

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:  
CASE NUMBER: PD1100714  
BOARD DATE: 20121119

BRANCH OF SERVICE: NAVY  
SEPARATION DATE: 20070807

---

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty AC1/E-6 (AC1/Air Controlman First Class), medically separated for right anterior ankle impingement. The condition began as a consequence of injury in 2005. The CI did not improve adequately to rehabilitative treatment and was unable to meet the physical requirements of his rating or satisfy physical fitness standards. He was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). Other congenital deformities of feet, other specified disorders of ankle and foot joint, loose body in joint and unspecified arthropathy involving ankle and foot, identified in the rating chart below, were also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the right anterior ankle impingement condition as unfitting, rated 20% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). Possible ankle loose body, possible talonavicular arthrosis and right gastroequinus versus possible triceps sural equinus were included as related Category II diagnoses. The CI made no appeals, and was medically separated with a 20% disability rating.

---

**CI CONTENTION:** "When I first got out of the military, the VA clinic in Ft Myers, FL, told me that I should have been military retired, due to the fact that I have an orthopedic condition. Every day, I wake up and I am in pain. Some days the pain goes away over time, throughout the day. A lot of days, the pain stay in my ankle, foot region. Now, not only is it my original right ankle area in pain, but both of my feet. My right foot because, I have to walk differently, because my foot will not bend correctly in the ankle joint. Since I walk differently on my right foot, my left foot is in pain. I have arthritis in both of my feet and right ankle region. I have back and sciatica pain. I have been to the doctor numerous times for treatment. I have been issued orthotics from a podiatrist at the VA clinic. An order was put in for a prosthetic brace, but we could not get one exactly right, to help with the pain. I have had several cortisone shots in the right foot/ankle region. An MRI was done and showed fluid on my right foot / ankle region. I recently resigned from my job as an air traffic controller. I resigned for personal reasons. My job required me to stand for long periods of time. My ankle and feet were enduring a lot of pain. I feel that I should be medically retired because, the only training that I have is air traffic control. I have tried to do other types of jobs and just could not handle the pain that the stress of working on my feet endured. I gave the Navy almost 12 years, I would be over 16 years now. I had every intention of retiring so that I could get a pension from the US Navy. The Navy was the greatest career that I have had ever or will have. If there was any chance that I could go back in, I would." [sic]

---

**SCOPE OF REVIEW:** The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) "identified but not determined to be unfitting by the PEB." The ratings for unfitting conditions will be reviewed in all cases. The right ankle condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The bilateral foot pain and low back with sciatica pain conditions are not within the Board's purview. Any conditions or contention not requested in this

application, or otherwise outside the Board's defined scope of review, remain eligible for future consideration by the Board for Correction of Naval Records.

**RATING COMPARISON:**

Service PEB – Dated 20070503			VA (3 Mos. Pre-Separation) – All Effective Date 20070808			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Ankle Impingement	5262	20%	Right Ankle Sprain	5003-5271	10%*	20070531
Loose Body in Ankle	Cat 2					
Talonavicular Arthrosis	Cat 2					
Right Gastroequinus	Cat 2					
No Additional MEB/PEB Entries			Cervical Spine Sprain	5237	10%	20070531
			Tinnitus	6260	10%	20070530
			Right Hand Arthritis	5220-5003	10%	20070531
			0% X 3 / Not Service-Connected x 5			20070531
<b>Combined: 20%</b>			<b>Combined: 30%</b>			

\*Initial VA decision rated at 0%; 20120202 decision increased to 10% effective 20070808

**ANALYSIS SUMMARY:** The Board acknowledges the sentiment expressed in the CI's application regarding the significant impact that his service-incurred condition has had on his current earning ability and quality of life. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans Affairs (DVA). The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board's authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

**Right Anterior Ankle Condition.** An inversion injury to the right ankle while playing basketball in September 2005 caused ongoing ankle pain. Magnetic resonance imaging (MRI) performed in January 2006 revealed likely ankle ligament tears. X-rays and CT scanning confirmed the presence of osteophytes and other degenerative changes of the ankle that interfered with ankle motion. While physical therapy and injections were partially and temporarily helpful, the CI declined a surgical option. There were two range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Right Ankle ROM	NARSUM ~4 Mo. Pre-Sep	VA C&P ~2 Mo. Pre-Sep
Dorsiflexion (0-20°)	-10°	10°
Plantar Flexion (0-45°)	Not specified	30°
Comment	Plantar strength normal	--
§4.71a Rating	20%	10%

At the narrative summary (NARSUM) exam 4 months prior to separation, the CI reported pain in the anterior aspect of his ankle and along his Achilles tendon that was worsened with prolonged standing or walking. Morning stiffness also occurred. There were no symptoms of instability. The examination described the presence of blocking of anterior ankle motion when attempting to dorsiflex the foot. Ligament stability was confirmed. Pes planus (flat feet) was also noted. Ankle strength, including plantar flexion, was normal except for slight weakness of

eversion. At the VA Compensation and Pension (C&P) exam 2 months prior to separation, the CI reported intermittent ankle pain produced by physical activity and relieved by rest or anti-inflammatory medicine. The condition prevented running and other cardiovascular exercise. Examination revealed a normal gait without use of assistive devices. There was no ankle deformity or ankylosis. Repetition did not result in additional limitation of motion. Ankle X-rays were normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 20% rating under the 5262 code (impairment of tibia or fibula, with moderate ankle disability). The VA's initial 0% rating under a 5003-5271 code (arthritis; limited ankle motion) was later increased to 10% with the acknowledgment that §4.59 (painful motion) should have been applied. Because the VA exam provided more detailed information pertinent to rating than the NARSUM exam, for example plantar flexion and gait, it was assigned higher probative value. Board members noted that a 20% rating is the highest possible under the 5271 code, and that the VA exam did not justify a rating higher than 20% under the 5262 code. Board members also agreed that the related Category II diagnoses (possible loose body, possible talonavicular arthrosis, and right gastroequinus versus possible triceps sural equinus) were properly subsumed by the PEB under the unfitting ankle condition. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the right anterior ankle impingement condition.

---

**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 anterior ankle impingement condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board's scope of review for consideration.

---

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

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Right Anterior Ankle Impingement	5262	20%
	<b>COMBINED</b>	<b>20%</b>

---

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20110830, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

President  
Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL  
OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44  
(b) CORB ltr dtd 18 Dec 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR that the following individual's records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy's Physical Evaluation Board:

- former USN
- former USN
- former USMC

Assistant General Counsel  
(Manpower & Reserve Affairs)