RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000973 SEPARATION DATE: 20050831

BOARD DATE: 20110712

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl/E-4 (0481/Landing Support Specialist) medically separated for right leg shin splint. The CI developed pain in the right leg in June 2004 after training. The CI underwent a bone scan which indicated minimal increased uptake in the distal third of the right tibial diaphysisplus some about the metatarsals of the left foot. The CI was treated with a cam walker*,* physical therapy (PT), non-steroidal anti-inflammatory (NSAID) medications and arch supports. The CI was placed on limited duty (LIMDU) for eight months which included no prolonged standing. The CI did not respond adequately to treatment and was unable to perform within her military occupational specialty (MOS) or meet physical fitness standards. The Medical Evaluation Board (MEB) felt that this significantly interfered with duty and forwarded sprain and strain of unspecified site of knee and leg and plantar fascial fibromatosis to the Physical Evaluation Board (PEB) as medically unacceptable on NAVMED 6100/1. The PEB adjudicated the right leg shin splint condition as unfitting, coded 5022-5003 at 10%; with probable application of SECNAVINST 1850.4E. The PEB adjudicated the right plantar fasciitis as category II (conditions that contribute to the unfitting condition). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “Continued pain. Pain spreading from original injury – some items of injury not covered in rating.”

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20050701** | **VA (13 days Pre Separation) – All Effective Date 20050901** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Shin Splint, Right Leg | 5022-5003 | 10% | Stress Fracture, Right Tibia | 5299-5262 | 0% | 20050817 |
| Plantar Fasciitis, Right | Cat II | Plantar Fasciitis, Right Foot | 5099-5020 | 0% | 20050817 |
| ↓No Additional MEB/PEB Entries↓ | Trochanteric Bursitis, Right Hip | 5250-5019 | 10% | 20050817 |
| Migraine Headaches | 8100 | 10% | 20050817 |
| **Combined: 10%** | **Combined: 20%** |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member’s medical conditions, compensation can only be offered for those medical conditions that cut short a service members career, and then only to the degree of severity present at the time of final disposition. However the Department of Veteran Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to compensate service connected conditions and to periodically re-evaluate veteran’s for the purpose of adjusting the veterans disability rating should the degree of impairment vary over time.

Shin Splint Right Leg and Plantar Fasciitis Right. The CI was found unfit for right leg pain and inability to perform any duties which required standing for long periods of time or general weight bearing on her lower body. The CI had diagnoses of shin splint right leg and plantar fasciitis right (category II - conditions that contribute to the unfitting condition). However, the symptoms and disability of right leg shin splint and right plantar fasciitis are not distinctly separable in this case and both conditions are frequently medically linked. The PEB category II designation led to the CI’s right plantar fasciitis not being considered in the rating for the disability of the CI’s right leg shin splint. The PEB unfitting shin splint used a joint code analogously to plantar fasciitis (5299-5003) at 10% for the right shin. The MEB and narrative summary (NARSUM) exam at four months prior to separation noted that the CI complained of chronic pain in the shin and foot, was unable to run without pain and rated this pain as 3-4 out of 10, with 10 being the worst. The CI indicated that wearing arch supports did make a difference between wearing them and not wearing them. In the NARSUM, the examiner noted that the bone scan indicated minimal increased uptake in the distal third of the right tibial diaphysis,plus some about the metatarsals of the left foot. On physical exam, there were findings of tenderness to palpation over the right medial arch and over the plantar fascial band and in the arch and adductor origin. There was slightly antalgic gait; however, there was normal range of motion (ROM) and motor strength. The right distal third of the leg was tender to palpation along the anteromedial muscle group. The examiner recommended that the CI should not run, jump, lift, go to the field nor should she walk or stand for more than 30 minutes.

The VA compensation and pension examination two weeks prior to separation indicated that the CI continued to complain of constant pain in the right leg. The physical examination documented mild tenderness in the right foot plantar fascia and tenderness to palpation in the right tibia consistent, however the gait was normal. The functional limitations for the right foot were that the CI should avoid jumping and walking on uneven ground, and for the right tibia stress fracture the functional limitations were to avoid jumping and running frequently.

The key differences in the examinations were the service-noted antalgic gait, while the gait was normal on the VA exam. The VA and PEB chose different coding options for the CI’s shin splint right leg. The PEB used the VA Schedule of Rating Disabilities (VASRD) as per §4.71 diagnostic group codes 5022 periostitis and 5003 arthritis degenerative hypertrophic or osteoarthritis. The VA coded as 5262 at 0% (mild symptoms relieved by built up shoe or arch support) and 5020 synovitis at 0%. The Board noted that the CI’s condition was only somewhat improved by arch supports and there was no painful motion of the ankle or abnormal gait at the VA exam. Alternative coding using 5262 (tibia and fibula, impairment of) with slight knee or ankle disability (10%) was considered, but was not predominate. The Board considered the VA’s disability coding, but elected to consider the higher of two evaluations and the preponderance of the record which demonstrated painful right ankle/foot movement. The Board also considered a separate rating for the right plantar fasciitis condition at 0% coded 5299-5020, or reapportionment of symptoms to a 0% shin splints and 10% plantar fasciitis rating; however, there was no mechanism for a combined rating of higher than 10% for the right lower extremity while adhering to the tenants of §4.14 (avoidance of pyramiding). All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s 10% rating decision for the right shin splint condition and category II finding for the right plantar fasciitis condition.

Remaining Conditions. The right hip and migraine headaches conditions were each rated 10% by the VA, and right knee, bronchitis, depression and sinus tachycardia were identified by the CI on the MEB history and physical form. Several additional non-acute conditions or medical complaints were also documented. The right hip and right knee pain were considered as potentially being potentially contributing to the CI’s other MEB/PEB right lower leg conditions. There were treatment notes proximate to the MEB period, but no specific indications of duty interference. The Board’s threshold for adding new unfitting conditions is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. After due deliberation, and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the right hip or right knee condition as additionally unfitting for separation rating. The migraine headaches were well controlled on medication with no indication of significant duty interference. None of the remaining conditions were significantly occupationally active during the MEB period, none were there basis for limited duty and none were implicated in the non-medical assessment. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating.

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. 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 the right shin splint condition, the Board unanimously recommends no change in the PEB rating of 10%. In the matter of the right hip, right knee and migraine headaches conditions, and 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.

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

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Shin Splint, Right Leg | 5022-5003 | 10% |
| Plantar Fasciitis, Right | Cat II |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100321, 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 26 Jul 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 PDBR Ms. XXXXX’s 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.

 Assistant General Counsel

 (Manpower & Reserve Affairs)