RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900260 BOARD DATE: 20091117

SEPARATION DATE: 20020321

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was a Specialist Aircraft Structural Repairmen who was medically separated from the Army in 2002 after 4.5 years of service. The medical basis for the separation was; chronic pain, left ankle, rated as slight/ frequent. The CI suffered repeated left ankle injuries in Jul and Nov 1999, with two corrective surgeries to repair tendon injury, scaring and a bony defect. Despite aggressive therapy he had pain and limited range of motion (ROM) of his left ankle that interfered with the duties of his MOS. The CI also had long standing complaints of low back pain (LBP) with motion since falling in Dec 1997 and Jan 1999. LBP was not relieved by physical therapy, home exercise or non-narcotic medications. The CI sustained a contusion of his right knee in Sep 2000 with complaints of knee pain and probable meniscal tear, but imaging studies were negative. The CI was referred to the disability evaluation system. The MEB found that the CI's left ankle, right knee, and low back conditions did not meet standards. The PEB of 20011212 PEB found the CI unfit at 10% for 5099-5003 Chronic pain, left ankle, right knee, and low back pain rated as slight/frequent. However, this determination was administratively changed on DA Form 18 dated 20020114 to: 5099-5003 Chronic pain, left ankle rated as slight/frequent. (MEBD DIAG 2 [right knee] and 3 [LBP] Not Unfitting) and the CI was separated at 10% disability for his chronic left ankle pain.

CI CONTENTION: “I am currently rated at 70% by the VA for the same service-connected conditions. The severity of these conditions is to the point that I am unable to maintain gainful employment. Since I was discharged, I have had approximately 5 surgeries for these conditions as well as numerous other procedures. I have been given a temporary 100% rating on several occasions due to these disabilities. I am also in the process of filing for social security disability as I am totally disabled and unable to work. As you can see in the attached documentation, my condition continues to worsen. Therefore, I would greatly appreciate the board's consideration of my case, and very respectfully request that my original rating by the PEB be revised as to allow me to be placed on the permanent disability retired list.”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA (Exam Pre-discharge)** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| CHRONIC PAIN, LEFT ANKLE. RATED AS SLIGHT/ FREQUENT.  (MEBD DIAG 1, AND NARSUM)  (MEBD DIAG 2 AND 3 NOT UNFITTING) | 5099 5003 | 10% | **20020114** | OSTEOCHONDRAL DEFECT OF THE **LEFT ANKLE** | 5271 | **10%**  100%  10% | **20011227** | 20020322  20070126  20070401 |
| MEBD DIAG 2: Right knee probable meniscal tear | NOT UNFITTING | |  | **RIGHT KNEE** PAIN | 5260 | **NSC** |  |  |
| MEBD DIAG 3: Mechanical low back pain | NOT UNFITTING | |  | **MILD DISC BULGE, L4-5** (Formerly DC 5293) | 5243 | **10%**  20% | **20011227** | 20020322  temp100%  20060627 |
|  |  |  |  | LEFT KNEE CONDITION ASSOCIATED WITH OSTEOCHONDRAL  DEFECT OF THE LEFT ANKLE | 5257 | NSC |  |  |
|  |  |  |  | SCAR, LEFT KNEE ASSOCIATED WITH OSTEOCHONDRAL DEFECT  OF THE LEFT ANKLE | 7802 | 0% | **20070131** | 20070126 |
|  |  |  |  | OBSTRUCTIVE LUNG DISEASE | 6699-6600 | 0% | **20011227** | 20020322 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*incl non-PEB Dxs)*: 20% from 20020322**  **30% from 20060627**  **40% from 20070801** | | | | |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ANALYSIS SUMMARY:** The MEB diagnoses were Left ankle osteochondral lesion, Right knee probable meniscal tear, and mechanical low back pain and NARSUM noted they did not meet retention standards. PEB 20011212: 10%; 5099 5003 Chronic Pain, Left Ankle, Right Knee and Low Back. Rated as Slight/Frequent. (MEBD DIAG 1, 2, 3, and NARSUM). PEB (DA Form 18) 20020114: 10%; "Chronic Pain, Left Ankle, Rated as Slight/Frequent. (MEBD DIAG 1, and NARSUM), (MEBD DIAG 2 and 3 Not Unfitting). Rated as slight/frequent IAW U.S. Army Phys1cal Disability Agency Policy/Guidance Memorandum #13, dated 12 April 2000, subject: Rating Pain. This Admin correction reflects change in item 8B, "Disability Description" as reads on 199. This admin correction supersedes DA Form 199 pertaining to your 12 Dec 01 informal PEB." Commander's Statement of 20010909 indicated CI unable to perform duties and liability to unit. The crux of this case is which of the three MEB conditions are unfitting.

**Left Ankle:** The CI sustained a left ankle injury with resultant left ankle instability and with the diagnosis of a significant osteochondral (OCD) lesion. He underwent a left ankle lateral ligament reconstruction with micro fracturing and drilling of an OCD lesion on 20010109. Despite aggressive rehabilitation the CI had continued swelling and pain in his ankle, which precluded him to return to his normal level of activity. The CI had a repeat arthroscopy on 20010609 showed a persistent OCD lesion on the posterior medial aspect of his talus and scar tissue was cleared out. Evaluation at two months from his second arthroscopy on the left ankle showed the CI was "doing as well as can be expected for having a difficult problem in his ankle." Exam showed lower extremity 2+ reflexes to both knees and ankles, strength 5/5 throughout. The CI had tenderness to palpation over his left ankle primarily on the medial aspect with some decreased sensation to light touch along the dorsal aspect of his foot. He has well-healed scars medially and laterally. His range of motion of the left ankle 0˚ (normal 20˚) of dorsiflexion, 25˚ (normal 45˚) of plantar flexion and is stable to examination.

The VA used the MEB NARSUM history. Range of motion of the left ankle on pre-discharge VA exam (20011227) was decreased by 5˚ dorsiflexion to 15˚, but plantar flexion was normal to 45˚. There was no heat, redness, swelling or effusion of the left ankle. No joint instability or weakness was found, and surgical scars were not motion limiting. An evaluation of 10% was granted for moderate limited motion of the ankle. Subsequent worsening and ankle surgery resulted in a temporary VA 100% rating in 20070126. That temporary rating was changed to 10% effective 20070401.

Subsequent worsening of the CI's ankle condition confirmed the separation diagnosis, but did not indicate any error of rating at the time of discharge. IAW §4.59 Painful motion, the left ankle should rate at 10% from either the military or VA exam proximate to the date of CI's separation. Code 5271 Ankle, limited motion (Moderate) appears predominate.

**Chronic Lower Back Pain (LBP).** The MEB diagnosis was mechanical low back pain and there were numerous treatment notes indicating chronic physical therapy and multiple treatments. The LBP exam (20011120) stated "He is sitting comfortably. Evaluation of his back reveals he has near full range of motion to full flexion. He is able to touch his hands to the floor and extend and laterally bend. He has some tenderness in the lower lumbosacral area." He has been followed in physical therapy for chronic mechanical low back pain. The CI's service medical records reveal he slipped on a wet floor injuring his back in Dec 1997. He was noted to demonstrate full range of motion, but exhibited tenderness to palpation in the lumbar area. He was treated conservatively to include Flexeril and a temporary profile which exempted him from physical training. He slipped again, this time on ice, in Jan 1999. His treatment was consistent with that previously provided. He presented again in May 2001 with complaints of back pain, but no diagnosis was rendered. He was seen in physical therapy and provided a home exercise program. He reported his symptoms were worsening despite this therapy and was followed for complaints of back pain through the remainder of his military career. The MEB diagnosed mechanical low back pain after examination, noting near full range of motion with some tenderness to the lower lumbosacral area. His pain was considered to be slight but frequent.

The pre-discharge VA LBP exam (20011227) demonstrated minimal painful motion noted at the extreme of flexion. The mechanical ROM of the lumbar spine was normal, with normal gait and posture. MRI (20020111) provided evidence of a mild disc bulge at L4-5. The VA assigned an evaluation of 10% for mild symptoms associated with intervertebral disc syndrome.

The PDBR cannot rate on post-discharge worsening of the CI's LBP, although worsening does serve to strengthen the diagnosis and findings at the time of discharge. The contended episodic 100%'s from the VA were for convalescence from surgery which is post-discharge and outside of the DOD guidelines. By administrative change of the original PEB which found this condition unfitting, LBP was found NOT unfitting. The CI had abnormal spine imaging, tenderness and pain-limited motion documented that was chronic. The CI's unfitting ankle condition does closely align with his LBP as ankle pain and minor changes in gait to protect the ankle or from limited ankle motion can commonly lead to increased stresses and disability of the lower back. The CI's MOS of Aircraft Structural Repairmen, requires climbing and positioning in tight spaces that add to the strength of adding this condition as unfitting. The Commander's statement of 20010909 indicated a non-specific chronic severe condition making the CI unfit to deploy or "perform the tedious physical tasks required of his military occupational specialty." Given the numerous visits and physical therapy the CI had for chronic LBP this condition should be found to be unfitting. Code 5009-5003 could be used; however, using the VASRD in effect at the time, code 5293 Intervertebral disc syndrome rated as 5292 Spine, limitation of motion of lumbar, slight appears predominate given the CI's imaging studies of mild disc bulge at L4-5 (this would correspond to current VASRD code 5243). Using either the military or VA exam, IAW §4.59 Painful motion, the CI's lower back exams would rate at 10%. (This would correspond to current VASRD code 5243)

**Right Knee.** The NARSUM and MEB indicated "Right knee, probable meniscal tear" did not meet standards and the initial PEB included chronic pain, right knee, as part of the CI's unfitting condition(s). However, this condition was changed to "not unfitting" by PEB (DA Form 18) 20020114 as an administrative change. The NARSUM focused predominately on the CI's ankle condition, but noted that the CI also had the "complaint of knee pain, which has been locking on the lateral side of his knee over the last several months. His right knee examination reveals range of motion to 0 to 140 degrees, no obvious instability. He has medial joint line and lateral joint line tenderness to palpation. Because he has had this ongoing problem with his left ankle, this has not been addressed, but he obviously has some initial symptoms." There were numerous profiles listing right knee pain and multiple treatment notes for tender knee area and minor swelling with pain on climbing stairs and prolonged standing. The MEB history and physical listed right knee pain as not meeting standard, and mental health notes for handling pain addressed the right knee pain with activity as a source of the CI's pain. The records mentioned that right knee MRI was scheduled, but the MRI report was not in the records provided to the Board. The report of right knee MRI of 20050905 was obtained by the Board from the original treatment facility and was negative: "The cruciate ligaments/ collateral ligaments/ and menisci appear unremarkable. No evidence of bone contusion. No evidence of chondromalacia. IMPRESSION: Negative study."

The VA did not service connect a right knee condition since there was no formal diagnosis "Right knee, probable meniscal tear." The VA noted an eight month history of pain, swelling, stiffness, instability and locking of the right knee joint with weekly flares. The CI claimed that he had a right knee MRI in the past and that provided evidence of a meniscal tear which had never been repaired, but that exam was not located. The VA detailed knee exam and X-rays were negative. The VA stated "Service connection for right knee pain is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed…He provided a history of a torn right meniscus during the VA examination, but this could not be substantiated by his service medical records. No evidence of a chronic, disabling knee condition was provided by VA examination."

The MEB listed "probable right knee meniscal tear" as not meeting standards on the MEB and the original PEB listed chronic right knee pain as unfitting. However, this condition was changed to "not unfitting" by PEB (DA Form 18) 20020114 as an administrative change. Right knee imaging was negative with normal plain X-rays and negative MRI. The MRI supported that the CI's painful knee was not due to a meniscal tear. Given the unfitting left ankle injury and pain-limited ROM, the anatomy and physiology of increased stress on the opposite right knee is physiologically reasonable and theoretically possible. However, there is no objective evidence of either a meniscal injury or of an arthritis-like condition. The VA pre-discharge exam demonstrated normal pain-free ROM, with a history of painful motion with stair climbing and exertion. As there is no abnormal imaging or clear duty limitations in the records attributed to the right knee, this condition of painful right knee did not rise to the level of being unfitting and is therefore not ratable.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The PEB referenced the Army Pain rule (PDA Policy/Guidance Memorandum #13, dated 12 April 2000, Subject: Rating Pain) which is not used by the Board for adjudication. After careful consideration of all available information, the Board unanimously concluded that the CI’s condition is appropriately rated at 20% combined: 10% for 5271 Osteochondral defect of the left ankle and 10% for 5293 Intervertebral Disc Syndrome (rated as slight) using the VASRD in effect at the time of separation. (Note: Code 5293 is closest to the newer VASRD code 5243). With regard to the left ankle, the left ankle rated at the 10% (moderate) level using either the military or VA evaluation at the time of discharge. Subsequent worsening and surgery, resulting in a VA rating of 10% following a temporary 100% rating 5 years after separation, did not indicate any error in diagnosis or rating at the time of separation. The Board determined that the left ankle was unfitting and appropriately rated at the 10% level, but that VASRD code of 5271 more appropriately described the condition. With regard to the CI's LBP, the MEB found it did not meet standards, the initial PEB found it unfitting, and an administrative change DA Form 199 indicated the LBP was not unfitting. Using a de novo evaluation of the evidence, the Board determined that LBP should be changed to an unfitting condition as the combined limitations from the CI's ankle and back would have adversely affected the CI's ability to perform his specialty. It is not reasonable to expect the line commander to differentiate from limitations caused by different systems that affect the lower extremities, positioning, or mobility. With regard to the CI's right knee, the Board deliberated in detail concerning the possible duty and MOS implications of the CI's "right knee pain and probable meniscal tear." The MEB found it did not meet standards, the initial PEB found it unfitting, and an administrative change DA Form 199 indicated the right knee was not unfitting. Using a de novo evaluation of the evidence and given the normal knee imaging (no meniscal tear or arthritic changes) and lack of significant treatments, formal diagnosis or duty limitations in the record, the evidence did not support a finding of unfit for this condition and the Board unanimously agreed that it was not unfitting. The other diagnoses rated by the VA were not mentioned in any PEB paperwork and could not be considered by the Board. The Board voted unanimously to rate the CI at 10% 5271 Osteochondral defect of the left ankle and 10% 5293 Intervertebral Disc Syndrome (slight) for a combined 20% rating.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of the CI’s prior medical separation.

|  |  |  |
| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| OSTEOCHONDRAL DEFECT OF THE LEFT ANKLE | 5271 | 10% |
| INTERVERTEBRAL DISC SYNDROME (Rated as Slight limitation of lumbar motion) | 5293 | 10% |
| Combined | 20% |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090327, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

