

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1200882
BOARD DATE: 20130123

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20030930

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSgt/E-6 (4421/Legal Services Specialist), medically separated for chronic bilateral tibial stress reaction. He did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was placed on limited duty and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic bilateral tibial stress reaction to the Physical Evaluation Board (PEB) as a medically unacceptable condition for adjudication. No other conditions were forwarded to the PEB. The PEB adjudicated the chronic bilateral tibial stress reaction condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD) and SECNAVINST 1850.4E. The CI did not appeal and was medically separated with a 10% disability rating.

CI CONTENTION: "Permanent pain and life/lifestyle changing impact. Please see enclosed letter. Access to all existing VA records is granted. See attached/enclosed letter and VA records." In the letter the CI cites his bilateral tibial stress fractures as well as a panic disorder and painful knees, back and hands.

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 bilateral tibial stress reaction condition, as requested for consideration, meets the criteria prescribed in DoDI 6040.44 for Board purview. The other requested conditions (panic disorder, knees, back and hands) 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 20030707			VA (~1 Mos. Post-Separation) – All Effective Date 20031001			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Bilateral Tibial Stress Reaction	5022-5003	10%	Stress Fracture, Left Tibia	5022	10%	20030828
			Stress Fracture, Right Tibia	5022	10%	20030828
			Bursitis Left Hip	5019	10%	20030828
			Panic Disorder w/o Agoraphobia	9412	30%*	20030902
↓No Additional MEB/PEB Entries↓			0% X 1 / Not Service-Connected x 2			
Combined: 10%			Combined: 50%			

*Increased to 50% from 20041105.

ANALYSIS SUMMARY:

Chronic Bilateral Tibial Stress Reaction Condition. The CI was first noted to have possible “shin splints,” tibial shaft stress fractures, in late 2000. He continued to have pain over the next few years and was managed with activity limitations and medications. Despite this, his symptoms worsened and prevented him from meeting full duty requirements. In October 2002, he was noted to have bilateral tibial stress fractures confirmed on a bone scan. The narrative summary dictated on 30 April 2003, 5 months prior to separation. The CI reported that his pain had worsened over time and increased with activity with minimal improvement from medications. On examination, the gait was normal and the hips, knees and ankles had full (ROM) without pain. However, there was tenderness to palpation along the anteromedial aspect of the tibia from near the knee to the ankle (bilaterally implied). X-rays showed no obvious increased thickening about the bone or signs consistent with inflammation. At the MEB examination on 16 May 2003, the CI reported no specific symptoms related to the stress fractures. The examiner documented no specific findings. At the VA Compensation and Pension examination on 28 August 2003, (4 weeks prior to separation), the CI reported constant pain aggravated by walking. The gait was normal. The fibula and tibia were normal on examination, although elsewhere in the narrative it was noted that the tibiae were tender to palpation along the shaft. The ROM of the hips, knees and ankles was normal other than the left hip which also had bursitis. X-rays were normal.

The Board directs attention to its rating recommendation based on the above evidence. It noted that each tibia was separately painful and, by report, positive on the bone scan. The PEB rated the bilateral tibial stress reaction as a single condition at 10% and coded it at 5022-5003, periostitis and degenerative arthritis. The VA rated each leg at 10% coded 5022. The Board considered the coding options and ratings. The Board majority noted that without incapacitation or limitation in motion, neither the 5003 or 5022 codes support greater than a combined 10% disability rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board majority concluded there was insufficient cause to recommend a change in the PEB adjudication for the bilateral tibial stress fracture 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 bilateral tibial stress fracture condition and IAW VASRD §4.71a, the Board, by a 2:1 vote, recommends no change in the PEB adjudication. The minority voter, who supported separate ratings for each leg, did not elect to submit a minority report. There were no other conditions within the Board’s scope of review for consideration.

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

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Bilateral Tibial Stress Fracture	5022-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120618, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

xx
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 21 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 USN
- former USN
- former USMC
- former USN
- former USMC
- former USN
- former USN
- former USN
- former USMC
- former USMC
- former USMC
- former USMC

xxxx
Assistant General Counsel
(Manpower & Reserve Affairs)