

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: X
CASE NUMBER: PD1201639
BOARD DATE: 20130306

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20030731

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (6173/CH-53 Crew Chief) medically separated for osteochondritis dissecans (OCD) of the right ankle. He was treated, but did not improve adequately to fully perform his military duties or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). The MEB listed four ankle conditions on the NAVMED 6100/1, and referred him to a Physical Evaluation Board (PEB). The PEB found him unfit due to tibial OCD of the right ankle, and rated it 10%. The other three ankle conditions were all adjudicated as Category II (contributing to the unfitting condition). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: "The medical condition and subsequent surgery that forced me out of the Marine Corps caused me daily pain at the time of discharge and continues to degenerate. In addition to the original PEB, the VA found additional conditions that should have been considered at the time. The VA found my total disability rating at 30% which would have made me eligible for retirement."

SCOPE OF REVIEW: The Board's scope of review as defined in DoDI 6040.44, 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 conditions "identified but not determined to be unfitting by the PEB." The unfitting right ankle condition (osteochondritis dissecans of the tibia) meets the criteria prescribed in DoDI 6040.44 and is addressed below. Since the other three ankle conditions all contribute to the unfitting condition, they too are addressed below. However, no other conditions are within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Board for Correction of Naval Records.

RATING COMPARISON:

Navy PEB – dated 20030604			VA (2 weeks Pre-Separation) – All Effective 20030801			
Condition	Code	Rating	Condition	Code	Rating	Exam
Right Ankle OCD	5299-5003	10%	Right Ankle Condition	5299-5271	10%	20030711
Right Ankle Instability	Category II					
Right Ankle Pain	Category II					
Right Ankle Fracture	Category II					
↓No Additional MEB/PEB Entries↓			Right Shoulder Condition	5299-5203	10%	20030711
			Tinnitus	6260	10%	20030710
			0% x 6 / Not Service Connected x 3			20030711
Combined: 10%			Combined: 30%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the impairment with which his conditions continue to burden him, and the significant impact they have had on his quality of life. It is noted for the record that the Board is subject to the

same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate members for future severity or potential complications of conditions. That role and authority is granted to the Department of Veterans Affairs (DVA). The Board evaluates DVA evidence in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation. While the DES considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a member's career, and then only to the degree of severity present at the time of separation. The DVA, however, is empowered to compensate for all service-connected conditions and to periodically re-evaluate conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment change over time.

Right Ankle Condition. This CI injured his right ankle in December 2001. Magnetic resonance imaging (MRI) showed a possible osteochondritis dissecans lesion of the distal tibia. He was treated with touch down weight bearing (TDWB) for 7 weeks, but his pain persisted. Further evaluation found an old talar fracture, as well as subtalar instability. He then had ankle surgery to fix the problems with his right ankle. After surgery and post-operative rehabilitation his symptoms were better. However, he continued to have persistent right ankle pain and an MEB was initiated.

The MEB clinical evaluation was on 24 February 2003. At that exam, he had good range-of-motion (ROM), and no numbness. His strength was improving and he was full weight-bearing. Active dorsiflexion was 10 degrees and passive plantar flexion was 40 degrees, with good inversion-eversion. Motor strength was normal. In July 2003, the CI had a VA Compensation and Pension (C&P) exam. He reported that he was not able to run or do stairs because the right ankle was painful and fatigued easily. On exam, the ankle was somewhat painful to lateral and medial flexion. The CI could not hop on the right leg due to pain in the right ankle. There was no objective evidence of motor weakness or other neurological findings. The two ROM evaluations which the Board weighed in arriving at its recommendation are summarized below.

Right Ankle ROM	MEB ~5 Mo. Pre-Sep (20030224)	VA C&P ~2 weeks Pre-Sep (20030711)
Dorsiflexion (20° is normal)	10°	20°
Plantar Flexion (45° is normal)	40°	45°
§4.71a Rating	10%*	10%*

*10% based on VASRD §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all available evidence. The PEB and VA chose different coding options for the right ankle condition, but both assigned a rating of 10%. Using clinical data in the treatment record, the CI's right ankle was non-compensable based on the Veterans' Administration Schedule for Rating Disabilities (VASRD) §4.71a codes for loss of ankle motion (5270 through 5272). However, IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. The Board tried to find a path to a higher rating for the right ankle, but there was not sufficient evidence to justify a rating higher than 10%. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the unfitting right ankle condition (tibial osteochondritis dissecans).

Other PEB Conditions. Three other ankle conditions were adjudicated by the PEB as Category II (related to and contributing to the unfitting condition). These three other conditions were: right ankle subtalar functional instability, persistent right ankle pain, and right ankle lateral process fracture of the talus. They were all reviewed by the action officer and considered by the Board. The evidence in the treatment record supports the conclusion that these conditions were indeed related to and contributed to the unfitting condition. It is therefore appropriate

that these three conditions be considered Category II. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends no change to the PEB adjudication of these three other ankle conditions.

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. In the matter of the unfitting right ankle condition (OCD of the tibia), the Board unanimously recommends no change to the PEB adjudication. In the matter of the other three PEB conditions (right ankle subtalar functional instability, persistent right ankle pain, and right ankle lateral process fracture of the talus) the Board unanimously recommends no change to 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
Right Ankle Osteochondritis Dissecans of the Tibia	5299-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120731, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

X
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 04 Apr 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:

- xformer USMC
- xformer USN
- xformer USMC
- xformer USMC
- xformer USN
- xformer USMC
- xformer USMC
- xformer USN
- xformer USMC
- xformer USN
- xformer USMC

x
Assistant General Counsel
(Manpower & Reserve Affairs)