 2002 (3 months after initial surgery), and separation occurred in August 2002 (6 months after initial surgery). She had not reached maximum medical benefit and her condition was not stable. The initial VA C&P also revealed the CI was still convalescing from her foot surgery with significant swelling, tenderness, and impaired function.

The CI had not reached maximum medical benefit prior to separation and therefore the VA assigned a prestabilization rating of 50% for unhealed or incompletely healed wounds or injuries: Material impairment of employability likely. When prestabilization ratings are applied, a C&P evaluation is required between six and twelve months after separation from service and this was done in May 2003. VASRD §4.28 prestabilization rating from date of discharge from service defines the requirements for rating unstabilized, unhealed, and incompletely healed conditions, wounds, and injuries.

In order to comply with VASRD §4.28, the Board recommends a period of twelve months on the Temporary Disability Retired List (TDRL) with a rating of 50% for 5284 Left Lisfranc Fracture, Status Post Left Lisfranc Arthrodesis. This twelve month period should begin immediately following the CI’s prior medical separation. The Board recommends a permanent rating of 30% for the same condition following the TDRL period. The CI’s condition warrants a 30% rating based on the VA C&P evaluation of 20030529.

During the intervening time between the two VA C&P evaluations, the CI was diagnosed with Reflex Sympathetic Dystrophy (RSD) and the VA considered this condition when determining their rating in 2003. This condition is also known as Complex Regional Pain Syndrome (CRPS). However, this condition was not present at the time of entry into the TDRL and the Board cannot consider this condition in its determinations. The Board did consider neurologic abnormalities as these were present prior to entering the TDRL.

The NARSUM examination documented decreased strength which could have been due to a peripheral neuropathy or secondary to pain. The initial VA C&P documented her left second great toe had lost its extensor tendon and had a significant droop. This would not occur due to pain alone and is indicative of a neurologic abnormality. The subsequent VA C&P examination documented worsening neurologic problems with the inability to flex the toes on her left foot. Also, she could only wiggle her great toe slightly.

The second VA C&P evaluation was completed fifteen months after the initial surgery and the CI continued to walk with a limp and have significant daily pain. She was employed at a desk-type job but had difficulty with the amount of walking that was required for this job. She no longer had edema or ecchymosis but tenderness to palpation persisted. In addition to the motor weakness described above, she also had decreased sensation of her toes and the distal portion of her metatarsals. The CI’s pain is aggravated by any increased or prolonged activity, such as shopping on her feet for more than thirty minutes.

The continued impaired gait, daily severe pain, weakness, and decreased sensation warrant a determination that the CI’s foot injury is severe, as opposed to moderately severe. The VA also considered the CI’s residuals of the Left Foot Lisfranc Fracture to be severe and applied a 30% rating.

Although the VA also rated her neurologic impairments and RSD as 8524 at 30%, the Board cannot include RSD as evidence and finds there was insufficient evidence to apply a separate rating for peripheral neuropathy. The Board considers the neurologic findings to be necessary for the characterization of the foot injury as severe and therefore these same impairments cannot also be used to support a rating for a peripheral neuropathy. The VA rating also included a 10% rating for the scars on her left foot. However there was no evidence that the scar was unfitting and no rating can be recommended for it.

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| Movement  Left Ankle | Normal ROM | Physical Therapy 20010801 | MEB (NARSUM)  May 2002  (ROM not measured) | C&P 20020628  2 months prior to separation | C&P 20030529  9 months after separation |
| Dorsiflexion | 0-20 | 0 | NA | 30 without pain and without weakness | 2 |
| Plantar Flexion | 0-45 | 50 | NA | 45 without pain and without weakness | 35 |
| Notes: |  | Inv 30 ev20  (Right: 15 dorsi, 50 plantar, 35 inv, 25 ev) | Severe antalgic gait secondary to left foot pain; decreased range of motion of left ankle joint, subtalar joint, and midtarsal joint secondary to edema and pain, and +3/+4/5 muscle strength. The pain scale was +9/10 upon range of motion and resistance | Significant limp; significant swelling on arch of left foot; marked swelling and tenderness over the arch of left foot with pain on any attempt at tarsometatarsal motion. Left second great toe has lost its extensor tendon and has significant droop  Ankle normal with no swelling and no local tenderness; no laxity is noted on examination of the ligaments of the left ankle | No obvious swelling of her foot at this time; decreased sensation of her toes and distal portion of her metatarsals; palpable tenderness over the medial and lateral malleolus on the left.  Range of motion of her left ankle is as above and inversion 10 degrees, eversion 10 degrees. Not able to flex the toes on her left foot; can only wiggle her great toe slightly. Normal flexion and extension of the toes on her right foot. Palpable tenderness over the entire dorsum of left foot. |

Other Conditions (Not in the Disability Evaluation System (DES

Peripheral Neuropathy and Reflex Sympathetic Dystrophy rated as VASRD 8524; Scars left foot; Left Knee Pain; and Right Foot Condition: None of these conditions are mentioned anywhere in the DES package and are therefore outside the scope of the PDBR.

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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. After careful consideration of all available information the Board determined by majority vote that the CI’s condition is most appropriately rated with a 12-month TDRL rating of 50% applied immediately after her previous separation from service in 2002, followed by a permanent rating of 30% for Left Lisfranc Fracture, Status Post Left Lisfranc Arthrodesis.

The Board unanimously determined the CI’s condition was not stable at the time of separation from service six months after her initial surgery and a rating determination made one year after separation would appropriately represent her permanent level of functional impairment. A majority of the Board determined the CI’s condition after one year on TDRL is appropriately considered severe based on the presence of continued impaired gait, daily severe pain, weakness, and decreased sensation.

The single voter for dissent elected not to submit a minority opinion, concurred with the 12-month TDRL rating of 50% but felt that ‘Moderately severe’ was a more appropriate representation of the disability picture at twelve months, and recommended a permanent rating of 5284 at 20%.

The other diagnoses, rated by the VA (Peripheral Neuropathy and Reflex Sympathetic Dystrophy rated as VASRD 8524; Scars left foot; Left Knee Pain; and Right Foot Condition) were not mentioned in the Disability Evaluation System package and are therefore outside the scope of the Board. The CI retains the right to request her service Board of Correction for Naval Records (BCNR) to consider adding these conditions as unfitting.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows; TDRL at 50% for 12 months immediately following the CI’s prior medical separation (Prestabilization rating of 50% for Unhealed or incompletely healed wounds or injuries--Material impairment of employability likely as required by VASRD (2002) §4.28) and then a permanent combined 30% disability retirement as below.

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| --- | --- | --- | --- |
|  | **VASRD CODE** | **TDRL (PRE- STABILIZATION) RATING** | **PERMANENT**  **RATING** |
| Left Lisfranc Fracture, Status Post Left Lisfranc Arthrodesis | 5284 | 50% | 30% |
| **COMBINED** | **50%** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090601, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 4 May 10

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (enclosure (1)).

2. The subject member’s official records are to be corrected to reflect the following disposition:

a. Separation from the naval service due to physical disability with placement on the Temporary Disability Retired List with a disability rating of 50 percent for the period 9 August 2002 thru 8 August 2003.

b. Final separation from naval service due to physical disability rated at 30 percent with placement on the Permanent Disability Retired List effective 9 August 2003.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid funds if appropriate, and notification to the subject member once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)