RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900538 SEPARATION DATE: O/A 20080723

BOARD DATE: 20101110 TDRL DATE: 20041115

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SUMMARY OF CASE: This covered individual (CI) was a Private, E-1, recruit who was placed on the Temporary Disability Retired List (TDRL) on 15 Nov 04, after almost five months of active service. The medical basis for the placement on TDRL and separation was a right ankle fracture that was surgically repaired. The CI was on day 46 of training when she fell 8 feet while on the obstacle course. She sustained a fracture of the right ankle. The ankle fracture was treated with open reduction internal fixation (ORIF) in Aug 04, with one screw removed in Nov 04. The CI was unable to complete basic training, referred to the Informal Physical Evaluation Board (IPEB) and placed on TDRL status at 30% disability. On TDRL re-examination of 20070613, the examining physician recommended that the CI be returned to active duty. It appears that the CI met a Medical Evaluation Board (MEB) 20070618 and was determined to be unfit and referred to the IPEB. The right ankle fracture was the only condition submitted to the IPEB. The IPEB determined the right ankle fracture to be Category I, unfit and ratable at 10% disability by Naval and Department of Defense regulations. The IPEB recommended removal from the TDRL and separation with severance pay on 20071001. The CI initially appealed the decision, but subsequently accepted the recommendation which the Formal PEB upheld. Note: the exact date of separation cannot be determined from the record, but there is a note in the record dated 20080723 directing this separation be executed.

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CI CONTENTION: The CI states: “I still do not have full movement in my ankle. After I had my second surgery I asked the physician if I would need physical therapy and I was told that I would be fine. I never had a follow up appointment and the only reason that I am able to walk is because I finally just put down my crutches and did what I could to walk. After a while my ankle still was not working well and I still did not have full motion so I set up an appointment on my own and went to physical therapy. I was told that there I would probably not ever have full motion like I did prior to the accident due to how long it was before I attended therapy.”

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RATING COMPARISON:

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| **Service IPEB – Dated 20071001** | **VA (3 yr. Pre-Separation) – All Effective 20041115** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL - 20041115** | **TDRL** | **Sep.** | **No VA Rating at time of TDRL.** |
| Right ankle fracture, s/p surgical treatment | 5284 | 30% | 10% | Residual right ankle, chronic knee and hip pain  | 5299-5271 | 20% | 20050405 |
| ↓No Additional MEB Entries↓ | - |  |  |  |
| **TOTAL Combined: 10%** | **TOTAL Combined: 20%** |

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ANALYSIS SUMMARY:

Right ankle Condition: There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

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| Right Ankle | Separation Date: 20080723 |
| Goniometric ROM | Entry NARSUM - 20040824 | VA C&P -20050405 | PT - 20070611 |
| Dorsi Flexion 0-20⁰ normal | Surgery 20040824 | 10⁰ | 0⁰ With pain |
| Plantar flexion 0-40⁰ normal |  | 20⁰ | 40⁰ With pain |
| §4.71a Rating |  | 20% | 10% |
| Comments | completely non-weight bearing on her right lower extremity with a cast and crutches | No pain noted | ROM with pain; no instability or weakness. Stiffness secondary to capsular adhesions |

The CI’s initial entry into TDRL was very soon following surgery and the Narrative Summary (NARSUM) indicated extensive healing time (over 18 weeks) and “completely non-weight bearing on her right lower extremity with a cast and crutches.” The VA exam was 3 years prior to permanent separation; the CI had numbness on the top of the right foot, swelling and pain which increased with weight bearing. Osteopenia (less calcium in the bone) was noted on imaging. The military physical therapy (PT) exam was 13 months prior to separation and materially agreed with the TDRL Exit NARSUM accomplished 2 days later. The examiner stated: “she has had her pain resolve in her ankle with weight-bearing. She’s able to do most of her activities of daily living with minimal pain…She denies any weakness, any numbness, tingling throughout her ankles She has no knee pain, no hip pain.” Exam demonstrated “right ankle is without swelling…no tenderness to palpation…limited dorsiflexion…no instability…no weakness added to her ankle.” “She has been doing well in her activities of daily living without impairment.” At the time of the 2007 NARSUM, neither significant arthritis nor osteopenia was present and imaging demonstrated “a healed fracture with an intact anatomic mortis.” The CI’s ankle swelling and pain with walking were noted to be resolved. The recommendation of the examining physician was for the CI to be either separated from TDRL status or returned to active duty. The record indicated there had been marked improvement in the ankle since the VA exam (20050405). The Board noted that the CI did most of her activities of daily living with minimal pain and that the ROM was limited primarily in dorsiflexion, with no foot drop. The Board considered coding using either 5271 limited range of motion of the ankle; or 5284, foot injuries as equivalent. The CI’s level of disability did not support “actual loss of use of the foot” or coding under 5284 at the severe criteria level. All evidence considered, there is not reasonable doubt in the CI’s favor supporting re-characterization of the PEB fitness adjudication for the right ankle condition as 5284 at 10% (Moderate).

Other Conditions: No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the Disability Evaluation System (DES) file. No other conditions were contended in the application or identified by the VA within 12 months of separation. A note in the record indicating unspecified surgery (20080305) was confirmed as not related to any orthopedic/TDRL condition. The Board therefore has no basis for consideration of any other conditions eligible for additional rating at separation.

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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 Veterans Administration Schedule for Rating Disabilities (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 ankle condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication of 5284 at 10% as the permanent separation rating.

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RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Ankle Fracture, s/p Surgical Treatment | 5284 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090903, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

 BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXXXX, EX-USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 18 Nov10

 I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (reference (b)) that Ms. XXXXX’ records not be corrected to reflect a change in either her characterization of separation, or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)