RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD200900729 SEPARATION DATE: 20090530

BOARD DATE: 20100603

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (0311, Rifleman) medically separated for right ankle fracture, status post open reduction internal fixation with residual ankle pain and stiffness. The CI sustained an injury to his right ankle from a non-combat related all-terrain-vehicle (ATV) accident in March 2008. He did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was placed on extended limited duty and underwent a Medical Evaluation Board (MEB). The right ankle condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW NAVPERS 18068F. The PEB adjudicated the right ankle fracture with residuals as unfitting, rated 10%, with application of SECNAVINST 1850.4E, DoDI 1332.39 and the Veterans’ Administration Schedule for Rating Disabilities (VASRD), respectively. The CI made no appeals and was separated with a 10% disability rating.

CI’s CONTENTION: “Physical Therapy note dated January 13, 2009 reported right ankle Dorsiflexion of 0-4 degrees and right ankle plantar flexion of 0-42 degrees which meet the criteria of between 30% to 40% disability according to the VASRD.”

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20090408** | **VA ( 3 Mo. Pre Separation) – All Effective 20090531** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| R Ankle Fracture | 5099-5003 | 10% | R Ankle Fracture | 5271 | 10% | 20090205 |
| ↓No Additional MEB Entries↓ | R Ankle Scar | 7804 | 10% | 20090205 |
| L Knee Patellofemoral | 5260-5024 | 10% | 20090205 |
| R Knee Patellofemoral | 5260-5024 | 10% | 20090205 |
| Lumbar Spine Strain  | 5243-5237 | 10% | 20090205 |
| Tinnitus | 6260 | 10% | 20090210 |
| GERD | 7346 | 10% | 20090205 |
| **0% x 2 / NSC x 1**  |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 50%** |

ANALYSIS SUMMARY:

Right Ankle Condition. The CI sustained a right trimalleolar ankle fracture on 15 March 2008 after a non-duty related accident with his all-terrain-vehicle. He underwent an open reduction internal fixation (ORIF) of the fracture on 16 March 2008 which involved the placement of a two syndesmotic screws. The surgery was successful, and resulted in anatomical alignment of the ankle joint. In June of 2008 he had the screws removed and began physical therapy (PT). During the course of treatment, the CI also developed a right Achilles tendon contracture which was improved with PT. Despite two limited duty periods, medications, extensive physical therapy and pain clinic management, the ankle pain persisted and the CI could not perform the military duties. The CI’s MEB orthopedic exam was completed on 18 December 2008. During this exam the CI reported that his right ankle pain was 3-6/10 and described as aching, sharp, tingling and throbbing at times. He was on several pain medications, but did not need assisted devices for ambulation. The physical exam of his right ankle noted two well-healed surgical scars with some mild tenderness along the lateral scar. The CI had some decreased sensation over the dorsal lateral aspect of his right foot and his strength was 5/5. The right ankle range of motion (ROM) results are in the chart below. X-rays show a healed fibula fracture, an anatomically reduced ankle mortise and retained hardware without signs of failure. The examiner felt that maximum benefit from outpatient care was achieved, and his final diagnosis was right ankle fracture, status post ORIF with residual ankle pain and stiffness. The PEB rated him at 10% for painful motion coded 5099-5003. The VA compensation and pension (C&P) exam was completed on 5 February 2009, three and one-half months prior to separation. During this exam, the CI complained of weakness and stiffness of the right ankle as well as lack of endurance with limited ROM. On exam it was noted that the CI had a normal gait, and required no device for mobilization. The right ankle was tender to palpation, but no deformity was noted. The ROMs are in the following chart:

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| --- | --- |
| Left Ankle | Separation Date: 20090530 |
| Goniometric ROM  | Ortho MEB 5 ½ Mo. Pre Sep(20081218) | VA C&P 3 ½ Mo. Pre Sep\*(20090205) | PT 4 ½ Mo. Pre Sep(20090113) |
| Dorsiflexion (20⁰ nl) | 5⁰ | 18⁰ | 4⁰ |
| Plantar Flexion (45⁰ nl) | 42⁰ | 40⁰ | 42⁰ |
| Comment | No mention of pain with motion | Pain at end of motion. No Deluca | Pain w/ resistance during inversion & eversion |
| §4.71a Rating | 10% | 0% | 10% |

\*See additional VA exam in text below

On a follow-up VA exam for ankle and back pain performed on 21 May 2009 (nine days before separation) the CI was still complaining of right ankle pain, but the examiner noted no edema of the extremities and the CI’s gait was intact. The examiner also stated, “…he has great ROM in his ankle and seems to have good strength, so I do not think physical therapy will add much.” The CI was rated at 10% by the VA for pain with motion of the right ankle coded 5271 (Ankle, limitation of motion). The CI’s right ankle ROM improved prior to separation, but was still painful. Review of the CI’s contention that he should receive a 30-40% rating led the Board to surmise that the CI was looking at the 5270 code, ankylosis of the ankle (“frozen joint”) versus 5271 for limited motion. The CI’s ankle was clearly not fused in position, thus the 5270 code does not apply. The Board determined that the PEB rating was correct as the ROM was not limited to the extent required for the “marked” criteria and higher rating. Although either code could be used, the Board felt that the PEB code was more accurate at the time of separation due to the improved ROM. After careful review of all available evidentiary information, the Board unanimously recommends no change in the PEB adjudication for the right ankle condition.

Remaining Conditions. Other conditions identified in the Disability Evaluation System (DES) file were trouble hearing, low back pain secondary to limping, right knee pain, frequent heartburn/gastroesophageal reflux disease, tender right ankle scar, short term memory loss and trouble sleeping. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period, carried attached profiles, or were implicated in the non-medical assessment. These conditions were reviewed by the action officer and were considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally left knee pain, tinnitus and other non-acute conditions and several other non-acute conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. 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.

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. In the matter of the right ankle condition (right ankle fracture with residuals), the Board unanimously recommends a rating of 10% coded 5099-5003 IAW VASRD §4.71a. In the matter of the hearing difficulty, low back pain, right knee pain, frequent heartburn, tender right ankle scar, short term memory loss, trouble sleeping, 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. 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.

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 with Residual Pain and Stiffness | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091207, 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, FORMER USMC

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 13 Jun 11

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

 Assistant General Counsel

 (Manpower & Reserve Affairs)