RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: MARINE CORPS
CASE NUMBER: PD1200535 SEPARATION DATE: 20020228
BOARD DATE: 20130118

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCPL/E-3 (9971/Basic Marine), medically separated for bilateral upper extremity paresthesias status post (s/p) suboccipital craniectomy (SOC) duraplasty secondary to Chiari malformation. The CI fainted during a vaccination in 1999, struck his head and suffered loss of consciousness (LOC) for about 10 seconds with amnesia for the incident. He developed post-concussive headaches and was placed on limited duty (LIMDU). During the LIMDU, he was found to have a congenital Chiari malformation while being evaluated for the headache. He subsequently had suboccipital craniectomy and duraplasty for the Chiari malformation. He was also noted to have bilateral upper extremity paresthesias following the concussion. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. Again, the CI was placed on LIMDU and referred for a Medical Evaluation Board (MEB). The MEB determined "status post suboccipital craniectomy duraplasty" as medically unacceptable. It was the only condition forwarded to the Informal Physical Evaluation Board (IPEB) for adjudication. The IPEB adjudicated the condition as unfitting on 10 January 2001, but determined the condition to have existed prior to service (EPTS) without service aggravation and therefore was not ratable. The CI appealed his IPEB. His first Formal PEB (FPEB), on 13 March 2001, found him unfit for a cranial defect and rated him at 10%. The CI filed a Petition for Relief (PFR). The Secretary of the Navy's Council of Review Boards denied his PFR, determined his condition to be EPTS, and not service aggravated. Because this was an adverse finding, the CI was automatically granted a second FPEB. This was conducted on 27 November 2001 with legal representation for the CI. The FPEB noted that the rating of the suboccipital skull defect, which precluded the wear of a Kevlar helmet, was prohibited by SECNAVINST 1850.4D, Enc (9), para 1.(25)(e), pg 9-17 as a known and predictable side effect of the surgical treatment of the underlying EPTS condition. The CI was rated for bilateral upper extremity (BUE) paresthesias, 10% each extremity, which followed a head injury and concussion and preceded the surgery. The second FPEB also noted that the post-concussive headaches, initially severe and incapacitating, for which the CI contended, had improved, and would not be considered unfitting and were therefore not ratable. The CI made no further appeals and was then medically separated with a 20% combined disability rating.

CI CONTENTION: The CI listed the following conditions: cervical strain, paresthesias upper right extremity, attention deficit, residuals scar-post suboccipital craniotomy duraplasty, hyperactivity, chiari malformation, paresthesias left upper extremity, headaches, TBI, Lumbar strain w/nerve damage. The CI elaborated no specific contention in his application.

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 Board determined that the unfitting suboccipital craniectomy duraplasty and subsequent scar as well as the BUE paresthesias to be within its purview. The other requested conditions (cervical strain, attention deficit,

hyperactivity, headaches, TBI, lumbar strain with nerve damage) are outside the purview of the Board. 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 20011127			VA (13 Mos. Pre-Separation) – All Effective Date 20030301			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
S/P suboccipital craniectomy duraplasty secondary to Chiari Malformation, RIGHT	8516	10%	RUE Paresthesias	8716	0%*	20010126
S/P suboccipital craniectomy duraplasty secondary to Chiari Malformation, LEFT	8516	10%	LUE Paresthesias	8716	0%*	20010126
↓No Additional MEB/PEB Entries↓			Chiari Malformation, s/p suboccipital craniectomy duraplasty w/residual headaches	8099-8009	10%**	20010126
			Cervical Strain	5299-5290	10%#	20010126
			Scar, skull s/p suboccipital craniotomy duraplasty	7800	10%	20010126
			0% X 0 / Not Service-Connected x 1			20010126
Combined: 20%			**Combined: 30%**			

*The VARD dated 20071212 for a new claim then changes and rates as listed in chart above-breaking out each upper extremity and rating each at 0% effective 20020301 and then increasing them to 10% effective 20070309.
**The Original VARD has 8099-8008 Chiari malformation, s/p SOC duraplasty with residual paresthesias of BUE rated 10%. Increased to 30% effective 20091217 and coded 8099-8100. Increased to 50% effective 20101215.
#Increased to 20% effective 20091217.
TBI added at 10% effective 20101215.

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 Veterans Affairs Schedule for Rating Disabilities (VASRD) standards, based on severity at the time of separation. The Board also noted that DoDI 1332.38; E3.P4.5.6. "Treatment of Pre-Existing Conditions" specifies that "generally recognized risks associated with treating preexisting conditions shall not be considered service aggravation."

S/P SUBOCCIPITAL CRANIECTOMY DURAPLASTY SECONDARY TO CHIARI MALFORMATION Condition. On 19 August 1999, the day after accession, the CI was receiving vaccinations when he fainted and hit his head with a 10 second LOC and amnesia for the event. He had a small laceration, but his examination was otherwise unremarkable. He fully recovered and was able

to return to training within a few days. He again presented 20 December 1999 complaining of headaches and fainting. At a neurology referral on 6 January 2000, he gave a history of persistent headaches since the trauma which were followed by a LOC of several seconds to 2 minutes. The neurological examination including sensation was normal. He was evaluated with magnetic resonance imaging (MRI) and magnetic resonance angiogram, electroencephalogram, Holter monitor, echocardiogram, and found to not to have an underlying neurological or cardiac problem on these tests. Despite medications, his symptoms persisted and he was further evaluated with a CAT scan and MRI of the head; the latter showed cerebellar herniation and a diagnosis of congenital Chiari malformation were made. A 24 April 2000 neurology examination documented normal objective findings, but subjective numbness of the fingertips. During a 1 June 2000 neurology evaluation, his examination was again normal. On 20 June 2000 he was evaluated by neurosurgery and compression of the brainstem from the herniation was determined. Slight weakness of the triceps and biceps was noted as well as slightly impaired joint position sense. The CI's 29 June 2000 neurology evaluation noted non-dermatomal subjective sensory complaints. On 17 July 2000, a suboccipital craniectomy (SOC) with duraplasty was performed to relieve the pressure. A 11 September 2000 neurology evaluation documented decreased sensation in the ulnar distribution of the hands. He did well post-operatively although he did have an episode of viral meningitis on 1 November 2000. Although his pre-operative headaches improved, he continued to have difficulty with the wear of a Kevlar helmet and also noted duly impairment from sensory disturbances which were in an ulnar distribution bilaterally. The MEB narrative summary was dictated on 4 October 2000, 17 months prior to separation, by the treating neurosurgeon. He noted that the post-operative skull defect and scar interfered with the wear of the Kevlar helmet. The motor and cranial nerve examinations were normal. Sensation was not addressed. At the MEB examination on 27 October 2000, the CI reported no specific complaints. The MEB examiner made no specific annotations regarding the neurological examination. At the VA Compensation and Pension (C&P) examination on 26 January 2001, 13 months prior to separation, the CI reported a history of headaches and forearm numbness without comment on current symptoms. He did note chronic neck pain with weakness, stiffness, fatigue and lack of endurance. On examination, he had normal posture and gait. A disfiguring 12 cm post-surgical scar was documented. The left dominant CI was noted to have normal strength in BUE and both lower extremities (BLE). Reflexes were normal, but sensation decreased to pinprick in the forearms. No comment was made if it was in a dermatomal or peripheral nerve distribution. A 29 January 2001 neurology note documented that the CI was symptom free for headaches. He had a narrow gait, but some difficulty with tandem walking. Muscle strength and tone were normal. Sensation was decreased to pinprick over BUE just above the elbow in a glove distribution. A C&P examination on 9 July 2007 documented a normal sensory examination in all four extremities. The 29 January 2010 C&P examination noted that the sensory examination was inconsistent.

The Board directs attention to its rating recommendation based on the above evidence. The PEB determined that the s/p SOC with duraplasty secondary to Chiari malformation was unfitting, and coded it 8516 for a mild impairment of the ulnar nerve. It noted in the discussion that the sensory loss could be attributed to the underlying Chiari malformation, but that the history of the head trauma and concussion preclude a finding of natural progression. The Board noted that the use of code 8616 for ulnar neuritis would have been more accurate, but that this provides no advantage to the CI. The PEB also determined that the Chiari malformation and attendant surgery and post-operative residuals to be EPTS conditions and not ratable. Type I Chiari malformation is considered to be a congenital condition and, by definition, EPTS. IAW DoDI 1332.38; E3.P4.5.6., the treatment and sequelae of an EPTS condition are not considered service aggravation for the purpose of disability rating. The VA rated the Chiari malformation with BUE paresthesias at 10%, coding it analogously to 8008, thrombosis of brain vessels. The VA subsequently changed the coding to analogous to 8100, migraine headaches, and increased the rating to 30% effective 17 December 2009 and 50% effective 15 December 2010. The 12 December 2007 VA rating decision separated the paresthesias for each upper extremity and

rated them 0% effective 1 March 2002 (separation) and 0% from 9 March 2007. Both were coded 8716 for ulnar neuralgia. The Board first considered the PEB adjudication that the Chiari malformation was congenital and therefore an EPTS condition and concurred with this adjudication. Accordingly, under DODI 1332.38, the surgical residuals are also not ratable. The Board then considered the bilateral paresthesias of the upper extremities. It noted that the neurology examinations showed a variable distribution of the loss. Subsequent VA examinations remote from separation were either normal or inconsistent. The action officer opined that this is not consistent with a permanent neurological deficit at the time of separation. However, DoDI 6040.44 states that the Board cannot recommend a lower total combined rating than that adjudicated by the PEB. 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 Chiari malformation, s/p surgery, with bilateral upper extremity sensory deficits.

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 s/p suboccipital craniectomy duraplasty secondary to Chiari malformation condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended scar condition, the Board unanimously recommends no change from the PEB determination as an EPTS related condition. 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
Status Post Suboccipital Craniectomy Duraplasty with Right Upper Extremity Sensory Deficit	8516	10%
Status Post Suboccipital Craniectomy Duraplasty with Left Upper Extremity Sensory Deficit	8516	10%
Post-operative scars	EPTS	---
	COMBINED (w/BLF)	**20%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120505, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXX
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 31 Jan 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:

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

XXXXXXXXXXXXXX
Assistant General Counsel
(Manpower & Reserve Affairs)