RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900449 BOARD DATE: 20100324

SEPARATION DATE: 20080910

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SUMMARY OF CASE: This covered individual (CI) was Technical Sergeant Broadcast Journalist medically separated from the Air Force in 2008 after 12 years 8 months of service. The medical basis for the separation was Right Leg Pain. The Right Leg Pain was determined to be medically unacceptable. The CI was referred to the Physical Evaluation Board (PEB), found unfit for continued military service and separated at 20% combined disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations.

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CI CONTENTION: The CI states: “Rating of 20% was awarded. However the VA added a 10% rating for the scar above the condition rated at 20%. Scar is from same injury.”

Letter to PDBR:

“I was separated from active duty service on 10 Sep 2008 after a Formal PEB (FPEB). I asked for review of the FPEB from Secretary of the Air Force and the final decision rendered a 20% disability rating for the osteomyelitis in my right tibia/fibula.

I received my rating decision from the Department of Veterans Affairs and they decided the rating for my leg not only included the 20% for the osteomyelitis (codes 5271-8521), but also 10% for the scar above the infection site (code 7804). This 10% was not included in the final decision by the FPEB. The scar is a direct result of the injury which eventually caused my separation and I believe it should have been included in the final decision.

It is my understanding the PEB uses the Code of Federal Regulations (CFR)-38 rating schedule for their decisions. With the additional 10% rating from the VA, this should change the FPEB decision to a 30% rating from 20%.

A 30% rating entitles me to a medical retirement from active duty instead of separation. I request review of the rating decision from the VA and a change in the PEB decision to include the scar above the infection site for a total combined rating of 30% and retirement from active duty effective 10 Sep 2008.”

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RATING COMPARISON:

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| --- | --- |
| **Service PEB/Personnel Council** | **VA (3 months after Separation)** |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Right Leg Pain, Status-Post Open Tibia/Fibula Fracture Complicated By Late-Onset Osteomyelitus | 5271(5262) | 20%(20%) | 20080728(FPEB 20080610 and IPEB 2008043) | Status Post Comminuted Fracture Distal Right Tibia Fibula With Resultant Osteomyelitis (Inactive At This Time) With Superficial Varicosities Right Ankle,Secondary To Fracture Residuals. | 5271-8521 | 20% | 20081203 | 20080910 |
|  |  | In NARSUM | Scar | 7804 | 10% | 20081203 | 20080910 |
| Asthma | 6602 | Category II | Asthma | 6602 | 30% | 20081203 | 20080910 |
| Major Depressive Disorder | 9434 | Category II | Major Depressive Disorder, in Partial Remission alsoClaimed as Adjustment Disorder Due to Depressed Mood | 9434 | 10% | 20081212 | 20080910 |
| Adjustment Disorder With Depressed Mood |  | Category III |  |  |  |  |  |
|  |  | In Pulmonary and Psychiatric Addenda | Obstructive Sleep Apnea | 6847 | 30% | 20081203 | 20080910 |
| CATEGORY II -Conditions that can be Un-fitting but are not Currently Compensable or Ratable |  | Not in DES | Chronic Cervical Strain, Claimed With C3-4 Degenerative Changes | 5237 | 10% | 20081203 | 20080910 |
|  |  | Not in DES | Chronic Low Back Strain | 5237 | 10% | 20081203 | 20080910 |
| CATEGORY Ill - Conditions that are not Separately Unfitting and not Compensable or Ratable |  | Not in DES | Temporomandibular Joint Syndrome (TMJ) | 9905 | 10% | 20081203 | 20080910 |
|  |  | Not in DES | Bilateral Hammer Toes | 5282 | 0% | 20081203 | 20080910 |
|  |  | Not in DES | Bilateral Hearing Loss | 6100 | 0% | 20081203 | 20080910 |
|  |  | In Pulmonary and Psychiatric Addenda | Moderate Chronic Allergic Rhinitis, Status Post NasalSeptoplasty/reconstruction Also Claimed as ChronicSinus Infection | 6512 | 0% | 20081203 | 20080910 |
|  |  | Not in DES | Irritable Bowel Syndrome (IBS) Claimed as Chronic Diarrhea | 7319 | 0% | 20081203 | 20080910 |
|  |  | In Pulmonary Addendum | Gastroesophageal Reflux Disease | 7346 | 0% | 20081203 | 20080910 |
|  |  | In NARSUM | Tinnitus | 6260 | 10% | 20081203 | 20080910 |
| **TOTAL Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*):** **80% from 20080910****90% from 20090311**  |

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ANALYSIS SUMMARY:

Condition 1. Right Leg condition: Unfitting.

In November 2003 the CI was involved in a motorcycle accident and suffered an open tib-fib fracture that required treatment with an external fixator. He later developed osteomyelitis that became chronic and required surgical debridement and a bone graft in February 2005. He continued to have pain and swelling as well as ankle stiffness and was unable to tolerate (because of increased pain) any prolonged weight bearing activity such as running or standing for long periods of time. There was no instability of the ankle joint but he did have pain limited motion of the ankle along with fatigability and lack of endurance. Neither the AF or VA examinations commented on gait but two fellow broadcasters testified that the CI had a limp, characterized as severe by one and definite by the other.

This condition was originally rated at 20% under VASRD 5262 (Tibia and Fibula, Impairment of) by the Informal PEB (IPEB) and the Formal PEB (FPEB). The CI appealed to the Secretary of the Air Force Personnel Council and they also rated his condition at 20% but used VASRD 5271 (Ankle, Limited Range of Motion of). This code was also used in the VA rating.

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| Movement**Right Ankle** | ROM Mil20080131 | ROM VA20081212 (3months after separation) |
| Plantar flexion(0-45) | 10 | 0-35 |
| Dorsiflexion(0-20) | 0 | 0-10 |
| Inversion |  | 0-25 |
| Eversion |  | 0-10 |
| Notes: |  | It might be estimated that with prolonged weight-bearing that the range of motion would be reduced in inversion to 0 to 10 degrees secondary to pain and fatigability. |

Condition 2. Scar: Not unfitting

The narrative summary (NARSUM) said the scar was adherent but not tender to palpation. However, the VA evaluation said the scar was non-adherent but was quite tender to palpation. There was no specific mention of scar or limitations attributable to the scar in Commander’s letter, NARSUM, or VA evaluation. For example, no alternative footwear authorized or inability to wear boots or other military clothing mentioned.

Condition 3. Asthma: Not unfitting

There was no specific mention of asthma or limitations attributable to the asthma in Commander’s letter, NARSUM, pulmonary addendum or VA evaluation. CI was not worldwide deployable but AF generally retains personnel with asthma. They can work outside the continental United States where medical care is available but cannot deploy.

Condition 4. Depression: Not unfitting

Depression was mentioned in the Commander’s letter. However, there were no limitations attributable to the depression in Commander’s letter, NARSUM, psychiatric addendum or VA evaluation. The CI’s profile was S1 and his GAF was 70 in both the NARSUM and VA Compensation & Pension (C&P) evaluations.

Other conditions in Disability Evaluation System (DES) package (Not adjudicated by PEB: Not unfitting

Cervical Strain, Obstructed Sleep Apnea (OSA - no CPAP), GERD, Chronic Allergic Rhinitis/Sinusitis, Tinnitus. No evidence that any of these conditions are unfitting. None were mentioned in the Commander’s letter, or restrictions attributable to these conditions in Commander’s letter, NARSUM, Addenda, or service treatment record.

Other Conditions not in DES package: Not unfitting

Back Strain, Temporomandibular Joint (TMJ), Bilateral Hammer Toes, Bilateral Hearing Loss, Irritable Bowel Syndrome (IBS).

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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. After careful consideration of all available information the Board unanimously determined that the CI’s condition is most appropriately rated at 20% for 5271 Right leg Pain, Status-Post Open Tibia/Fibula Fracture Complicated by Late-Onset Osteomyelitis.

After a motorcycle accident that resulted in an open tibia/fibula fracture that required open reduction and internal fixation and later developed chronic osteomyelitis, the CI continued to have pain, swelling, and stiffness as well as pain limited range of motion of his right ankle with fatigability and lack of endurance. He was unable to tolerate any prolonged weight bearing activity such as running or standing for prolonged periods of time. These restrictions precluded him from performing his required military duties.

The PDBR utilizes the VASRD to determine the appropriate disability ratings for conditions that are unfitting for continued military service at the time of separation. Conditions that are not unfitting at the time of separation are not rated.

The Board considered the conditions of Scar, Asthma, and Major Depressive Disorder and unanimously determined that none of these conditions were unfitting at the time of separation from service. Therefore no additional ratings are warranted. The VA applies a rating to all conditions that cause functional limitations, regardless of fitness for military duty.

In the matter of Cervical Strain, OSA (no CPAP), GERD, Chronic Allergic Rhinitis/Sinusitis, and Tinnitus the Board unanimously determined that none of these conditions were unfitting at the time of separation from service. Therefore no additional ratings are recommended.

The other diagnoses rated by the VA (Back Strain, TMJ, Bilateral Hammer Toes, Bilateral Hearing Loss, IBS) were not mentioned in the DES package and are therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Military Records (BCMR) to consider adding these conditions as unfitting.

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RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Leg Pain, Status-Post Open Tibia/Fibula Fracture Complicated By Late Onset Osteomyelitis | 5271 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090529, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB, MD 20762-7002

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2009-00449.

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

 Sincerely

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR