

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:  
CASE NUMBER: PD1200345  
BOARD DATE: 20121116

BRANCH OF SERVICE: NAVY  
SEPARATION DATE: 20040307

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty AC2/E-5 (AC2/Air Traffic Controller), medically separated for chronic right ankle instability (5299-5003). The CI did not improve adequately with surgical treatment to meet the physical requirements of his rating or satisfy physical fitness standards. He was placed on both light duty and limited duty and referred for a Medical Evaluation Board (MEB). Chronic ankle pain, identified in the rating chart below, was also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the chronic ankle instability condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The remaining condition, chronic ankle pain, was determined to be not unfitting and determined to be Category II (associated with the unfitting condition but not separately ratable). The CI made no appeals, and was medically separated with a 10% disability rating.

**CI CONTENTION:** In Item 3, the CI Contends, "My personal health has taken a turn since the injury. I have gained weight; have sleep apnea, anxiety, and other disorders."

**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 condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The remaining conditions rated by the VA at separation and listed on the DD Form 294 application 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 20031114			VA – All Effective Date 20040308			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic R Ankle Instability	5299-5003	10%	Chronic Instability, Right Ankle	5271	20%	STR
Chronic R Ankle Pain	Cat II					
↓No Additional MEB/PEB Entries↓			0% X 3 / Not Service-Connected x 5			STR
<b>Combined: 10%</b>			<b>Combined: 20%</b>			

**ANALYSIS SUMMARY:** The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time. 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.

**Chronic Right Ankle Instability Associated with Chronic Ankle Pain Condition.** The CI had a history of repeated right ankle injuries in February 1999 and September 2000 resulting in chronic ankle pain diagnosed as chronic sprain by an orthopedic surgeon. Arthroscopic surgery of the right ankle performed in May 2001 included excision of a loose joint body debridement of synovitis, and a lateral ankle reconstruction. He had persisting pain with running. On 23 January 2003, his primary care doctor noted decreased range-of-motion (ROM). The MEB narrative summary (NARSUM ) performed on 7 April 2003, 11 months before separation, documented CI had chronic right ankle pain status post surgery. The MEB NARSUM examination was normal except for "decrease of range of motion and strength in right ankle." No goniometric ROM or gait observation was reported. On 7 May 2003, a month later, "severe" ROM limitations were noted of the ankle by family practice. No goniometric measurements or mention of an antalgic or limping gait were found in the service treatment record (STR). No VA Compensation and Pension (C&P) examination proximate to separation is in evidence (VARD states CI did not show for his scheduled examination in June 2004). The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 10% rating under the VASRD 5299-5003 code (traumatic arthritis). The VA's 20% rating under the 5271 code (ankle, limited motion of) was based on a "severe" ROM impairment as noted in the STR. The Board considered whether the ankle impairment more nearly approximated the moderate (10%) or marked (20%) impairment under diagnostic code 5271 (limited motion). While there were no goniometric measurements of the ankle, all examinations reported limited motion which was characterized as severe by one examiner. The Board also considered the duty limitations of no prolonged walking or standing and CI report of inability to climb the 10 flights of stairs to the control tower the condition imposed by pain. In the absence of evidence to the contrary, the Board agreed that the degree of limited motion and functional impairment due to pain justified a 20% rating under code 5271. The Board concluded there were no other reasonable coding options for rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the right chronic ankle instability condition with residuals of pain (5271).

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**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 chronic right ankle instability associated with chronic ankle pain condition, the Board by a vote of 2:1 recommends a disability rating of 20%, coded 5271 IAW VASRD §4.71a. The single voter for dissent (who recommended no change to the PEB

adjudication) submitted the appended minority opinion. There were no other conditions within the Board's scope of review for consideration.

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**RECOMMENDATION:**

The Board recommends that the CI's prior determination be modified as follows, effective as of the date of his prior medical separation:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Ankle Instability	5271	20%
	<b>COMBINED</b>	<b>20%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120328, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

President  
Physical Disability Board of Review

MINORITY OPINION:

The Board members deliberated between a 10% and 20% for a final disposition. After a thorough review and examination of the whole recorded history, I believe the final rating of 10%, as rated by the PEB, accurately reflects the elements of the CI's disability at the time of his separation.

There is not a sufficient amount of evidence in the CI's treatment records to present a "severe" ROM impairment to warrant a higher disability rating of 20%. The MEB NARSUM exam was normal except for a "decrease of range of motion and strength in right ankle." There were no goniometric ROMs or gait observation reported. The only note in the STR that recorded a "severe" ROM limitation of the ankle was on 7 May 2003, by family practice. There were no goniometric measurements or mention of an antalgic or limping gait in the service treatment record.

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS  
COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44  
(b) PDBR ltr dtd 17 Dec 12  
(c) PDBR ltr dtd 5 Dec 12  
(d) PDBR ltr dtd 11 Dec 12  
(e) PDBR ltr dtd 26 Nov 12  
(f) PDBR ltr dtd 20 Nov 12

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (f).
2. The official records of the following individuals are to be corrected to reflect the stated disposition:
  - a. former USMC: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
  - b. former USMC: Disability separation with a final disability rating of 10 percent (increased from zero percent) with entitlement to disability severance pay.
  - c. former USN: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
  - d. former USN: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
  - e. former USMC: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
3. Please ensure all necessary actions are taken, included the recoupment of disability severance pay if warranted, to implement these decisions and that subject members are notified once those actions are completed.

Assistant General Counsel  
Manpower & Reserve Affairs)