

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1200883
BOARD DATE: 20130207

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20031021

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCPL/E-3 (3043/AFSC, JOB), medically separated for moderate bunion deformity, left foot, status post (s/p) surgery, and moderate bunion deformity, right foot, patient refused surgery. The CI was diagnosed with a diagnosis of bilateral bunions, (left operated) on March 3, 2003. The CI refused surgery on the right foot after experiencing significant pain after surgery on the left bunion. He did not improve adequately after treatment 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 no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the moderate bunion deformity, left foot, operated as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD. The "moderate bunion deformity, right foot, patient refused surgery" condition was determined to be willful neglect IAW SECNAVINST 1850.4E and not ratable. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: "Other medical conditions which were physical and mental that are in medical record."

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. Only the bunion conditions are 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 PEB – Dated 20030429			VA (16 Mos. Post-Separation) – All Effective Date 20031022			
Condition	Code	Rating	Condition	Code	Rating	Exam
Mod. Bunion Deformity, Left Foot,	5280	10%	Mod. Bunion Deformity, L Foot	5280	10%	20040920
Mod. Bunion Deformity, Right Foot,		IM/WN	Scar, Residual ... Left Foot	7804	10%	20040920
↓ No Additional MEB/PEB Entries ↓			Mod. Bunion Deformity, R Foot	5280	0%	20040920
Combined: 10%			Not Service-Connected x 2			
			Combined: 20%			

ANALYSIS SUMMARY:

Moderate Bunion Deformity, Left Foot Operated Condition. The first documented visit for bunions was on 7 February 2002, 14 months after accession, when he noted a 2 year history of

bilateral foot pain. A family member had recently had a bunionectomy and he desired the same. He was next seen on 7 August 2002 when he noted a history of bunions since high school which had gradually worsened over time. On 23 October 2002, a left bunionectomy was performed. A second procedure on the right was anticipated after the CI had recovered from the first surgery. Recovery was complicated by significant post-operative pain for which he underwent hardware removal without significant relief. A local steroid injection relieved the pain temporarily. The narrative summary (NARSUM) dictated on 3 March 2003, 7 months prior to separation, and noted that the CI had declined surgery on the right toe due to the post-operative pain on the left. The examiner noted that there was no discernable swelling or increased warmth of the left great toe and that the motion was satisfactory. He was noted to have had no improvement in his pain "despite the fact that there are not objective reasons for the pain." At the MEB examination on 25 March 2003, the CI reported that he had residual pain and reduced movement of the left great toe after surgery. The only comment on the right was to note the presence of a bunion. The MEB physical exam documented no specific findings. At the VA Compensation and Pension (C&P) examination on 20 September 2004, 11 months after separation, the CI reported that his symptoms began in boot camp and were aggravated by the use of boots. He stated that he could walk ½ to a mile before developing pain in his feet. He did not require the use of special shoes. On examination, his gait was normal. There was tenderness over the distal left great toe and the scar; the latter was otherwise well healed. The range-of-motion (ROM) was noted to be normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the left bunionectomy condition at 10% and coded it as 5280, hallux valgus (bunion). The Board determined that this is the appropriate code and that no higher rating is available under this code. The VA also rated the scar. There was no impairment attributed to the scar in the service treatment records (STRs). The use of shoe of comfort was only in the post-operative period. The VA examination documented a normal gait and that the CI did not require the use of special shoes. By precedent, the Board does not recommend separation rating for scars unless their presence imposes a direct limitation on fitness. No such permanent limitation was in evidence. 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 left bunionectomy condition.

Moderate Bunion Deformity, Right Foot Surgery Refused by the Patient Condition. As noted above, the CI endorsed a history of bilateral bunions since high school and that other family members also had bunions. The CI reported a history of pain which preceded accession at the initial visit in 2002. The CI declined surgery. His decision was thought to be unreasonable and he signed a Form 6100/4, Certificate of Counseling, indicating such. The Board found no evidence that there had been more than natural progression of the condition while in service and that the CI had declined reasonable treatment. Accordingly, the record does not support a finding that the right bunion was separately unfitting. 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 the right bunion condition. The Board concluded therefore that this condition could not be recommended for additional disability rating.

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 rating the left bunion. As discussed above, PEB reliance on SECNAVINST 1850.4E was operant in this case in the fitness determination of the right bunion. In the matter

of the left and right bunion conditions 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.

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
Moderate Bunion Deformity, L Foot Operated	5280	10%
Moderate Bunion Deformity, R Foot, Surgery Refused by the Patient	N/A	IM/WN
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120620, 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)