

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200214
BOARD DATE: 20121114

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20050430

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated Reserve CPL/E-4 (3112, Traffic Management Specialist), medically separated for posttraumatic osteochondritis desiccans, right talar dome, and posttraumatic right ankle arthrosis. The CI sustained a severe right ankle inversion injury when he was under fire in Iraq, ran for protection and jumped into a three foot deep hole. Despite three cortisone injections; non steroidal anti inflammatory drugs (NSAIDS); rehabilitation and orthopedic consults; a diagnostic arthroscopy abrasion chondroplasty and a right ankle reconstruction surgery by arthroscopy; aggressive physical therapy (PT) and use of an ankle brace and cane, the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued placed on light duty and referred for a Medical Evaluation Board (MEB). The PEB adjudicated the posttraumatic osteochondritis desiccans, right talar dome, condition as unfitting, rated 20%, with application of the Department of Defense Instruction (DoDI) 1332.39 and Veteran's Affairs Schedule for Rating Disabilities (VASRD). The PEB also adjudicated the posttraumatic right ankle arthrosis condition as related Category II diagnosis ("contributing to the unfitting condition"). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: "THEY RATED ME FOR THE RIGHT ANKLE TRAUMA AFTER THE MEDICAL BOARD WAS DONE I HAD ANOTHER ANKLE SURGERY WITHOUT IT BEEN TAKEN IN CONSIDERATION AT THE PEB. ALSO I WAS BEING THREATED FOR PTSD, BACK PAIN AND SHOULDER PAIN. THE OTHER CONDITION WERE CONNECTED BY VETERANS ADMINISTRATION BUT I HAD SINCE BEING MEDICALLY DISCHARGE I HAD TO SPEND AROUND \$ 500 A MONTH FOR MEDICAL INSURANCE FOR ME AND MY FAMILY. THE MAJORITY WAS FOR ME. I HAD THE FOLLOWING CONDITIONS CONNECTED TO THE SERVICE SINCE MAY 1, 2005 ONE DAY AFTER MY END OF ACTIVE SERVICE: 1. DYSTHTMIC DISORDER 2. RIGHT ANKLE Arthritis 3. LOW BACK PROBLEMS 4. KNEE PROBLEMS (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 unfitting right ankle trauma condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The other requested 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 20050224			VA (~3 Mos. Post-Separation) – All Effective Date 20050501			
Condition	Code	Rating	Condition	Code	Rating	Exam
Posttraumatic Osteochondritis Desiccans, Right Talar Dome	5099-5003	20%	S/P Right Ankle Sprain w/ Residual FX & Ligament Rupture; Posttraumatic Osteochondritis, Posttraumatic Arthrosis	5271	20%	20050808
Posttraumatic Right Ankle Arthrosis	Category 2					
No Additional MEB/PEB Entries			Dysthymic Disorder	9433	30%	20050829
			Discogenic Disease, Spondylosis, & Posterior Disc Protrusion T11-T12	5243	10%*	20061207*
			Left Knee PFS	5260	10%*	20061207*
			0% X 2 / Not Service-Connected x 4*		20050808	
Combined: 20%			Combined: 60%*			

* VARD 20050908 (Original) granted combined rating of 40%. CI appealed two non-service connected conditions (LBP & Lt Knee PFS). After new C&P exam on 20061207, VARD 20070319 awarded full grant of appeal, adding both conditions and raising combined rating to 60%, all retroactive to DOS.

ANALYSIS SUMMARY: The Board acknowledges that the MEB was not available in the evidence before it; and, could not be located after the appropriate inquiries. Further attempts at obtaining the relevant documentation would likely be futile. The missing evidence potentially relates only to the scope of the Board discussed above; and, it is not suspected that the missing evidence would significantly alter the Board’s recommendations. The Board also acknowledges the CI’s assertions that the PEB did not take his second right ankle surgery into consideration when adjudicating his case. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected service-improprieties in the processing of his case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

Right Ankle Condition (Posttraumatic Osteochondritis Desiccans, Right Talar Dome; and Posttraumatic Right Ankle Arthrosis). Both of the PEB right ankle conditions were considered in rating the right ankle condition. 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 chart below.

Right Ankle ROM	MEB ~4.5 Mo. Pre-Sep	Rehab consult ~2 Mo. Post-Sep	VA C&P ~3 Mo. Post-Sep
Dorsiflexion (0-20°)	5°	17°	10°
Plantar Flexion (0-45°)	“full”	25°	15°
Comment: Surgery 20050418; 2 mo. after the PEB and .5 mo. prior to separation	Lace up brace; antalgic gait; effusion; global tenderness to palpation(TTP); pain with resisted ankle motions; well healed incisions; sensation/motor intact	Diffuse tenderness; “Right leg appears thinner - Right 34cm Left 39.5cm; “uses cane/brace at times”	Limping gait; tenderness ankle; ankle brace; TTP; unable to repetitively stand on heels/toes due to pain; manual muscle testing dorsiflexors/plantar flexor 3/5
§4.71a Rating	20%	20%	20%

The right ankle pain condition was well documented in the service treatment record (STR). The CI fractured the right ankle in March 2003 which was confirmed by an X-ray in May 2003 that demonstrated a fracture of the lateral malleolus. The CI continued with right ankle inversion, pain and laxity. Magnetic resonance imaging (MRI) in December 2003 indicated a tear in the calcaneofibular ligament and a small avulsion fracture in the posterior aspect of the distal

fibula. The CI underwent a diagnostic arthroscopy and abrasion chondroplasty in March 2004. There was minimal improvement in the right ankle and an MRI indicated an occult fracture involving the posterolateral aspect of the talus. The MEB examination performed approximately 4 months prior to separation, noted continued pain when walking; an inability to run or jump; intermittent swelling; pain worse with cold and activity; and mild pain relief with NSAIDS. The MEB physical exam findings summarized in the chart above.

In May 2005, the CI underwent right ankle reconstruction surgery by arthroscopy (PEB dated 24 February 2005). The rehabilitation consult 2 months after to separation noted that the right ankle joint had been injected three times with cortisone and the CI required a cane and ankle/foot supports for ambulation due to the sharp pain. The exam findings are summarized in the chart above. The VA Compensation & Pension examination, performed 3 months after separation, noted right ankle swelling, stiffness; weekly flare-ups; instability and give-way sensation, fatigue ability and lack of endurance; precipitating factors of prolonged standing, ambulation or trying to jog which exacerbated pain and use of an ankle brace for ambulation. The exam findings are summarized in the chart above with ROM testing including additional functional loss due to pain.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the right ankle condition as 5099 analogous to 5003 arthritis, degenerative (hypertrophic or osteoarthritis) rated 20%. The VA coded this condition 5271 Ankle, limited motion of: marked and rated 20%. All exams in evidence supported a 20% rating and the VA exam was following the post-PEB ankle surgery.

The Board considered that the coding of 5099-5003 at 20% would require "occasional incapacitating exacerbations" while the VA coding schema using 5271 focused on limitation of motion which would be more ideal coding for the right ankle condition. Although the 5271 coding would be closer to "ideal," neither coding is incorrect, nor would any change of coding increase the rating level or benefit the CI.

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 posttraumatic osteochondritis desiccans, right talar dome 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. As discussed above, PEB reliance on DoDI 1332.39 and VASRD for rating posttraumatic osteochondritis desiccans, right talar dome condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the posttraumatic osteochondritis desiccans, right talar dome and associated posttraumatic right ankle arthrosis conditions 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:

UNFITTING CONDITION	VASRD CODE	RATING
Posttraumatic Osteochondritis Desiccans, Rt Talar Dome (and Posttraumatic Right Ankle Arthrosis Cat 2)	5099-5003	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120228, 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 26 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 USMC
- former USMC
- former USMC
- former USMC

Assistant General Counsel
(Manpower & Reserve Affairs)