

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXX
CASE NUMBER: PD1200823
BOARD DATE: 20130115

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20020131

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, LCPL/E-3, (5537/Marine Musician), medically separated for bilateral shoulder condition. The CI began experiencing spontaneous dislocations of his shoulders, right worse than left during recruit training. He completed training but had difficulty carrying his saxophone in the Marine Corps Band; he was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). The MEB forwarded multidirectional instability (MDI) of both shoulders and no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the multidirectional bilateral shoulder instability as unfitting, rated 10% for each shoulder, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a combined 20% disability rating.

CI CONTENTION: "Unsure of original PEB findings (believed to be 0%) eventually each shoulder was rated as 20% after lengthy appeals process. Condition has continued to worsen over the years (nearly constant discomfort/pain/numbness, etc.)"

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 rated conditions of MDI for both shoulders is the only condition that meets the purview of the Board as prescribed in DoDI 6040.44 and is addressed below. 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 20011204			VA (6 Mos. Post-Separation) – All Effective Date 20020201			
Condition	Code	Rating	Condition	Code	Rating	Exam
Multidirectional Instability both shoulders	5299-5003	10%	Right Shoulder Joint Laxity	5202	20%*	20020802
	5299-5003	10%	Left Shoulder Joint Laxity	5202	20%*	20020802
↓No Additional MEB/PEB Entries↓			Tinnitus	6260	10%	20020802
			0% X 0 / Not Service-Connected x 3			
Combined: 20%			Combined: 50%*			

* VA originally rated shoulders combined at 20% using 5201, then separated at 10% each using 5203, then upon DRO review [including personal appearance, treatment notes and exam on 28 October 2003] increased to 20% each effective DOS using 5202 for instability; Right shoulder increased to 30% effective 27 February 2008

ANALYSIS SUMMARY:

Multidirectional Instability of Both Shoulders. The narrative summary (NARSUM) noted the right hand dominant CI developed instability and pain in both shoulders, right worse than left with spontaneous bilateral shoulder dislocations in his second month of Marine Recruit training. None of the November 1999 prior to enlistment or enlistment physicals documented any pre-existing condition. Over the next year, the CI experienced episodes of shoulder dislocations including during Physical Fitness exercises, such as pull-ups, in February 2001 that prompted orthopedic and physical therapy evaluations. The service treatment record (STR) also references dislocation of his shoulder, while carrying his saxophone as a member of the Marine Corps Band. At that time the record indicates that his right shoulder dislocations could happen daily and he could self subluxe each shoulder and there was no apprehension. Orthopedic evaluation in March 2001 referenced the CI felt shoulders slide out of socket, right more often than left and spontaneously reduce. The examiner stated right shoulder was positive sulcus test, mild apprehension, mild relocation test, and left shoulder less in degree, with diagnosis of shoulder laxity, subluxation/dislocation both shoulders, right greater than left. At orthopedic evaluation in May 2001, the CI was diagnosed with bilateral shoulder instability and physical therapy was extended 2 months with a limited duty (LIMDU) recommendation of no pushups, pull ups, or running for 6 months, due to up to 10 dislocations a day. By May 2001, shoulder magnetic resonance imaging was reported as negative. A second course of physical therapy was begun in June 2001. In September 2001, the member was at sick call for a transient right shoulder dislocation/reduction while marching/drilling. The exam showed a limited exam due to pain and normal neurological exam. Only one reference to proposed treatment by surgical repair was noted in the STR and that was in the commander's statement. On 29 October 2001, the CI's commander issued a non-medical assessment stating condition actually prevents him from performing his MOS duties as a Marine Musician. "The medical advice (*the CI*) has received is that his condition has a 60% chance of correction through surgery." The CI declined surgery and was referred to the MEB. No goniometric range of motion (ROM) evaluations are placed in evidence because rating was based on instability, not ROM, and full ROM was noted by MEB and VA exams.

At the MEB exam, 3 months prior to separation, the CI reported "bilateral shoulder subluxations" on the DD Form 2807. On the MEB physical exam DD Form 2808, dated 05 November 2001, the examiner recorded "B shoulder subluxation, popping B shoulder, + sulcus sign L>R, N/V intact distally." In the NARSUM, 4 months prior to separation, the examiner noted "he has minimal pain from this, but pretty much every time he tries to adduct, externally rotate the arms, he dislocates the shoulders. They usually easily relocate. Occasionally he gets some numbness and tingling in the arms when this occurs." The NARSUM examiner noted "he has full range of motion in the joints. He has capsular laxity inferiorly and posteriorly on both sides. He can voluntarily dislocate the shoulder and it feels as if they are dislocating posteriorly, when he adducts, internally rotates the arms." The examiner also noted that reversing the maneuver usually relocated the shoulder. At the VA Compensation and Pension exam 6 months after separation, the CI reported that whenever he raises his arms over his head, he is at risk for his "shoulder dislocating." Per the examiner, the CI also stated that he "experienced a mild, constant, dull throbbing, particularly of his right shoulder, which is associated with some mild stiffness upon awakening." He also reports experiencing transient paresthesias in his hands which may persist for 2 or 3 hours following a "dislocation." The VA examiner found normal shoulder ROM and slight decrease in the CI's ability to perform internal rotation posteriorly due to apprehension regarding possible subluxation of his shoulder joint. The examiner found the sulcus test negative. The examiner opined "Bilateral shoulder joint laxity, right greater than left, with history of recurrent, uncomplicated, anterior glenohumeral subluxations which easily relocate, and are most likely secondary to insufficient shoulder girdle muscular strength in this still developing young man." At the separation physical 2 weeks prior to separation the examiner documented, "+ subluxation with ROM testing" and summarized

“B/L shoulder instability.” Positive sulcus sign, the pathognomonic sign of multidirectional shoulder instability, was found in multiple notes. CI shoulder apprehension to testing ROM was noted twice in the service treatment record.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated each shoulder 8 weeks prior to separation at 10% under VASRD code 5299-5003, analogous to Arthritis, degenerative (hypertrophic or osteoarthritis). The VA rated each shoulder 6 months after separation under code 5201, (Arm, limitation of motion), at 10% each. The Board debated whether the CI’s condition was laxity with subluxations or he had true shoulder dislocations due to instability, and noted both shoulders were coded separately from the PEB. The Board directed its attention at coding the right shoulder, and found code 5202, (Humerus, other impairment of, recurrent dislocation of, at scapulohumeral joint), a better fit to the recurrent right shoulder condition, but felt that an analogous prefix should be attached to account for the lack of guarding of movement documented in the STR. The Board considered the concept that the MDI as a syndrome of shoulder instability creates much more disability than the physical signs would suggest. The Board felt the STR fit the level of frequent episodes for the right shoulder, but could not find sufficient documentation to make the same conclusion for the left shoulder. In considering the right shoulder, the Board agreed that the apprehension documented in the STR in ROM testing of the right shoulder represented some degree of guarding at the shoulder level. By considering §4.3, (Resolution of reasonable doubt) and §4.7 (Higher of two evaluations) the Board opined that the disability best fit 20% for the right shoulder condition and did not rise to the level of 30% in the dominant shoulder since the STR did not support the next higher level of guarding of all arm movements for 30% disability of the dominant side. The Board then turned attention to the matter of the left shoulder. The Board noted that the left shoulder rarely, caused the CI to seek medical attention according to the STR. The Board opined that the original PEB coding of 5299-5003 for the left shoulder, analogous to arthritis, degenerative, best fit the limitation of motion due to the risk of dislocation as presented in the STR, and agreed with the 10% disability rating.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3, §4.7, §4.40 and §4.45; the Board recommends a disability rating of 20% for the right shoulder MDI condition under code 5299-5202, and no change to the PEB adjudication of 10% under code 5299-5003 for the left shoulder MDI 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 MDI both shoulder condition, the Board unanimously recommends a disability rating of 20% for the right shoulder MDI condition coded 5299-5202. The Board recommends no change in the PEB determination of 10% for the left shoulder MDI condition coded 5299-5003, both IAW VASRD §4.71a. 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

UNFITTING CONDITION		VASRD CODE	RATING
Multidirectional instability both shoulders condition	Right	5299-5202	20%
	Left	5299-5003	10%
		COMBINED (w/ BLF)	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120611, 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)