RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: Marine

CASE NUMBER: PD1000591 SEPARATION DATE: 20020331

BOARD DATE: 20110316

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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 (0311, Rifleman) medically separated from the Marine Corps in 2002 after a total of four years of service. The medical basis for the separation was status post (S/P) closed (left) tibia and fibula fracture. The CI injured his left lower leg in November 1999 during which he sustained a closed fracture to the left tibia and fibula. Initially he was managed with cast immobilization and subsequent activity progression; however, the CI continued to complain of leg length inequality and pain throughout the left lower extremity. In December 2000, the CI underwent a corrective osteotomy for both the left tibia and fibula. At this time, a partial injury to the superficial peroneal nerve was noted. The CI was placed on limited duty (LIMDU) for eight months. Despite the extensive LIMDU, the CI was unable to return to full duty and was referred to a Medical Evaluation Board (MEB). The MEB found that, “despite an attempted restoration of mechanical axis and length, this has not improved the patient’s complaints of activity related to his work,” and forwarded S/P closed tibia and fibula fractures, malunion, S/P corrective osteotomy, and S/P partial injury to the superficial peroneal nerve to the informal Physical Evaluation Board (IPEB). The IPEB adjudicated “S/P closed tibia and fibula fractures” as unfitting, rated 10%, coded 5299-5003. The IPEB adjudicated the remaining conditions as Category II (conditions that contribute to the unfitting condition). The CI did not appeal, and was medically separated with a disability rating of 10%.

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CI CONTENTION: The CI states: “Left leg is extremely painful and pretty much useless. Leg is very weak and gives out at times unexpectedly. Changes have been made and I feel I should be rated higher.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20011213** | | | **VA (7 Mo. after Separation) – All Effective: 20020401** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| S/P Closed Tibia and Fibula Fractures | 5299-5003 | 10% | Residuals of Osteotomy 2nd to Left Tibiofibular Fx & Scar | 5275-5262 | 20% | 20021004 |
| Left Knee Lig … 2nd LTib-Fib … | 5299-5260 | 10% | 20021004 |
| Left Ankle Lig … 2nd LTib-Fib … | 5262 | 10% | 20021004 |
| Malunion, S/P corrective osteotomy | Category II | | *see above* | | | |
| S/P Partial Injury to the Superficial Peroneal Nerve | Paresthesias of the Peroneal Nerve | 8520 | 10% | 20021004 |
| ↓No Additional MEB/PEB Entries↓ | | | HTN | 7101 | 10% | 20021004 |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 50%\*** | | | |

\* 100% effective 20041126 with added Bipolar Disorder (100%) with earlier Adjustment Disorder attributed to Left Leg condition.

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ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability-assigned for conditions which were connected with his tibia and fibula fractures condition, and the gravity of his condition and consequences which merit a higher separation rating. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for conditions that did not impair duty performance or potential complications resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration. A “crystal ball” requirement is not imposed on the service PEBs by the Board; the 12-month window specified in DoDI 6040.44 is appropriate for rating comparisons, but not for new developments or increased disability after separation. This case focuses on the fact that, although the CI had extensive tibia and fibula surgeries, the unremitting pain prevented him from performing his duties. The PEB and the VA differ on coding issues and ratings regarding the left lower leg conditions, including differing joints (leg, ankle and knee), scars, and the nerve condition. A tear of the peroneal nerve was noted on surgery, and this contributed to his post-operative symptomatology and poor recovery. His condition involved more an injury to his knee; the midshaft of the left knee and ankle, peroneal nerve, weakness and antalgic gait contributed to his pain.

Left Lower Leg Condition. The CI’s left tibia and fibula fractures were initially treated conservatively including a calcaneal (foot) pin for traction. Subsequent lower leg angulation and shortening deformity with pain was surgically corrected, with no symptom relief. The PEB rated the CI’s left lower leg condition as S/P closed tibia and fibula fractures analogously, coded to arthritis of the knee (5299-5003), and appeared to consider the impaired knee function alone for coding. However, the Board considered the primary unfitting condition to be the left lower extremity pain as the CI was unable to perform simple activities such as prolonged walking, standing, running or physical training. The primary injury was not to the left knee, but rather to the prolonged (pre-surgical) left lower leg angulation and shortening which impacted the left knee and ankle.

There were two 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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| Left Knee | Surgery: 20001219 (remove rod 20010319) Separation Date: 20020331 | |
| Goniometric ROM | MEB – 20010815  ~ 7 mos. Pre-separation | VA C&P – 20021004  ~ 7 mos. Post-separation |
| Flexion 0-140⁰ normal | 0⁰-135⁰ | 3⁰-120⁰ |
| Extension 0⁰ normal | 0⁰ | 3⁰ |
| Comments (+ Leg) | Non tender (MEB exam w/TTP mid-medial tib shaft; exquisitely tender scar) | LLE very painful; sl antalgic gait; leg bowed medially; mod fatigue/weakness on rep 5⁰-110⁰; neg Lachman’s/McMurrays |
| §4.71a Rating | 10% | 20%-30% *(see discussion of leg vs knee coding)* |

The narrative summary (NARSUM) noted no evidence of ankle arthrosis on imaging. No ankle ROM exam was documented. The VA exam of the left ankle indicated: 0⁰ dorsiflexion (nl 0-20⁰), 20-35⁰ plantar flexion (nl 0-45⁰) with moderate pain and weakness, and moderate to marked fatigability and incoordination.

In the NARSUM on 15 August 2001, approximately seven months pre-separation, the CI complained about activity-related pain, prolonged standing and walking, inability to run and no change in his pre-surgical leg pain symptoms. The examiner documented that the CI had normal motor strength, no evidence of effusion, range of knee motion 0-135 degrees, no atrophy of the anterolateral or superficial posterior compartments, no tenderness to palpation of the knee, no evidence of prominence of screw heads and no obvious Tinel’s sign along the peroneal nerve to level of incision. The only abnormality was a diminished perception of light touch over the dorsum of the foot. The examiner concluded that “despite an attempted restoration of mechanical axis and length, this has not improved the patient’s complaints of pain with activity related to his work.” The MEB physical additionally indicated midshaft tenderness to palpation and “medial distal tibia scar–well-healed, exquisitely tender.”

At the VA Compensation and Pension (C&P) exam (4 October 2002) approximately seven months post-separation, the CI complained of left knee and ankle pain secondary to his fracture of the left tibia and fibula. He also complained of daily pain, weakness, stiffness, knee give-away, ankle rolling, and a very painful left lower leg. He further stated that he could not find work because he couldn’t stand on his leg for more than five minutes. The examiner noted that the CI walked with a slightly antalgic gait, without use of crutches, braces, canes or special shoes. On physical exam, it was documented that the CI could not completely extend the left knee and was able to flex it 3-120 degrees. On repetition ROM decreased to 5⁰-110⁰ and there was moderate fatigue and weakness. The examiner also documented that “the left leg is bowed.”

Both exams were equal timeframes from separation; however,, the VA exam was more extensive and detailed. The ankle-decreased ROM and especially the bowing of the left leg noted during the VA exam were considered non-acute changes that were unlikely to have developed solely post-separation. The VA coding and rating of 5275 (bones, of the lower extremity, shortening of) analogously related to 5262 (tibia and fibula, impairment of) as moderate 20% with additional separate knee and ankle coding, differed substantially from the PEB coding of 5003 **a**rthritis, degenerative (hypertrophic or osteoarthritis) rated as mild at 10%. The CI’s impairments were not primarily restricted to the knee, but better aligned with the CI’s initial injury and surgery of the lower leg (tibia and fibula) with impairment of tibia and fibula with knee or ankle disability (5262). The disability levels of “with marked knee or ankle disability" (30%) and "with moderate knee or ankle disability (20%) were considered, i.e., pain on prolonged standing/walking, running, jumping, climbing or carrying heavy objects greater than ten pounds, the knee and ankle ROMs, the exquisitely tender scar, not-unfitting neurologic (mild hyperesthesia plantar/absent top of foot with VA paresthesias over lateral L knee, lower leg and ankle). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the left leg condition.

Hypertension Condition. The VA rated the hypertension condition as 10%. The CI had minimally elevated blood pressure on the MEB history and physical exam. However, this condition is neither linked to fitness nor considered as a disability IAW the VASRD.

Mental Health. The mental health condition was post-separation and not in the DES package. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

Other Conditions (Paresthesias of the Peroneal Nerve). The VA rated this condition as 10% and it was considered in the DES package. The NARSUM noted, “some diminished perception of light touch over the dorsum of the foot, consistent with a partial injury to the superficial peroneal nerve.” The MEB physical stated, “No sensation over ventral surface left foot with hyperesthesia over plantar surface.” There was no indication of restriction of military foot gear or any muscle atrophy. Any pain from the hyperesthesia was considered in the CI’s primary unfitting condition above. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of the peroneal nerve condition as a separately unfitting condition for permanent 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. In the matter of left lower leg (tibia/fibula fractures) condition, the Board by a split vote of 2:1 recommends rating of 5275-5262 at 20%. The single voter for dissent (who recommended 30%) submitted the addended minority opinion. In the matter of paresthesias of the peroneal nerve, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating of 10%, coded at 8520. In the matter of the peroneal nerve and hypertension 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, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| S/P Left Tibia and Fibula Fractures | 5275-5262 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20100522, 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 Action Officer (AO) recommends that under VASRD code 5275-5262 the “status post left tibia and fibula fractures” be rated at 30%. The CI’s injuries were not primarily restricted to the left knee but affected the entire left lower leg including the left ankle and foot. The Navy PEB rated the injury as 5003 “arthritis, degenerative,” and considered only the knee, choosing to parse out the injuries. The findings on exam of bowing of the left leg, ankle rolling, and antalgic gait, limited ROM of the foot and ankle were well-documented, indicating that the injury involved the left knee, ankle, and foot.

The Board deliberated between two rating schemes which included S/P left tibia and fibula fractures at 20% and 30%. The majority for 20% agreed that the CI’s injuries were primarily restricted to the left knee or ankle, and chooses the moderate knee or ankle disability. By virtue of the facts that the CI had bowing of the left leg, ankle rolling, antalgic gait, and limited ROM of both the foot and ankle, as was clearly documented on exams, this indicates a marked knee or ankle disability, and should be rated at 30% disability.

The AO 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** |
| S/P Left Tibia and Fibula Fractures | 5275-5262 | 30% |
| **COMBINED** | **30%** |

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 PEB (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 31 March 2002.

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)