

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200789
BOARD DATE: 20130103

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20080128

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty DC2/E-5 (Damage Control Man), medically separated for a left distal radius fracture. The condition was a consequence of a motorcycle accident in September 2005 and required multiple surgical procedures. Despite lengthy occupational therapy and surgical repairs the CI did not improve adequately with treatment to meet the physical requirements of his rating and was referred for a Medical Evaluation Board (MEB). The MEB forwarded other closed fractures of distal end of radius, malunion of fracture and nonunion of fracture to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW SECNAVINST 1850.4E. Triangular fibro-cartilage complex tear (TFCC) and left proximal fibula fracture, listed in the rating chart below, were also identified by the MEB. The IPEB adjudicated the left and right distal radius fractures as unfitting, rated 10% each with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The TFCC tear with ulnar styloid non-union, right distal radius fracture and status post (s/p) motorcycle accident with bilateral distal radius fractures were determined to be related Category II diagnoses. Left proximal fibular fracture was considered an uncategorized diagnosis. A Formal PEB (FPEB) upheld the 10% rating for the left distal radius fracture and the related Category II condition, TFCC tear; but the right distal radius fracture and the left proximal fibular fracture were adjudicated as Category III: conditions that are not separately unfitting and do not contribute to the unfitting condition. The CI was medically separated with a 10% disability rating.

CI CONTENTION: "The injuries received rendering the member unfit include bilateral distal radius fractures, bilateral ulnar styloids, left fibular fracture, right knee lateral meniscus tear, and moderate traumatic brain injury with residual cognitive disorder. The first PEB conducted on or around 27 June 2007, rendered a combined disability rating of 20%. While the member disagreed with the 20% rating, the member requested a formal PEB hearing. The members of the formal PEB hearing conducted on 11 October 2007 did not hear all of the accounts that make the member unfit for duty and then lowered the past PEB finding from 20% to 10%. The injuries that were not accounted for included the moderate traumatic brain injury with residual cognitive disorder and right knee lateral meniscus tear. Also concluding the right wrist injuries are not unfitting were improperly decided. The Department of Veterans Affairs current ratings are proof of the facts that the member should have been found unfit for active duty with a disability rating 30% or greater. As a Damage Controlman in the US Navy, the member could not have completed the required tasks for the high demanding position and requirements. Due to the traumatic brain injury, the member experiences impaired thinking, decrease in work efficiency, periods to preform occupational tasks, memory impairment, difficulty concentrating, and fatigue. Since the injuries occurred, the member experiences continued pain in the affected extremities. Even though, the right knee lateral meniscus tear was repaired while on active duty, the meniscus continues to tear. Continued service in the US Navy was impossible for the member. But the disability rating given was incomplete and not accurate. The member is requesting the PDBR to review and reevaluate the case at hand for medical retirement with a disability rating of 30% or greater." [sic]

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 right distal radius fracture and left proximal fibular fracture 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 left distal radius fracture and related TFCC tear conditions. The right knee lateral meniscus tear and traumatic brain injury (TBI) with residual cognitive disorder 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 FPEB – Dated 20071011			VA (8 Mos. Post-Separation) – All Effective Date 20080129			
Condition	Code	Rating	Condition	Code	Rating	Exam
Left Distal Radius Fracture	5215	10%	Left Wrist Degenerative Joint Disease	5215-5212	10%	20081009
TFCC Tear, Ulnar Styloid Nonunion	CAT II		Right Wrist Fracture	5215-5212	10%	20081009
Right Distal Radius Fracture	CAT III		Left Knee Strain	5014-5260	10%	20081009
Left Proximal Fibular Fracture	CAT III		Cognitive Disorder, TBI	8045-9304	30%	20080701
↓No Additional MEB/PEB Entries↓			Lumbar Strain	5237	10%	20081009
			Neck Strain	5237	10%	20081009
			Right Knee Strain	5014-5260	10%	20081009
			0% X 3 / Not Service-Connected x 2			20081009
			Combined: 60%			
Combined: 10%						

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 his degree of impairment vary over time. Furthermore, with regard to the CI’s assertion that the FPEB’s adjudication of the right wrist was improperly decided, the Board must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to suspected service improprieties in the disposition of a case.

Left Distal Radius Condition. The CI is right hand dominant. There were two 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.

Left Wrist ROM	MEB ~8 Mo. Pre-Sep	VA C&P ~8 Mo. Post-Sep
Dorsiflexion (0-70°)	57°	40°
Palmar Flexion (0-80°)	29°	25°
Ulnar Deviation (0-45°)	18°	30°
Radial Deviation (0-20°)	10°	10°
Forearm Pronation (0-80°)	56°	--
Forearm Supination (0-85°)	50°	--
Comment		+Painful motion
§4.71a Rating	20%	10%

The narrative summary (NARSUM) noted an inability to carry more than 10 pounds, perform push-ups, turn wrenches or use his hands for more than 15 minutes due to pain. Examination noted well healed surgical scars of the wrist; redness and swelling were also present. At the VA Compensation and Pension (C&P) exam performed 8 months after separation, the CI reported pain severity at rest of 2 on a 0-10 scale which increased to 6/10 with activity. He was unable to do push-ups. Examination revealed no loss of motion with repetition.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 10% rating under a 5215 code (wrist, limitation of motion of). Although the dorsiflexion and palmar flexion in evidence was non-compensable under that code, there was sufficient evidence of pain with use (§4.40) and painful motion (§4.59) to justify a 10% rating IAW §4.71a. The VA's 10% rating was assigned under a combination 5212 code (radius, impairment of; Malunion of, with bad alignment). While the respective ratings were appropriate under the codes used by the PEB and the VA, the Board considered an alternate coding pathway to a higher rating. Under the 5213 code (elbow and forearm, supination and pronation, impairment of), motion lost beyond the last quarter of the pronation arc warrants a 20% rating. Since full pronation is 80 degrees, the 56 degree pronation reported by the NARSUM examiner meets this higher rating criterion. The Board agreed that the left triangular-fibrocartilage complex tear with ulnar styloid nonunion condition was properly subsumed under the unfitting distal radius fracture condition as a related Category II diagnosis. 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 left distal radius fracture condition, coded 5213.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were right distal radius fracture and left proximal fibular fracture. 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 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. These conditions did not carry attached duty limitations and were not implicated in the non-medical assessment (NMA). Both conditions were reviewed and considered by the Board. There was no indication from the record that either 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 either 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 left distal radius fracture condition, the Board unanimously recommends a disability rating of 20%, coded 5213 IAW VASRD §4.71a. In the matter of the contended right distal radius fracture and left proximal fibular fracture, the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board's scope of review for consideration.

RECOMMENDATION: The Board 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
Left Distal Radius Fracture	5213	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120614, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

President
Physical Disability Board of Review

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 Feb 12
(c) PDBR ltr dtd 26 Dec 12
(d) PDBR ltr dtd 8 Jan 13 ICO
(e) PDBR ltr dtd 14 Jan 13 ICO

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

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. former USN: Disability separation with a final disability rating of 10 percent (increased from 0 percent) with entitlement to disability severance pay effective the date of discharge.

b. former USMC: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay effective the date of discharge.

c. former USN: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay effective the date of discharge.

d. former USN: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay effective the date of discharge.

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)