

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200311
BOARD DATE: 20121108

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20090830

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized Reserve SGT/E-5 (1361/Drafting and Survey NCOIC), medically separated for a left foot condition, (severe debilitating plantar fasciitis). He did not respond adequately to conservative treatment and was unable to fulfill the physical demands perform within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Plantar fasciitis was forwarded to the Informal Physical Evaluation Board (IPEB) IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB's submission. The IPEB adjudicated the left foot condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB), which affirmed the IPEB findings; and was then medically separated with a 10% disability rating.

CI CONTENTION: "Left Achilles tendonopathy, neck strain, chronic low back strain with spondylosis and radiating pain left leg and foot, bilateral plantar fasciitis. I believe that I should have been medically retired from the Marine Corps instead of receiving an Administrative medical discharge. I was rated 30% initially by the VA. I served 12 years with the intent of retiring from the Marine Corps and I fought to stay in."

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 other requested conditions, neck strain, low back pain and right foot plantar fasciitis 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 FPEB – Dated 20090528			VA (9 Mos. Post-Separation) – All Effective Date 20091016			
Condition	Code	Rating	Condition	Code	Rating	Exam
Severe Debilitating Plantar Fasciitis	5399-5310	10%	Left Achilles Tendinopathy	5099-5024	10%	20100521
↓No Additional MEB/PEB Entries↓			Neck Strain	5237	10%	20100521
			Chronic Low Back Pain	5237	10%	20100521
			0% X 3 / Not Service-Connected x 2			20100521
Combined: 10%			Combined: 30%			

ANALYSIS SUMMARY: The Board acknowledges the CI's contention that suggests ratings should have been conferred for other conditions documented at the time of separation and therefore

should have been medically retired from the Marine Corps. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time.

Severe Debilitating Plantar Fasciitis Condition. The CI first sought care for lower extremity pain in July 2007, (calf and foot symptoms) and was conservatively treated for left Achilles tendonitis with non-steroidal medications and physical therapy. He deployed to Iraq and his symptoms worsened despite several cortisone injections. Upon redeployment he was evaluated and treated by several specialists to include orthopedics, pain management, and physical therapy for persistence disabling plantar fasciitis which was confirmed by a magnetic resonance imaging (MRI) study. He underwent further additional conservative treatment which included the use of a controlled ankle motion (CAM) walker, then complete rest with prolong casting, shoe inserts, and several treatments with orthotripsy for a left calcaneal spur noted on X-ray. Due to the persistence of symptoms and reported intermittent back pain an evaluation for sciatica was also completed to exclude as a cause for his foot pain. The MRI study of the lumbar spine was normal and the conclusion was no objective evidence that his foot pain was being caused by his back. After exhausting multiple treatment options without success, the CI was referred to an MEB. The service treatment record (STR) noted reported pain scales of 5 and 6 of 10 in intensity. The non-medical assessment documented the CI was working in his MOS, not worldwide deployable and missing 55 hours per week for treatment of his medical condition.

The MEB physical exam demonstrated generalized decrease in sensation of the left foot, mild symptomatic pes planus and diminished deep tendon reflex of the left Achilles compared to the right. At the VA Compensation and Pension (C&P) exam performed after separation, the CI reported bilateral constant sharp and throbbing pain in the heels all the time, worse with weight bearing, left achilles tendon pain only with weight bearing and relief of pain with non-steroidal medication and rest. He reported limitations in standing and walking after 1.5 hours and an inability to do sports or run. He worked at Lowes, had no loss of work, and no incapacitation episodes. The C&P exam demonstrated bilateral pes planus, normal gait with heel and squat maneuvers, tenderness of the bilateral medial aspect of the foot to the heel, some guarding, tenderness of the left Achilles with normal alignment and no guarding and no abnormal calluses. X-ray of the left foot revealed a plantar calcaneal heel spur and minimal arthritic changes of the first metatarsal phalangeal joint.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB assigned a 10% rating coded 5310 for moderate pain under VASRD §4.73—Schedule of Ratings—Muscle Injuries. The Board agreed the evidence did not support the moderate severe pain criteria under this code for a higher rating. The VA assigned a 10% rating coded 5024 for painful or limited motion of a major joint or group of minor joints which is consistent §4.71a—schedule of ratings—musculoskeletal system. There is no evidence of documentation of incapacitating episodes or ratable peripheral nerve impairment which would provide for additional or higher rating. 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 foot 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 left foot condition and IAW VASRD §4.73, 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
Severe Debilitating Plantar Fasciitis	5399-5310	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120321, 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)