RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD200900707 SEPARATION DATE: 20011031

BOARD DATE: 20101201

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SUMMARY OF CASE: This covered individual (CI) was an active duty Marine LCPL/ E-3 (0311, Marine Sentry) medically separated from the Marine Corps in 2001 after over 1 year of service The medical basis for the separation was Plantar Fasciitis Bilaterally and Pes Planus Bilaterally. The CI had a history of mild Pes Planus which was noted as a feet abnormality on the military entrance exam; however, there was no mention of a waiver. The CI developed gradual bilateral foot pain during Infantry Training. He was seen by Podiatry and treated with custom made orthotic devices along with non steroidal anti inflammatory (NSAID) medications. Despite extensive physical therapy including iontophoresis, orthotics, stretching and icing modalities, the CI was unable to return to full duty and was referred to a Medical Evaluation Board (MEB). The CI was placed on Limited Duty (LIMDU) for four weeks which included no prolonged standing. The MEB found “in view of the poor progress with light duty, medications, insoles, physical therapy and orthotic devices” as interfering with duty and forwarded “Flat Foot” and “Plantar Fascial Fibromatosis” conditions to the Physical Evaluation Board (PEB) on NAVMED Form 6100/1. No other conditions appeared on the MEB’s submission or were addressed in the narrative summary (NARSUM). The informal PEB adjudicated “Plantar Fasciitis Bilaterally” as unfitting rated with Veterans Administration Schedule for Rating Disabilities (VASRD) code 5310 at 10%; with probable application of SECNAVIST 1850.4E and / or DoDI 1332.39 which were in effect at the time. The PEB adjudicated the “Pes Planus Bilaterally” as Category II (“Conditions that contribute to the unfitting conditions”). 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 elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

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| **Service IPEB – Dated 20010830** | **VA (11 Mo. after Separation) – All Effective 20011101** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Plantar Fasciitis Bilaterally  | 5399-5310 | 10% | Bilateral Plantar Fasciitis with Pes Planus | 5276 | 30% | 20020924 |
| Pes Planus Bilaterally  | Category II |
| ↓No Additional MEB Entries↓ | Asbestosis | 6833 | NSC |
| **TOTAL Combined: 10%** | **TOTAL Combined: 30%** |

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ANALYSIS SUMMARY:

Bilateral Foot Conditions (Plantar Fasciitis Bilaterally and Pes Planus Bilaterally): The CI was found unfit for bilateral foot pain and inability to perform his sentry duties which included prolonged standing and marching. The CI had diagnoses of Plantar Fasciitis Bilaterally (unfitting) and “Pes Planus Bilaterally” (Category II -Conditions that contribute to the unfitting condition). However, the symptoms and disability of Pes Planus (Flat feet) and plantar fasciitis overlap significantly in this case and the two conditions are frequently medically linked. The PEB “Category II” designation led to the CI’s Pes Planus not being considered in the rating for the disability of the CI’s bilateral foot conditions. The PEB also combined the left and right foot conditions into a single muscle code of 5310 which is for a unilateral condition. The CI had asymptomatic Pes Planus clearly noted on his entry exam. The PEB noted the Plantar Fasciitis condition was impacted by a “PreExisting Condition - Reduced by 0%” and with “service aggravated” noted on the PEB worksheet (JDETS). The PEB-unfitting Plantar Fasciitis Bilaterally used a muscle code analogously to anterior compartment syndrome (5399-5310) at 10% for both feet combined as a single unfitting condition with possible use of SECNAVINST or DoDI rules that do not apply to the Physical Disability Board of Review (PDBR). The MEB exam and NARSUM (4-5 months pre-separation) noted constant pain in the arches of both feet worse on the left. Examination demonstrated that on weight bearing there was a large medial soft tissue bulge where the longitudinal arch should be with no visible longitudinal or transverse arches, tender plantar surface of the foot, and the “Bilateral heels were seen in a valgus position when weight bearing. It was also noted that … the ankles "rolled inward" bilaterally. When the feet and digits were dorsiflexed pain was elicited in the arch area bilaterally.” The CI had “Increased range of motion was noted on inversion and eversion of the feet at the subtalar and midtarsal joints bilaterally” with no loss of power or skin changes. The VA Compensation and Pension (C&P) exam 11 months (20020924) post separation was not significantly different from the MEB examination aside from greater complaints of pain. The VA noted a history of “Prior to military service he was very athletic with little if any foot problems” that agrees with the CI’s service entry history. The CI had constant pain in the arches (L>R), with marked flattening of both feet and X-rays confirmed severe Pes Planus of both feet. The VA and PEB chose different coding options for the CI’s bilateral foot condition which materially impacted the level of disability rating. The PEB used the VA Schedule of Ratings as per §4.73-4 Diagnostic Code 5310 Group X Function: Movements of the forefoot and toes; propulsion thrust in walking and a questionable consolidation of both feet into a single rating of 10% (Moderate). The general application of the VASRD is that unless specified in the specific code or condition for muscle injuries, nerve injury, etc., that evaluations are for involvement of a single extremity. If more than one extremity is affected, each extremity is evaluated separately and ratings are combined (under §4.25), using the bilateral factor (§4.26) where applicable. The VA considered the CI’s foot conditions (Bilateral Plantar Fasciitis with Pes Planus) as combining for foot disability IAW VASRD §4.71a-29 using rating Code 5276 Flatfoot; acquired and awarded the CI with a rating of 30% (severe, bilateral). The 5276 criteria of “objective evidence of marked deformity; pain on manipulation” were met with absence of indication of swelling on use. The CI’s condition was not improved by orthopedic shoes or appliances. The Board deliberated on the overlap of symptoms of the CI’s unfitting “Plantar Fasciitis Bilaterally” versus the contributions of EPTS and service aggravated Pes Planus Bilaterally. The Board determined that the contribution of the service aggravated Pes Planus to the Bilateral Plantar Fasciitis (EPTS=0%) condition was sufficient to include the disability of bilateral Pes Planus as a ratable unfitting condition. The Board considered the overlap of foot symptoms from the two inter-related conditions (Plantar Fasciitis and Pes Planus) and rating as a single bilateral code of 5276 at 30% (severe, bilateral) as the VA rated the combined foot conditions. However, the Board determined that keeping the PEB’s disability coding of 5399-5310 with un-bundling of both feet and applying 5310 separately to the left foot and right foot with a new unfitting rating for bilateral Pes Planus coded 5276 was predominate. The 5276 rating level, absent the symptoms required for coding each foot as 5310 at 10% (to avoid pyramiding), met the 10% (Moderate, bilateral) rating level. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends separation ratings for the bilateral foot conditions as: 5399-5310 at 10% for the left foot plantar fasciitis condition and 10% for right foot plantar fasciitis condition; and the addition of unfitting bilateral Pes Planus condition coded 5276 at 10%.

Other Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. VA claim for exposure to asbestos was noted with no disability or diagnosis noted. No other conditions were contended in the application or identified by the VA within 12 months of separation. 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 VASRD in effect at the time of the adjudication. As discussed above, the PEB may have relied on SECNAVINST 1850.4E or DoDI 1332.39 for rating the CI’s foot conditions and the conditions were adjudicated independently of those regulations by the Board. In the matter of the bilateral feet condition, the Board unanimously recommends that each foot be separately adjudicated as follows: an unfitting right foot plantar fasciitis condition coded 5399-5310 and rated 10%; and, an unfitting left foot plantar fasciitis condition coded 5399-5310 and rated 10%; both IAW VASRD §4.73. And, the Board recommends by a vote of 2:1 the addition of bilateral Pes Planus as an unfitting condition coded 5276 and rated 10% IAW VASRD §4.71a.

The single voter for dissent (who recommended not adding Pes Planus as an unfitting and ratable condition) submitted the addended minority opinion. 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 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** |
| Plantar Fasciitis Left Foot | 5399-5310 | 10% |
| Plantar Fasciitis Right Foot | 5399-5310 | 10% |
| Pes Planus Bilaterally | 5276 | 10% |
| **COMBINED (Incorporating BLF)** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091201, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MINORITY OPINION:

The CI was separated for unfitting feet based on two conditions: Plantar Fasciitis and Pes Planus. The Pes Planus was an EPTS, Service Aggravated condition that was addressed by the IPEB as Category II---contributing to the Plantar Fasciitis, but not unfitting independently. The Plantar Fasciitis was determined by the IPEB to be the unfitting condition. There is no evidence for, or reason to suspect that the anatomic severity of Pes Planus worsened over the course of this Marine’s relatively brief service career. In fact, the CI passed his last PFT in Dec 2000, and was standing watch at the time the Non Medical Assessment was written. To postulate that the Pes Planus deformity, barring the pain and complications of the consequent plantar fasciitis, would have itself evolved into an unfitting impairment would be speculative, and tenuous. Whatever VASRD coding strategy is employed, it is not possible to rate out left foot pain, right foot pain and bilateral foot pain (attributing it to Pes Planus or anything else) without violation of VASRD §4.14 (pyramiding). It is noted that the VA did not employ that strategy, although the §4.71a prescribed “marked deformity” requisite for the ‘severe’ (30%) rating under their single coding approach is open to challenge. If the Pes Planus was not unfitting on the basis of pain, then a separate compensable rating cannot be achieved without pyramiding. I agree with the Service IPEB that Plantar Fasciitis is the unfitting condition, coded at be 5399-5310. I concur with the majority, however, that the code should be applied to each foot separately and rated at 10% each. The Pes Planus did not rise to the level necessary to overturn the PEB’s category II rating, and the unfitting foot condition should be rated as follows.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Plantar Fasciitis Left Foot | 5399-5310 | 10% |
| Plantar Fasciitis Right Foot | 5399-5310 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) PDBR ltr of 6 Jan 11

 (b) DoDI 6040.44

1. I have reviewed reference (a) pursuant to reference (b).

2. 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 31 October 2001.

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

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)