

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1200545
BOARD DATE: 20130201

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20011231

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty L.Cpl./E-3 (9900/Recruit), medically separated for osteochondritis dissecans, left posteromedial talus, surgically treated twice. The CI sustained an ankle sprain on 11 October 2000, 3 months after accession, and was found to have an osteochondral fracture on X-ray. Conservative management was unsuccessful and on 8 January 2001, she underwent chondroplasty. Despite rehabilitation, she developed chronic pain and underwent open debridement on 30 May 2001. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty or satisfy physical fitness standards. She was referred for a Medical Evaluation Board (MEB). "Osteochondritis dissecans, left posteromedial talus, operated x 2" was forwarded to the Physical Evaluation Board (PEB). The MEB forwarded no other conditions for adjudication. The PEB adjudicated "Osteochondritis dissecans, left posteromedial talus, operated x 2" as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: "Since I was separated I had 2 additional surgeries [SP], 2 spinal injections several different medications & years of PTSD therapy. I have problems falling asleep & staying asleep I have nightmares I have lost range of motion in my Left-ankle I have nerve damage in result to my surgeries (The pain & loss of feeling is moving up my limb I have arthritis [SP] in my Left ankle I have had Knee Surgery on my left Knee in order to take needed cartilage [SP] and place in my left ankle."

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 osteochondritis dissecans condition, as requested for consideration, meets the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below. The other requested conditions [PTSD, sleep disturbance, nightmares, nerve damage, arthritis, left Knee] 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 20011024			VA (~1 Mo. Post-Separation) – All Effective Date 20020101			
Condition	Code	Rating	Condition	Code	Rating	Exam
OCD, Left ankle	5299-5003	10%	Residuals of Left Ankle Fracture	5271	10%*	STR
↓No Additional MEB/PEB Entries↓			0% X 1 / Not Service-Connected x 4			
Combined: 10%			Combined: 10%			

*Increased to 20% effective 20070201. Post-surgical temporary 100% x 2 on 20060814 and 20070920 for convalescence

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. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board's authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Osteochondritis Dissecans, Left Posteromedial Talus, Operated x 2 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.

+	Ortho ~6 Mos. Pre-Sep		OT ~4 Mos. Pre-Sep		MEB ~3 Mos. Pre-Sep	
	Left	Right	Left	Right	Left	Right
Dorsiflexion (0-20)	0		50	50--	20	30
Plantar Flexion (0-45)	10		10	20--	20	30
Comment	Five weeks post op		Ambulation pain free			
§4.71a Rating	20%		10%		10%	

Note: VA C&P Exam dated 20030916 is the closest VA C&P Exam closest to DOS p. 53. It is 21 months post-separation

The CI sustained a left ankle sprain and was found to have an osteochondral defect of the medial talar dome with a small avulsed fragment. She failed conservative management and was treated with arthroscopic debridement and drilling of the cartilage on 8 January 2001. Despite continued rehabilitation, she had continued pain and had open debridement on 30 May 2001. Post-operatively, she noted numbness of the left foot, but electrophysiologic studies were normal. She continued to have problems with impact activities and biking. The narrative summary dictated on 24 September 2001, 3 months before separation, by her treating orthopedic surgeon and 4 months after her second surgery. The CI reported she was comfortable walking, but had a deep ache in her ankle with increased activity like running or biking. She also noted pain with barometric changes. Her incision was well healed. The ROM measurements are above. The examiner also noted that subtalar motion was slightly restricted on the left. At the MEB examination a week later on 2 October 2001, the CI reported pain with 10-15 minutes of walking. On examination, she had normal strength and was without laxity. The ROM was full. Some edema was noted. There was not a VA Compensation and Pension (C&P) exam until 21 months after separation. The CI noted continued pain and that walking was limited to 5-10 minutes. On examination, she had a normal gait. The ankle was slightly swollen compared to the right. The ROM was slightly decreased from the last ROM on active duty at 15 degrees dorsiflexion and 30 degrees plantar flexion. There was no tenderness and the drawers was negative (normal).

The Board directs attention to its rating recommendation based on the above evidence. The VA based its initial rating on the service records. Both the PEB and VA rated the ankle at 10%, but coded it 5299-5003 (analogous to degenerative arthritis) and 5271 (limited ROM of the ankle), respectively. The Board considered these codes as well as other codes available for the ankle. None offered a route to a higher rating than that assigned 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 left ankle 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 ankle condition 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 there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Osteochondritis Dissecans, Left Posteromedial Talus, Operated x 2	5299-5003	10%
	RATING	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120603, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

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Acting 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 26 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:

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

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Assistant General Counsel
(Manpower & Reserve Affairs)