RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX
CASE NUMBER: PD1200475
BOARD DATE: 20130124

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20021115

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPL/E-5 (0311/Infantry), medically separated for right ankle anterior impingement, Grade II and left ankle subtalar pain, possible sinus tarsi syndrome. The CI had a bilateral eversion injury while running in February 2001. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). Two other conditions, identified in the rating chart below, were also forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the right and left ankle conditions as unfitting, rated 10% and 10% respectively, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be Category III (not separately unfitting and do not contribute to the unfitting condition). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: "The branch only awarded 20%, but the VA awarded an additional 10%."

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 conditions L5-S1 radiculopathy and degenerative disc disease (DDD) as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting conditions. 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 20020826			**VA (7 months Pre-Separation)**– All Effective Date 20021116**			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
R Ankle Anterior Impingement, Grade II	5299-5003	10%	Chronic R Ankle Anterior Impingement with Mild Degenerative Changes per X-Ray	5271	10%*	STR 98-02
L Ankle Subtalar Pain, Possible Sinus Tarsi Syndrome	5299-5003	10%	Chronic L Ankle Posterior Tibial Tendonitis/Peroneal Tendonitis	5271	10%*	STR 98-02
L5-S1 Radiculopathy	CAT III		Lumbar Spine, DDD L5-S1 with Radiculopathy	5237	10%	STR 98-02
Degenerative Disc Disease	CAT III					
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 2			
Combined: 20%			**Combined: 30%**			

*Bilateral factor of 1.9 added for diagnostic codes 5271, 5271
** VA C&P not in evidence

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. 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 (DVA), 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.

Right and Left Ankle Condition. The CI had a bilateral eversion injury while running in February 2001 with slow improvement despite conservative treatment to include nonsteroidal medications, LIMDU, orthotics, and physical therapy (PT). Orthopedics initially evaluated the bilateral ankle pain with magnetic resonance imaging (MRI) of each ankle. The MRI of the right and left ankle/hindfoot revealed findings consistent with old chronic high-grade injuries of the tibiofibular ligament on the right and the lateral collateral ligament on the left. On the left there was also a low to intermediate injury to the anterior tibiofibular ligament. The remaining ligaments of both ankles were intact. There was an incidental finding of bony spurring about the fourth tarsometatarsal joint of the right foot and there was mild bony irregularity involving the lateral malleolus of the left ankle. Orthopedics attempted once to treat with injections of the ankles yet the pain remained unchanged which was described as intense, sharp, located over the anterolateral bilateral ankle, a 6-7 of 10 in intensity, left greater than right, worsened with walking, standing and prevented him from running. The CI additionally reported new pain of the 3rd, 4th and 5th toes and burning pain of the left anterior lateral foot. The orthopedic examiner diagnosed bilateral subtalar joint pain, possible left superficial peroneal nerve neuritis and recommended a bone scan. A month prior to the MEB narrative summary (NARSUM), the orthopedic exam demonstrated bilaterally; pain with eversion, sinus tarsi and lateral pain right greater than left, normal extensor hallicus longus strength, normal lower extremity reflex findings, superficial peroneal nerve tenderness on tapping (site not clear in the evidence), decreased sensation of the right great toe, a nontender back exam and negative straight leg raise test bilaterally (provocative test for lumbar disc disease). The examiner thus recommended a MRI and an electromyogram (EMG) of the lumbar spine (L-spine) to rule out herniated disc disease or pathology of the superficial peroneal nerve. The MRI of the L-spine and the EMG were not in evidence for review. The non-medical assessment documented the CI had not been able to serve in a billet appropriate for a Marine since March 2001 due to the inability to prolong walk, stand, tactical displacement or perform the required MOS training and physical fitness testing. 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.

Ankle ROM degrees	Ortho~12 Mo. Pre-Sep		NARSUM~7 Mo. Pre-Sep	
	Left	Right	Left	Right
Dorsiflexion (20 Normal)	FROM	20	-	Mildly dec
Plantar Flexion (45)	FROM	45	-	-
Comment	Pain with extreme ranges of motion	Pain with extreme ranges of motion;	Pain with inversion	Silent to painful motion
§4.71a Rating	10%*	10%*	10%*	10%

*Conceding painful motion §4.59

The MEB NARSUM, dictated 7 months before separation, documented the CI's reported wearing of braces for activities The MEB exam demonstrated; right ankle tenderness over lateral malleolus and lateral joint line; no crepitus, no instability and no joint effusion. The left ankle demonstrated; tenderness in the sinus tarsi and over the superficial peroneal nerve where there was a positive Tinel's sign (provocative test for irritated nerve) and pain with inversion. The MEB examiner documented the bone scan revealed some increase uptake in the L5-S1 area and that the foot and ankle specialists felt that his left-sided foot pain may be related to the superficial peroneal nerve (SPN). The MEB examiner further documented the CI had undergone epidural steroid injections which had decreased his back pain but had not resolved his left foot pain. There were no service treatment records (STR) in evidence to which corroborate the care for the back as documented by the MEB examiner. A VA Compensation and Pension exam was not completed and the VA rating decision was based on the STRs.

The Board directs attention to its rating recommendation based on the above evidence. This rating includes consideration of functional loss lAW VASRD §4.10 (Functional impairment), §4.40 (Functional loss), and §4.59 (Painful motion). The PEB and VA chose different coding options for the condition, but this did not bear on rating and both were §4.71a—Schedule of ratings–musculoskeletal system. The PEB assigned each ankle 10% coded analogous with the ankle diagnostic codes to the diagnostic 5003 code (arthritis, degenerative) for painful motion and positive X-ray findings which is consistent with §4.71a. The Board agreed there was no evidence of incapacitating episodes to support additional or a 20% rating under the 5003 code. The VA assigned 10% each ankle coded 5271 (limitation of ankle motion) for likely moderate limitation as the specifics of the rating decision were not in evidence. The Board considered the VA's chosen code 5271 and agreed the evidence not support the higher 20% criteria for marked limited motion of the ankles. Finally the Board considered VASRD code 8722 for the left ankle. While the evidence suggests a herniated disc disease to implicate the SPN as the source of left ankle and foot pain, the MEB exam does not reflect neurologic signs for lumbar disc disease. The evidence, however, may also suggest a pathologic process of the distal superficial peroneal nerve with the positive Tinel's sign. The Board agreed therefore the left ankle condition could either be coded under a musculoskeletal code or a neurologic code but not both, IAW VASRD §4.14 (Avoidance of pyramiding). Therefore, the Board considered the 8722 code and agreed the evidence does not support the higher 20% rating for severe neuralgia. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the right and left ankle condition.

Contended PEB Conditions. The conditions adjudicated as Category III (not separately unfitting and do not contribute to the unfitting condition} by the PEB were L5-S1 radiculopathy and DDD. 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 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. None of these conditions were in evidence on a LIMDU. These conditions were incidentally diagnosed while further evaluating the left ankle condition for possible lumbar disc disease or S1 pathology without any evidence of back pain. This is further corroborated with the final orthopedic STR entry after this exam which reflects the CI was forwarded to the MEB for only bilateral unresolved ankle pain. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any 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 and left ankle condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended L5-S1 radiculopathy and the DDD conditions, the Board unanimously recommends no change from the PEB determinations. 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 Ankle Anterior Impingement, Grade II Condition	5299-5003	10%
Left Ankle Subtalar Pain, Possible Sinus Tarsi Syndrome Condition	5299-5003	10%
COMBINED (w/ BLF)		**20%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120604, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXX
Director
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 08 Feb 13

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:

- XX former USMC
- XX former USMC
- XX former USN
- XX former USMC
- XX former USMC
- XX former USN

XXXXXXXXX
Assistant General Counsel
(Manpower & Reserve Affairs)