

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX  
CASE NUMBER: PD1200821  
BOARD DATE: 20130212

BRANCH OF SERVICE: NAVY  
SEPARATION DATE: 20040130

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve E-5 (E02/Equipment Operator [Seabee]), medically separated for comminuted right intertrochanteric and subtrochanteric fractures, status post (s/p) open reduction internal fixation (ORIF). The CI was involved in an ATV accident on 24 November 2001 while on liberty and sustained severe injuries to his right femur and clavicle. Despite a right hip ORIF, orthopedic evaluations, aggressive physical therapy (PT), medications, and a built up shoe, the CI failed to meet the physical requirements of his rating or satisfy physical fitness standards. The CI was placed on light duty and referred for a Medical Evaluation Board (MEB). The MEB forwarded "Comminuted Right Intertrochanteric and Subtrochanteric Fractures, Status Post (S/P) Open Reduction Internal Fixation (ORIF) and Left Clavicular Fracture" to the Informal Physical Evaluation Board (IPEB). The IPEB adjudicated the "Comminuted Right Intertrochanteric and Subtrochanteric Fractures, S/P ORIF" condition as unfitting, rated 10% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The PEB also determined the left clavicular fracture condition was Category III (conditions not separately unfitting and do not contribute to the unfitting condition). The CI appealed to the Formal PEB (FPEB), which increased the rating of the hip fracture to 20%. The CI made no further appeals and he was then medically separated with a 20% disability rating.

**CI CONTENTION:** "Accident while on active duty, bolt in hip joint, plate and screws in femur, after accident administrative duty in Command. Command fought to retain me. Panel denied."

**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. 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 20030625			VA (3 Mos. Post-Separation) – All Effective Date 20040131			
Condition	Code	Rating	Condition	Code	Rating	Exam
Comminuted Right Intertrochanteric and Subtrochanteric Fractures, Status Post ORIF	5299-5003	20%	Residual, Fracture; Femur, Right, Post-Operative with DJD Right Hip, and Right Knee Loss of motion	5255	20%	20040402
Left Clavicular Fracture	CAT III		Residual Fracture left Clavicle	5201-5010	10%	20040402
<b>Combined: 20%</b>			<b>Combined: 30%</b>			

**ANALYSIS SUMMARY:** The Board's authority as defined in DoDI 6040.44, resides in evaluating the fairness of Disability Evaluation System (DES) fitness determinations and rating decisions for

disability at the time of separation. The Board utilizes VA 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. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Comminuted Right Intertrochanteric and Subtrochanteric Fractures, Status Post (ORIF) Condition. There were three 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.

Right Hip (Thigh) ROM	MEB~15 Mo. Pre Sep	Ortho ~10 Mo. Pre-Sep	VA C&P ~2 Mo. Post-Sep
Flexion (0-125°)	0-110°	90°	65° (67°)
Extension (0-20°)	-	-	-
External Rotation (0-45°)	0-45° (70°)	40°	20° (23°)
Internal Rotation (0-45°)	0-30°	0-30°	20° (22°)
Abduction (0-45°)	-	0-30°	30°
Adduction (0-45°)	-	-	15° (16°)
Comment	sensation intact bilaterally; right leg length shortening 1 inch	Wears built up shoe on right; "hip pain"; motor 5/5 right lower extremity; sensation intact bilaterally	Walks with limp; scar 14 inches long x ½ inch wide; right leg 1 inch shorter
§4.71a Rating	20%	20%	20%

In November 2001, the CI suffered a comminuted right Intertrochanteric fracture that was confirmed by X-ray. He underwent a right hip ORIF surgical procedure. Subsequently, the CI developed a right hip methicillin resistant staphylococcus aureus (MRSA) infection that required several outpatient visits for intravenous medication (IV). The CI had a bone scan that verified the hardware in place, a fracture in the right greater trochanter, and a moderate focally increased uptake in the right femoral head consistent with infection. Magnetic resonance imaging (MRI) 6 days later confirmed a right femoral head abscess. The CI underwent a right hip needle aspiration that was negative for purulent fluid. The CI was referred to podiatry for a lift shoe due to a discrepancy of a one-inch right limb shortening. The initial MEB narrative summary (NARSUM) examination approximately 15 months prior to separation, which was discussed in the FPEB rationale, indicated that there was right leg shortening of one inch. The NARSUM physical exam findings are summarized in the chart above. A reevaluation completed by orthopedics in April 2003, approximately 10 months prior to separation, was discussed in the FPEB hearing rationale. This examination indicated that the CI wore a built up shoe on the right foot and had pain in the hip and knee that was aggravated with prolonged walking and walking up hill. The physical exam findings are summarized in the chart above. The CI had five non-medical assessments (NMA) between 2002 and 2003 and all of the NMA's recommended that the CI be continued in his reserve status. The VA Compensation and Pension (C&P) examination documented a right leg limp. The C&P physical exam findings are summarized in the chart above.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the comminuted right intertrochanteric and subtrochanteric fractures, s/p (ORIF) condition analogous to 5003 [Arthritis, degenerative (hypertrophic or osteoarthritis)] and rated 10%. The VA coded the residual, fracture; femur, right, post-operative with degenerative joint disease (DJD) right hip and right knee loss of motion conditions 5255 Femur, impairment of and rated 20% (With moderate knee or hip disability). The FPEB increased the Informal PEB (IPEB) 10% rating to 20% but continued the same analogous coding. The rationale for the 20% rating with VASRD code 5299-5003 is unclear.

All exams demonstrated limited hip flexion and internal rotation ROM. The initial NARSUM, orthopedics, and the C&P examinations noted that the right leg was one inch shorter than the left and the orthopedics and C&P examinations specifically documented that the CI wore a right foot built up shoe. Although the CI wore the built up shoe, the C&P exam further indicated that the CI walked with a limp. The Board agreed that the CI's disability condition more aligned with the 5255 coding (Femur, impairment of); however, there is no advantage to the CI in changing the code as the rating would remain at 20%. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the comminuted right intertrochanteric and subtrochanteric fractures, s/p (ORIF).

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**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 comminuted right intertrochanteric and subtrochanteric fractures, s/p (ORIF) 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.

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**RECOMMENDATION:** The Board therefore recommends that there be no recharacterization of the CI's disability rating and separation determination as follows:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Comminuted Right Intertrochanteric and Subtrochanteric Fractures, S/P ORIF	5299-5003	20%
	<b>COMBINED</b>	<b>20%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120606, 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 22 Mar 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
- former USMC

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Assistant General Counsel  
(Manpower & Reserve Affairs)