RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD900520 SEPARATION DATE: 20041130

BOARD DATE: 20110317

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Lance Corporal (3043, supply clerk) medically separated from the Marine Corps in 2004. The medical basis for the separation was shin splints bilaterally, bilateral pes planus and healed stress fracture of the right tibia. The CI developed shin splints six months before he entered the military while running/training. The recruiter advised the CI to bear the pain, and the CI continued having shin splints in boot camp. He was seen by podiatry, and treated with orthotic devices, along with non-steroidal anti-inflammatory (NSAID) medication. The CI underwent extensive physical therapy, including orthotics, walk/run protocol and stretching. The CI had a history of pes planus, which is noted as a feet abnormality on the military entrance examination; however, there was no mention of a waiver. Despite being placed on limited duty four times from 2002 to 2003, the CI was unable to return to full duty, and was twice referred to a Medical Evaluation Board (MEB) in 19 November 2003 and 17 June 2004. After the first MEB, the CI was advised not to run, jump, or lift and was not allowed to deploy. While processing the second MEB, the CI was advised not to run, jump, lift, or stand/walk for more than 30 minutes. Three conditions: shin splints bilaterally, bilateral pes planus, and healed stress fracture of the right tibia were forwarded to the Physical Evaluation Board (PEB). The PEB adjudicated shin splints bilaterally condition as exiting prior to service (EPTS), reduced by 0% as unfitting, and rated with the disability code of 5003 at 10%, with probable application of SECNAVINST 1850.4e and DoDI 13329.39 Section E2.A1.5. The PEB adjudicated the other two conditions as Category II (conditions that contribute to the unfitting condition). The CI did not appeal the case, and was thus medically separated with a 10% combined disability rating.

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CI CONTENTION: The CI states: ‘’The issue for which I was retired, had been listed as cronic (sic). The shin splints I have only flare up when I was training to run. Generally (sic) there is a warm almost numb feeling pain that is always constant. When standing or walking for long periods, the pain first starts to burn and have sharp pain accompanying it. After approximately an hour the pain gets to the point that I must sit for at least 45 minutes to an hour for the pain to subside enough to continue without immediate increase in pain. If occasion were to arise and I had to jog or run for more than a few minutes, the pain and burning would rapidly occur and then would shortly start to radiate through to the back of my calf muscle. Were I to continue to jog or run the now ingulfing (sic) pain would start to throb with pain until I stoped (sic) along with the sharp, burning and throbbing (sic) pain my tower leg would feel as though it had gone limp impedeing (sic) my ability to walk. Needless to say I try not to run unless absolutely necessary.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20040921** | | | **VA ( 2 Weeks Pre-Separation) – All Effective 20041201** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Shin Splints Bilaterally  (EPTS reduced by 0%) | 5299-5003 | 10% | Chronic Shin Splints L Leg | 5299-5262 | 10% | 20041117 |
| Chronic Shin Splints R Leg | 5299-5262 | 10% | 20041117 |
| Bilateral Pes Planus | Category II | | Bilateral Pes Planus | 5276 | NSC | 20041117 |
| Healed Stress Fx of R. Tibia | Category II | | No Corresponding VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Insomnia | 9499-9433 | 30% | 20041117 |
| Chronic Lumbar Strain | 5237 | 10% | 20041117 |
| GERD | 7399-7346 | 10% | 20041117 |
| Internal Hemorrhoids | 7336 | 0% | 20041117 |
| 2 x Not Service Connected | | | |
| **Final Combined: 10%** | | | **TOTAL Combined: 60%** | | | |

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ANALYSIS SUMMARY:

Shin Splints Bilaterally, Bilateral Pes Planus and Healed Stress Fracture of Right Tibia. The CI was found unfit for bilateral shin splints and inability to perform his supply clerk duties, which included lifting, standing and walking for more than 30 minutes. The CI had the diagnoses of shin splints bilaterally (medial tibial stress syndrome), and bilateral pes planus (flat feet), healed stress fracture of the right tibia (Category II - conditions that contribute to the unfitting condition). However, the symptoms and disability of shin splints bilaterally, pes planus, and healed stress fracture of the right tibia are not distinctly separable in this case and the three conditions are frequently medically linked. The PEB Category II designation led to the CI’s bilateral pes planus and healed stress fracture of the right tibia not being considered in the rating for the disability of the CI’s bilateral shin splints. The PEB also combined the left and right shin/foot conditions into a single code of 5003 which is for a unilateral condition. The CI had asymptomatic pes planus clearly noted on his entry exam. The PEB noted the shin splints bilaterally condition was impacted by an “EPTS - reduced by 0%,” with bilateral pes planus and the fact that the CI had a right tibia stress fracture noted on the PEB worksheet. The PEB used a joint code analogously to plantar fasciitis (5299-5003) at 10% for both shins combined as a single unfitting condition, with possible use of SECNAVIST or DoDI rules that do not apply to this Board. The MEB and narrative summary (NARSUM) exams at one year and again five months before separation noted chronic shin and arch pain. The exams demonstrated that there was “tenderness to palpation in the middle third of the anterior medial tibial borders bilaterally and that the CI pronated throughout the gait cycle,” and “he has bilateral pes planus.” In the NARSUM, the examiner noted that the bone scan showed a healed right tibial stress fracture “Did Not Exist Prior To Entrance (DNEPTE).”

At the VA C&P examination 13 days prior to separation (17 November 2004), the examiner noted the CI had “stiffness in his feet at rest as well as with standing and walking,” and this was associated with pain on standing. The exam revealed evidence of mild flat feet deformities with fair weight bearing alignment of the Achilles tendon. The VA and PEB chose different coding options for the CI’s bilateral shin splints which materially impacted the level of disability rating. The PEB used the VA Schedule for Rating Disabilities (VASRD) as per §4.71 Diagnostic Group code 5003 arthritis, degenerative hypertrophic or osteoarthritis, and a questionable consolidation of both shins into a single rating of 10%. The general application of the VASRD is that, unless specified in the specific code or condition for joint injuries, muscle injuries, etc., evaluations are for involvement of a single extremity. If more than one extremity is affected, each extremity is evaluated separately and ratings combined (under VASRD §4.25), using the bilateral factor (§4.26) where applicable. The VA considered the CI’s shin splints bilaterally as combining for right and left shin disability IAW VASRD §4.71a-29 using code 5262 (tibia and fibula, impairment of: with moderate knee or ankle disability), and awarded the CI with a moderate bilateral rating of 20% (moderate, bilateral). The VA then considered the CI’s bilateral pes planus as combining for right and left foot disability IAW VASRD §4.71a-29 using rating Code 5276 (flatfoot; acquired) and rated this as not Service connected (NSC). According to the code 5276, the criteria of mild symptoms relieved by built up shoe or arch support is rated a 0%. The CI’s condition was not improved by arch supports or therapy.

The Board deliberated on the overlap of symptoms of the CI’s unfitting shin splints bilaterally versus the contributions of EPTS and Service-aggravated bilateral pes planus. The Board considered and rejected keeping the PEB’s disability coding of 5299-5003, with unbundling both feet and applying 5003 separately to each foot, and with X-ray involvement of two or more major joints or two or more minor joint groups. The Board considered any additional lower extremity disability contributed from bilateral pes planus and healed stress fracture of the right tibia in rating the CI’s unfitting shin splint conditions. After due deliberation considering all evidence and mindful of VASRD §4.3 (reasonable doubt), the Board elected to code similar to the VA rating determination of chronic shin splints left leg, code 5262, with a rating of 10%; chronic shin splints right leg, code 5262 with a rating of 10%.

Bilateral Pes Planus and Healed Stress Fracture of the Right Tibia. The PEB found the bilateral pes planus and healed stress fracture of the right tibia conditions as Category II conditions. The Board independently examined the record and post-separation information. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudications for these conditions.

Other Conditions (Insomnia, Chronic Lumbar Strain, GERD Internal Hemorrhoids). The insomnia, chronic lumbar strain, gastroesophageal reflux disease (GERD), internal hemorrhoids were not mentioned in the Disability Evaluation System (DES) package. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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. As discussed above, PEB reliance on SECNAVINST 1850.4E and/or DoDI 1332.39 for rating the CI’s shin/foot conditions and the conditions are adjudicated independently of those regulations by the Board. In the matter of the bilateral shin splints condition, the Board unanimously recommends that each leg be separately adjudicated as follows: an unfitting right shin splint condition, coded 5299-5262 and rated 10%, and an unfitting left shin splint condition, coded 5299-5262 and rated 10%; both IAW VASRD §4.71a. In the matter of the bilateral pes planus and healed stress fracture of the right tibia conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation.

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Chronic Shin Splints Left | | 5299-5262 | 10% |
| Chronic Shin Splints Right Leg | | 5299-5262 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 2000900520, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 28 Mar 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (reference (b)).

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 rated at 20 percent (increased from 10 percent) effective 30 November 2004.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)