RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX
CASE NUMBER: PD1201015
BOARD DATE: 20130124

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20031131

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (3521/Basic Automotive Mechanic) medically separated for compartment syndrome. Symptoms were first identified in early 2002 and compartment syndrome was diagnosed in September of that year. In October 2002, the CI underwent left lower extremity anterior and lateral fascial compartment releases. Despite this surgical intervention and follow-on physical therapy, the CI was not able to meet the requirements of his Military Occupational Specialty or physical fitness standards. He was consequently placed on Limited Duty and referred for a Medical Evaluation Board (MEB). In March 2003, the MEB identified the "Left lower extremity pain, etiology unknown" and forwarded it as the only condition for Physical Evaluation Board (PEB) adjudication. In April 2003 prior to meeting the PEB, the CI was brought to the emergency room complaining, "I can't move my legs or my left arm." The examination failed to provide a medical explanation for his symptoms, the CI was admitted to the in-patient psychiatric service with a presumptive diagnosis of conversion disorder. He was discharged 3 days later and a mental health addendum to the MEB was forwarded to the PEB with the following diagnosis: Conversion disorder with motor and sensory deficit, anxiety disorder not otherwise specified weakness, and altered sensorium in lower extremities bilaterally and upper left extremity history of compartment syndrome and left superficial peroneal neuropathy. No other conditions were submitted by the MEB. The PEB adjudicated "History of compartment syndrome" as Category I (unfitting) with "left lower extremity pain" and "left superficial peroneal pain" deemed as related Category I diagnoses; combined disability was rated as 20%. All other diagnoses of the MEB mental health addendum were judged as Category III (not unfitting and not contributing). The CI made no appeals and was medically separated with a 20% service disability rating.

CI CONTENTION: The application states "I received 20% from the USMC and the VA lower it to 10% for no proper reason" [*sic*]. He does not elaborate or specify a request for Board consideration of any additional conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 rating for the unfitting compartment syndrome is addressed below. The related Category I diagnoses of left lower extremity pain and left superficial peroneal neuropathy are also addressed below. The other conditions judged by the PEB as Category III were not alluded to in the application and are not judged to have been requested; they do not meet scope requirements. 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 20030918			VA (5.5 Mos. Pre-Separation) – Effective 20031201			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
History of Compartment Syndrome	5399-5312-8723	10%	Compartment syndrome, left lower extremity, peroneal nerve	8721	10%	20030618
	5399-5312	10%				
Left Lower Extremity Pain	Related Category I					
Left Superficial Peroneal Neuropathy	Related Category I					
Weakness And Altered Sensorium In Lower Extremities Bilaterally And Upper Left Extremity	Category III		Not Service Connected x 4			20030618
Anxiety Disorder	Category III					
Conversion Disorder With Motor And Sensory Deficit	Category III					
↓No Additional MEB/PEB Entries↓						
Combined: 20%			**Combined: 10%**			

ANALYSIS SUMMARY: 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, 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 the degree of impairment vary over time.

History of Compartment Syndrome Condition. At the MEB exam accomplished 8 months prior to separation, the CI reported that his foot fell asleep due to nerve damage and that he had surgery on his left leg for compartment syndrome in October 2002. The MEB physical exam simply noted scar on left leg. The narrative summary also prepared 8 months prior to separation, stated that the CI first presented in May 2002 with symptoms consistent with chronic exertional compartment syndrome. He underwent further evaluation to rule out tibial stress fractures or neuropathic pathology. Finding no previous specific diagnosis, he underwent compartment pressure measurements on 6 September 2002. At that time, he was found to have significant elevation of compartment pressures of the anterior and lateral compartments of the left leg with exercise. The CI underwent surgical intervention which consisted of left lower extremity anterior and lateral fascial compartment releases on 21 October 2002. Since that time, he has had minimal recovery with continued intermittent moderate pain as well as occasional numbness in the leg and foot region. He was unable to run, unable to wear boots or boot bands. Previous electromyography and nerve conduction studies (EMG/NCS) showed an absent superficial peroneal nerve response but no level was identified. The examiner opined that the significance of this finding was unknown. Physical examination was "fairly normal." He had a well-healed surgical incision consistent with the surgical history as described. He had full range-of-motion of the ankle and his neurologic examination was intact. Plain film X-rays were normal. Diagnosis was left lower extremity pain etiology unknown with the orthopedic surgeon's opinion that the CI was unable to perform full duty and he should be restricted from running, field activities, deployments and other significant exertion. The examiner recommended that "due to failure of recovery from his surgical procedure that the CI be considered for medical discharge."

Magnetic resonance imaging of the lumbar spine was performed on 4 June 2003 and revealed "very mild lumbar spondylosis at the lower two levels as described, otherwise negative." Bilateral EMG/NCS testing was accomplished on two occasions, once prior to surgery and again

after surgery. Prior to surgery, the results revealed an abnormal left lower extremity superficial peroneal sensory nerve response that was consistent with an axonal loss lesion not involving the motor fibers with the level of the compromise undetermined. After surgery, repeat EMG/NCS were performed on both lower extremities and were completely normal, including sampling of the lumbosacral paraspinals.

The VA Compensation and Pension exam accomplished 5 months prior to separation, noted a similar history the one presented above with the following significant additions. Postoperatively, he continued to have persistent pain at all times with weakness of the leg, tingling and numbness, abnormal sensation, and sometimes loss of sensation with paralysis of the left lower extremity occurring intermittently. He missed 5 to 8 hours of work per week because of the leg and back condition. He also developed similar pain in his right lower extremity and believed he might have compartment syndrome of the right leg; however, he had not been formally diagnosed. Physical examination was significant for normal posture and gait. Extremities were non-tender, without evidence of edema or varicose veins. Neurologic examination was significant for normal strength of all extremities bilaterally. Sensory exam revealed decreased sensation to pinprick and light touch on the dorsal aspect of both feet. Coordination was within normal limits as were his deep tendon reflexes bilaterally. The author's discussion of the CI's compartment syndrome was significant for the following entry, "The lower extremity examination does not reveal swelling, localized tenderness, or acute inflammatory changes. There is no evidence of palpable tenderness in the calves and no evidence of recurrent compartment syndrome in the lower extremities. As to this condition, he has no functional limitations."

The Board directs attention to its rating recommendation based on the above evidence. The PEB adjudicated the CI's history of compartment syndrome as 20% disabling by applying two analogous codes. The first code was 5399-5312, for moderate dysfunction of the Group XII muscles IAW the Veterans Affairs Schedule for Rating Disabilities (VASRD §4.71a). The second code was 5399-5312-8723, moderate neuralgia of the anterior tibial nerve (deep peroneal) also IAW VASRD §4.71a. This coding and rating scheme is contrary to the guidance delineated by VASRD principle §4.55 Principles of combined ratings for muscle injuries that states, "A muscle injury rating will not be combined with a peripheral nerve paralysis rating of the same body part, unless the injuries affect entirely different functions." The VA coded and rated the same condition by applying a single VASRD code of 8721 and assigned a 10% evaluation based on a mild incomplete paralysis of foot movements. The disability rating possibilities for the Group XII muscle code includes 0% for slight up to 30% for severe. The CI's bilateral lower extremity exam revealed normal strength and reflexes with decreased sensation to pinprick and light touch on the dorsal aspect of both feet. There is no evidence of any muscle abnormality. Alternatively, if the PEB assigned a single peripheral nerve code, as did the VA, then different rating options would be applied. Rating under peripheral nerve codes entails a judgment call regarding the severity of incomplete paralysis, especially the mild vs. moderate distinction. By precedent, the Board threshold for a "moderate" peripheral nerve rating requires some functionally significant motor and/or sensory impairment. As evidenced above, the CI did not have any functionally significant motor or sensory impairment so a mild, 0%, rating would be recommended by this Board. The proper application of either coding/rating scheme would not benefit the CI and there is no VASRD basis for recommending a higher rating than the 20% conferred by the PEB in this case. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication of the history of compartment syndrome 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 history of compartment syndrome 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.

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
History of Compartment Syndrome	5399-5312-8723	10%
	5399-5312	10%
	COMBINED	**20%**

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.

XXXX
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 8 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 USMC
- former USN
- former USMC
- former USMC
- former USN
- former USMC

XXXXXX
Assistant General Counsel
(Manpower & Reserve Affairs)