RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900573 SEPARATION DATE: 20070930

BOARD DATE: 20101028

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SUMMARY OF CASE: This covered individual (CI) was an active duty Marine SGT (3051, Warehousing) medically separated from the USMC in 2007 after 8.5 years of service. The medical basis for the separation was Bilateral Foot and Ankle Pain. The member had a history of bilateral congenital clubfoot deformities treated surgically in infancy (bilateral posteromedial releases), and bilateral lower leg surgeries (derotational tibial osteotomies) as a child (1988). He was granted a waiver for military entrance for this preexisting condition. The CI sustained a twisting injury to his left foot and ankle (stepped into a pothole; 2003; Korea), and reinjured the left ankle/foot in 2005. Subsequent to these traumatic events, the CI developed intractable foot and ankle pain, worse on the left lower extremity (LLE) than right lower extremity which prevented him from returning to full duty. He was seen by Orthopedics and underwent corrective LLE tendon (gastrocnemius lengthening) and bone surgery (resection of coalition). He had somewhat improved mobility in the LLE, but continued with significant pain with inability to stand for greater than 1 hour or run. He was placed on Limited Duty (LIMDU) on 20060328 with an extension of LIMDU. Despite extensive physical therapy including ultrasound and electrical stimulation, the CI was unable to return to full duty and was referred to a Medical Evaluation Board (MEB). The MEB found “Pain in joint involving ankle and foot” as interfering with duty and forwarded that single condition to the Physical Evaluation Board (PEB) on NAVMED 6100/1. The informal PEB adjudicated “bilateral foot and ankle pain with history of bilateral surgically treated clubfeet, right calcaneonavicular coalition and resection of left calcaneonavicular coalition” as unfitting, rated with the single disability code of 5271 at 10%; with probable application of SECNAVINST 1850.4E. The CI made no appeals and was thus medically separated with a 10% disability rating.

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CI CONTENTION: The CI states: “Extreme pain bilaterally left and right feet, ankles due to Service connected injury. Pain in both knees; patellofemoral pain syndrome. Wears custom fit Z-Coil Orthopedic Shoe for regular use.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20070625** | | | **VA (2 Mo. Prior to Separation) – All Effective 20070110** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral foot and ankle pain with history of bilateral surgically treated clubfeet, right calcaneonavicular coalition and resection of left calcaneonavicular coalition | 5271 | 10% | Left Ankle, … | 5271 | 20% | 20070712 |
| Right Ankle, … | 5271 | 20% | 20070712 |
| Left Foot, … | 5284 | 20% | 20070712 |
| Right Foot, … | 5284 | 20% | 20070712 |
| Left Foot and Leg, Surgical Scars | 7804 | 10% | 20070712 |
| ↓No Additional MEB Entries↓ | | | Left Knee, PFS | 5024-5260 | 10% | 20070712 |
| Right Knee, PFS | 5024-5260 | 10% | 20070712 |
| Acne Vulgaris | 7828-7800 | 10% | 20070712 |
| Cystectomy Scar, Neck | 7800 | 0% | 20070712 |
| Genital Warts | NSC | | |
| **TOTAL Combined: 10%** | | | **TOTAL Combined (BLF 6.7%): 80%** | | | |

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ANALYSIS SUMMARY:

Bilateral Ankle and Foot Pain (including Scars) Conditions: The PEB found the CI unfit for: “Bilateral foot and ankle pain with history of bilateral surgically treated clubfeet, right calcaneonavicular coalition and resection of left calcaneonavicular coalition.” The PEB combined the Left ankle, Left foot, Right ankle, and Right foot as a single unfitting condition, coded as 5271 (VA Rating Code “5271 Ankle, limited motion of:”) and rated 10% (“Moderate”) with possible use of SECNAVINST or DoDI rules that do not apply to the PDBR. The CI had an Existed Prior to Service (EPTS) condition (congenital club feet) with prior surgeries that he received a waiver for on entry into the USMC. His disability level at entry was adjudged to be 0% as he performed at a high standard of duty including “a high first class Physical Fitness Test (PFT)” prior to his injury. As noted by the PEB worksheet, the CI additionally had over 8 years of active service that they adjudged overcame any EPTS determination (“Length of Service overcomes EPTS”). The PDBR concurred that there should be no deduction of the final rating due to any EPTS contribution of disability. The CI had documented repeated trauma to his left ankle and foot. Medical experts related that the left foot injury (and surgery) and pain led to compensation by the right foot/ankle that increased stress and materially worsened the CI’s right foot/ankle conditions. The CI had multiple evaluations for his bilateral ankle and feet conditions that demonstrated limited and painful ankle motion on each side, difficulty with prolonged standing/running, and difficulty with ambulation. The pathology and disability of limited ankle range of motion (ROM) was distinctly separate (shortened gastrocnemius tendon (post-surgery on Left, without surgery on right leg) from that of the bilateral foot pathology (calcaneonavicular coalition post-surgery on Left; without surgery on right foot). [X-rays of the right foot show solid osseous fusion between the calcaneus and the navicular bone, with marked sclerosis and irregullarity along the posterior subtalar joint likely related to abnormal motion from known tarsal coalition; x-rays of the left foot show abnormal morpholology of the midfoot, flattening and sclerosis of the inferior aspect of the talus ard moderate dorsal degenerative changes along the talonavricular joint.] The Board could not rate these combined bilateral ankle and bilateral foot conditions under a single code IAW the Veterans Administration Schedule for Rating Disabilities (VASRD) alone. The Board noted intermittent exams demonstrating abnormal gait, without attribution to a specific side or ankle/foot distinction. The Board considered combining each sided ankle and foot condition into a single rating of 5167, Foot, Loss of Use at 40% each side. However, the Board adjudged that the combined ankle and foot disability did not equate to loss of use of either foot. The Board applied separate codes and ratings for each condition, since compensable ratings for each condition are achieved IAW VASRD §4.71a. This is consistent as well with the VA rating decision from their pre-separation examination. The Board considered the CI’s PEB-determined unfitting conditions for rating to be: Left ankle, Right ankle, Left foot, and Right foot.

Ankle Conditions. The record had three comprehensive bilateral ankle exams (in addition to the MEB exam) that the Board focused on for rating, and they are summarized in the chart below:

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| --- | --- | --- | --- | --- | --- |
| ROM |  | Separation: 20070930 | | | |
| Ankle Movement -degrees | Normal | PT- 20070322 | MEB-20070323 | PT-20070517 | VA - 20070712 |
| Left Dorsiflexion | 0-20 | 8 | 10 | -5 | 8 |
| Left Plantar flexion | 0-45 | 48 | - | 48 | 25 |
| Left inversion | 0-40 | 22 | - | 12 | 5 |
| Left eversion | 0-20 | 4 | - | 8 | 2 |
| Rating IAW §4.71a |  | 10% | 10% | 10%-20% | 10%-20% |
| Comments\*  Surgery 20060822 |  | TTP | No limp. TTP | L strength < R TTP\*\* | \* |
|  |  |  |  |  |  |
| Right Dorsiflexion | 0-20 | 8 | “neutral” | -3 | 5 |
| Right Plantar flexion | 0-45 | 60 | - | 34 | 20 |
| Right inversion | 0-40 | 18 | - | 18 | 0 |
| Right eversion | 0-20 | 5 | - | 12 | 0 |
| Rating IAW §4.71a |  | 10% | 10%-20% | 10%-20% | 10%-20% |
| Comments\*  Surgery 20060822 |  | TTP. | No limp. TTP | L strength < R TTP\* | \*\* |

\*Weak plantar flexion and TTP noted on 20070328 general exam for MEB and 20070517 PT exams.

\*\*Exam demonstrated pain and mechanically limited dorsiflexion of the left and right ankles; limited mobility; limited motion; tenderness; weakness and abnormal gait.

Regarding coding of the CI’s ankle conditions, code 5271 should be applied to each ankle individually. The MEB exam was six months prior to discharge, and did not provide values for each axis of ROM, and was only slightly different than the VA exam in measurement of dorsiflexion. The VA exam was closest to separation, accomplished by an orthopedic surgeon, exceptionally detailed, and was adjudged as having a slightly higher probative value than the PT or MEB exams. The determination of limited ankle motion (5271) being “marked” (20%) or “moderate” (10%) is not further defined by the VASRD. The left ankle ROM limitations were adjudged to be closer to “moderate” than “marked.” The right ankle dorsiflexion and ROMs were more restricted than the left ankle and were adjudged to be closer to “marked” than to “moderate” when the provisions of §4.3 (reasonable doubt) were applied. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 5271 at 10% for the left ankle condition, and a rating of 5271 at 20% for the right ankle condition.

Foot Conditions. The CI had bilateral foot conditions (calcaneonavicular area) and disability separate from his limited ankle ROMs addressed above. The MEB noted that the CI “has limited mobility of the right subtalar and midtarsal joints. … On the left, he has improved mobility in the subtalar and midtarsal joints, but less motion than a normal foot.” Recovery from resection of the left calcaneonavicular coalition and left gastrocnemius lengthening surgey of 20060822 appeared to be complete by the time of the MEB exams. The VA pre-separation exam noted tenderness to each foot (core, arch and lateral aspect), minimal swelling, “significantly limited motion in terms of inversion and eversion,” pain in the forefoot with manipulation, and mild footsplay. Foot radiographic abnormalities were noted above. Diagnosis was an “essentially rigid forefoot” worse on the right than the left. The Board considered VASRD §4.57, Static foot deformities in considering the level of severity. The Board considered coding options of 5276 Flatfoot, acquired; 5283 Tarsal, or metatarsal bones, malunion of, or nonunion of; and 5284 Foot injuries, other. Coding of 5283 or 5284 were equivalent, with the Board electing to use coding similar to the VA rating determination (5284). The level of severity of the foot conditions was considered in light of the disabilities already attributed to the CI’s unfitting ankle conditions to avoid pyramiding. The Board determined that the CI did not meet the criteria for loss of use of either foot, and that the right foot had greater limitations than the operatively improved left foot. The Board focused on the range of “moderately severe” (20%) and “moderate” (10%). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 5284 at 10% for the left foot condition, and a rating of 5284 at 20% for the right foot condition.

Left Leg Scars Condition. The MEB final physical note (AHLTA 20070328) indicated a reported history of inability to wear boots or dress shoes. The MEB examiner noted “He has well-healed surgical incisions around both feet and ankles.” The VA evaluation demonstrated only mild tenderness to the scar on the left lower calf. The CI’s contention that he used special footwear was noted as primarily attributable to his foot and ankle conditions, and not his scar condition. The Board adjudged that the mildly tender scar was not to the level of being unfitting at the time of separation. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of left leg painful scar as an unfitting condition for separation rating.

Bilateral Knee Pain: The CI contended that his bilateral knee condition (right and left knee patellaofemoral syndrome [PFS]) should be rated as an unfitting condition. The condition is noted in the Disability Evaluation System (DES) file, but not specifically addressed by the MEB or PEB. Review of the records, indicated that the bilateral knee pain was chronic and that the CI had injections with temporary relief and underwent physical therapy for the diagnosed PFS. The 20060410 LIMDU listed “Right PFS” as the single diagnosis along with circumstances of injury/illness: “left to right club feet with abnormal feet kinematics.” Knee pain was related to the CI’s primary ankles and feet conditions with indications that knee (and lower back) pain was secondary to the “biomechanical chain” of weightbearing and ambulation abnormalities caused by the bilateral ankle and foot conditions. The knees were considered stable. Although there was tenderness to palpation of the knee on MEB exam, these findings alone did not appear to interfere with the CI’s duties. Although the severity of impairment from the bilateral knee condition may have been “hidden” or minimized by the more severe bilateral lower extremity (ankle/foot) conditions for which the CI was found unfit, this is mere speculation. The VA pre-separation evaluation demonstrated minor pain-limited motion of each knee with crepitus, osteopenia, and without instability. The Board deliberated specifically concerning the possible addition of the right knee PFS as additionally unfitting. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of either knee PFS as an unfitting condition for separation rating.

Other Conditions (Acne Vulgaris and Neck Scar): These conditions were mentioned in the DES file. However, the skin and scar conditions were chronic and stable and did not interfere with the wear of military equipment/masks or have any bearing on duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of Acne or the neck scar condition as unfitting conditions for separation rating. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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. As discussed above, PEB probable reliance on SECNAVINST 1850.4E for rating the bilateral foot and ankle condition was likely operant in this case and the condition was adjudicated independently of that regulation by the Board. In the matter of the Bilateral foot and ankle condition, the Board unanimously recommends that it be rated for four separate unfitting conditions with rating levels by a vote of 2:1 as follows: Left ankle limited motion coded 5271 and rated 10%; Right ankle limited motion coded 5271 and rated 20%; Left foot, rigid forefoot coded 5299-5284 and rated 10%; and Right foot, rigid forefoot coded 5299-5284 and rated 20%; all IAW VASRD §4.71a. The single voter for dissent (who recommended adopting the same VA disability codes with each of the four ratings at the 10% level) did not elect to submit a minority opinion. In the matter of the left foot/leg surgical scars; right and left knee patellaofemoral syndrome; Skin; and Neck scar conditions, or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Left Ankle, Limited Motion, S/P Heel Cord Lengthening | | 5271 | 10% |
| Right Ankle, Limited Motion, Heel Cord Contracture | | 5271 | 20% |
| Left Foot, Rigid Forefoot, S/P Resection of Coalition | | 5299-5284 | 10% |
| Right Foot, Rigid Forefoot, Calconavicular Coalition | | 5299-5284 | 20% |
| **COMBINED (Incorporating BLF 4.8)** | | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090825, 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

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 3 Nov 10

1. I have reviewed the subject case pursuant to reference (a). The subject member’s official records are to be corrected to reflect the following disposition:

a. Effective the date of discharge (30 Sep 2007), placement on the Permanent Disability Retired List with a disability rating of 50 percent.

2. 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)