

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1200615
BOARD DATE: 20130108

BRANCH OF SERVICE: MARINES
SEPARATION DATE: 20020405

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PVT/E-1 (0151/Admin Clerk) medically separated for right ankle instability. He injured his right ankle in January 1999 while playing basketball. He was treated, but did not improve adequately to fully perform his military duties or meet physical fitness standards. He was put on limited duty and underwent a Medical Evaluation Board (MEB). The MEB found his ankle medically unacceptable due to instability and anterior impingement. The CI was referred to a Physical Evaluation Board (PEB), who found the right ankle instability unfitting and rated it 0%. The other right ankle condition (anterior impingement) was adjudicated as Category II (contributing to the unfitting condition). The CI accepted the PEB findings and was medically separated with a 0% disability rating.

CI CONTENTION: “The rulings for these conditions should be changed because they occurred while I was in the service and prevented me from re-enlisting and have severely limited my current and future job opportunities. Due to torn ligaments, scar tissue and etc. this injury is permanent as listed in the findings of the Physical Evaluation Board which I have enclosed.”

SCOPE OF REVIEW: The Board’s scope of review as defined in DoDI 6040.44, 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 two right ankle conditions (right ankle instability & right ankle anterior impingement) meet the criteria prescribed in DoDI 6040.44, and are accordingly addressed below. No other conditions are within the Board’s purview. Any condition outside the Board’s defined scope of review may be eligible for future consideration by the Board for Correction of Naval Records.

RATING COMPARISON:

Navy PEB – Dated 20010420			VA (12 weeks Post-Separation) – Effective 20020406			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Ankle Instability	5311	0%	Right Ankle Sprain	5271	10%*	20010214
Right Ankle Anterior Impingement	Category II		No VA Entry			
↓No Additional MEB/PEB Entries↓			Pseudofolliculitis Barbae (PFB)	7814	10%	20010214
Combined: 0%			Combined: 20%*			

*VA rating for right ankle condition was later increased to 20%, by a Decision Review Officer (DRO) decision dated 20030827

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the significant impact his ankle condition has had on his quality of life. It is noted for the record that the Board is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to

compensate members for future severity or potential complications of conditions. That role and authority is granted to the Department of Veterans Affairs (DVA). The Board evaluates DVA evidence in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation.

Right ankle instability. In January 1999, this Marine suffered an inversion injury to his right ankle while playing basketball. There was a “pop” and immediate swelling. After that injury, he re-injured the right ankle five times. He was treated, but in spite of treatment his right ankle problems persisted, and an MEB was initiated. His MEB clinical evaluation was on 13 December 2000. At that exam, his gait was normal. He was able to do toe-rise on the left, but not on the right. There was no tenderness to palpation (TTP) of his tendons, and all tendons were intact. Slight weakness was noted with eversion of the right ankle. Anterior drawer testing of the right ankle revealed a “clunk” which was not present on the left. Stress X-rays confirmed ligamentous laxity on the right. Range-of-motion (ROM) testing was done, and is summarized in the chart below. In February 2001, the CI had a VA Compensation and Pension exam. At that exam, his gait was normal. There was minimal swelling and some TTP of the right ankle. Motor strength was slightly decreased. Right ankle ROM is summarized in the chart below.

Right Ankle ROM (In degrees)	MEB ~ 16 Mos. Pre-Sep (20001213)	VA C&P ~ 14 Mos. Pre-Sep (20010214)
Dorsiflexion (20° is normal)	20°	20°
Plantar Flexion (45° is normal)	40°	45°
Comment	Painful motion	No mention of pain with motion
§4.71a Rating	10%*	0%

*10% based on VASRD §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all evidentiary information available. The right ankle condition was essentially non-compensable based on the Veterans Affairs Schedule for Rating Disabilities (VASRD) §4.71a diagnostic codes for the ankle (5270 through 5274). There is no specific VASRD code for ankle instability. However; IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to weakness or painful motion of a major joint. There was no path to a rating higher than 10% for the right ankle since there was no evidence of ankylosis, malunion, or other significant joint abnormality. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board recommends a disability rating of 10% for right ankle instability.

Other PEB condition. Right ankle anterior impingement (AI) was adjudicated by the Navy PEB as Category II (contributing to the unfitting condition). Right ankle AI was reviewed by the action officer and considered by the Board. There was no indication from the record that this second ankle condition, in and of itself, significantly interfered with satisfactory performance of duty requirements. Therefore, it does not constitute a separately unfitting condition. It is appropriate for right ankle AI to be adjudicated as Category II (contributing to the unfitting condition). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board determined that there was insufficient cause to recommend a change in the PEB adjudication of the right ankle AI 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 right ankle instability, the Board unanimously recommends a disability rating of 10%, coded 5299-5271; IAW VASRD §4.40, §4.45, §4.59, and

§4.71a. In the matter of the right ankle anterior impingement, the Board unanimously recommends no change in the PEB adjudication as Category II. There were no other conditions within the Board's scope of review for consideration.

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

UNFITTING CONDITION	VASRD CODE	RATING
Right ankle instability	5299-5271	10%
	COMBINED	10%

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.

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Director
Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44
(b) PDBR ltr dtd 11 Feb 13 ICO
(c) PDBR ltr dtd 7 Feb 13 ICO
(d) PDBR ltr dtd 27 Feb 13 ICO
(e) PDBR ltr dtd 7 Mar 13 ICO

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).

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 ten (10) percent (increased from zero percent) with entitlement to disability severance pay effective 5 April 2002.

b. former USMC: Disability retirement with a final disability rating of 30 percent (increased from 20 percent) with retroactive placement on the Permanent Disability Retired List effective 31 January 2002.

c. former USMC: Disability separation with a final disability rating of ten (10) percent (increased from 0 percent) with entitlement to disability severance pay effective 15 July 2003.

d. former USMC: Disability separation with a final disability rating of 40 percent (increased from 20 percent) with retroactive placement on the Permanent Disability Retired List effective 31 July 2003.

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.

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Assistant General Counsel
(Manpower & Reserve Affairs)