

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX
CASE NUMBER: PD1100842
BOARD DATE: 20121017

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20051015

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve CPL/E-5 (0311/Rifleman), medically separated for heterotopic ossification (abnormal bone formation) of the right hip and avascular necrosis of the left wrist scaphoid. The hip condition arose as a consequence of a femur fracture in 2004 and the left wrist scaphoid condition from a fall in 2003. Neither condition responded adequately to operative or rehabilitative treatment, nor was he able to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was placed on medical hold status and referred for a Medical Evaluation Board (MEB). The MEB submission was not available for review. The Physical Evaluation Board (PEB) adjudicated the right hip heterotopic ossification and left wrist scaphoid avascular necrosis conditions as unfitting, rated 10% respectively, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). Right femur fracture and healed right femur fracture were included as related Category II diagnoses. Additionally, knee pain and chondromalacia patella were rated as Category III (conditions that are not separately unfitting and do not contribute to the unfitting conditions). The CI made no appeals and was medically separated with a 20% disability rating.

CI CONTENTION: "The medical reasons which I was found unfit for duty continue to exist and worsen. Other injuries were also not taken into consideration when going through my MEB Board and medically discharged from the military. The Veterans Administration rated me with a higher rating at 60% and is currently reviewing my records to increase. The injuries continue to exist and continue to make me do routine appointments with the VA system and private healthcare. The injuries sustained while in the service continue to make my daily living very difficult and continues to limit my employment opportunities. I continue to seek medical attention for the daily pain; I ask for my review to be highly considered. Thank you."

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 knee condition requested for consideration and the unfitting right hip, femur fracture and left wrist conditions meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. The remaining conditions rated by the VA at separation 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 IPEB – Dated 20050422			VA (~1 Mo. After Separation) – All Effective Date 20051016			
Condition	Code	Rating	Condition	Code	Rating	Exam
Heterotopic Ossification, Right Hip	5299-5255	10%	Right Femur Fracture Residuals	7121-5252	10%	20051104
Right Femur Fracture	Category 2					
Healed Right Femur Fracture	Category 2					
Avascular Necrosis Lt Wrist	5099-5215-5003	10%	Residual Left Wrist Fracture	5215	10%	20051104
Knee Pain	Category III		Rt. Patellofemoral Syndrome	5014-5260	10%	20051104
Chondromalacia Patella	Category III		Scar Rt. Greater Trochanter	7804	10%	20051104
↓No Additional MEB/PEB Entries↓			Back Strain	5237	10%	20051104
			Tinnitus	6260	10%	20051104
			0% x 2/Not Service Connected x3			
Combined: 20%			Combined: 50%*			

*Rating decision 20080111 added PTSD 9411 at 30%, effective 20070501, based on later outpatient records; combined 60%.

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. With regard to the CI's assertion that other injuries were not taken in to consideration by the MEB, the Board also must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to suspected service improprieties in the disposition of a case.

Right Hip Condition. A motor vehicle accident in January 2004 caused a right femur fracture that was surgically treated with intramedullary nailing. Complete healing of the femur fracture during the post-operative course was noted, but heterotopic ossification developed in the soft tissues of the right hip near the head of the femoral nail. Right thigh and hip pain persisted. There were three goniometric 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 charts below.

Right Hip (Thigh) ROM – (in degrees)	MEB ~ 12 Mos. Pre-Sep	PT ~9 Mos. Pre-Sep	VA C&P ~ 1 Mo. After-Sep
Flexion (0-125)	115	100	95
Extension (10-20)	0	8	30
External Rotation (0-45)	25	25	40
Abduction (0-45)	45 (50)	40	45
Adduction (0-45)	35	Not tested	20
Comment	Non-antalgic gait. +tenderness over greater trochanter.	Abnormal gait, +tenderness, pain with motion	Slightly antalgic gait, pain with motion, +tenderness over the greater trochanter.
\$4.71a Rating	10%	10%	10%

The narrative summary (NARSUM) exam performed on 30 September 2004 reported that the CI could not run, carry heavy objects, climb or crawl. Exam revealed tenderness over the greater trochanter of the right hip, but not of the mid-shaft of the femur. There was no pain when physical stress was applied to the fracture site. Marked improvement of previous vastus medialis muscle atrophy was noted. X-rays showed a well-healed femur fracture and heterotopic ossification in the soft tissue area of the right hip. At the VA Compensation and Pension (C&P) exam performed on 4 November 2005 (3 weeks after separation), the CI reported right hip pain in the area of the surgical screws from prolonged sitting or walking. The pain was only present with activities. Examination revealed greater trochanter tenderness, but no thigh tenderness.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 10% rating under the 5255 code (impairment of femur), judging there was “slight” hip disability. The VA gave a 10% rating for painful motion under the 7121-5252 code (post-phlebotic syndrome, limitation of flexion). The Board agreed that a 10% rating was justified under 5251 (compensable limitation of extension at time of MEB exam), or for pain with use (§4.40) or painful motion (§4.59). The Board also considered whether “moderate knee or hip disability” under the 5255 code was an accurate descriptor of the clinical picture, but concluded that the “slight” disability assessment made by the PEB was appropriate. Healed right femur fracture was designated as a Category II condition and is appropriately subsumed under the right hip condition already discussed above. 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 hip condition.

Left Wrist Condition. The service treatment record (STR) indicates that a left scaphoid bone fracture occurred on 29 May 2003 while deployed. After treatment with a cast, the CI continued to experience pain in the left wrist. At a primary care clinic visit on 25 October 2004 (one year prior to separation) the CI complained of recurring pain that was worsening. The provider indicated that planned wrist surgery in January 2004 was pre-empted because of the MVA. The NARSUM examiner was silent regarding the wrist condition. The VA examiner reported that the right hand dominant CI underwent surgery on 6 July 2005 (2 months after the PEB, 3 months prior to separation) for avascular necrosis of the left scaphoid bone, but continued to complain of chronic stiffness and pain. He did not use a splint. Decreased strength caused reduced endurance, but did not result in dropping items. Exam revealed wrist tenderness. ROM measurements were dorsiflexion of 70 degrees (normal to 70 degrees), palmar flexion of 30 degrees (normal to 80 degrees), ulnar deviation of 20 degrees (normal to 45 degrees) and radial deviation of 30 degrees (normal to 20 degrees). Painful motion was present and increased discomfort with repetitive testing was also noted. No atrophy of the palm muscles was present. Objective testing showed 30 pounds of grip strength on the left

compared to 115 pounds on the right. X-rays revealed post surgical changes and mild degenerative changes of the hip joint.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 10% rating under an analogous 5215-5003 code (limitation of wrist motion, degenerative arthritis). The VA's 10% rating was assigned for painful motion since limitation of motion was non-compensable. Under the 5215 code, 10% is the highest possible rating, while a higher rating under 5214 requires ankylosis of the wrist. Board members therefore agreed that a pathway to a higher rating was not present. 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 left wrist condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were knee pain and chondromalacia patella. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations 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. These conditions did not carry attached duty limitations, were not implicated in the non-medical assessment (NMA), and were not judged to fail retention standards. They were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended conditions; and, therefore, no additional disability ratings can be recommended.

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 hip heterotopic ossification condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the left wrist scaphoid avascular necrosis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended knee pain and chondromalacia patella and conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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:

UNFITTING CONDITION	VASRD CODE	RATING
Right Hip Heterotopic Ossification	5299-5255	10%
Avascular Necrosis Left Wrist Scaphoid	5099-5215-5003	10%
	COMBINED	20%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110812, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXX

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 7 Nov 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
- former USN
- former USMC
- former USMC
- former USMC
- former USN

Assistant General Counsel
(Manpower & Reserve Affairs)