RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900481 SEPARATION DATE: 20071115

BOARD DATE: 20110819

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl/E-4 (6112, Helicopter Mechanic) medically separated for chronic pain in the left foot and ankle. The CI fractured his left calcaneus in December 2005. He was treated, but did not respond adequately to fully perform his required military duties or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). His left foot and ankle condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The Informal PEB (IPEB) found the left hindfoot posttraumatic arthritis status post fusion unfitting, and rated it 20%. One other left foot condition (left calcaneus fracture status post open reduction internal fixation) was adjudicated as category II (related to the unfitting left foot condition). The CI did not accept the IPEB findings, and requested reconsideration. In September 2007, a PEB Reconsideration was performed. This resulted in no change to the original IPEB adjudication. The CI was then medically separated with 20% disability IAW applicable Navy and DoD regulations.

CI CONTENTION: “I feel the condition is more than a 20% disability. I also have to wear a hard brace in my day to day life just to get around. The brace was issued to me by the prosthetics clinic at the VA hospital in Denver, CO. The brace locks my foot and ankle in so they do not function normally and give me pain. I also have arthritis in my knees & spine from my body being off balance. This is all documented in my VA med. Records.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Navy IPEB Reconsideration – dated 20070913** | | | **VA (2 mo. Pre-Separation) – All Effective 20071116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Hindfoot Arthritis | 5271 | 20% | Left Calcaneal Fracture,  S/P ORIF with Fusion | 5271 | 20% | 20070905 |
| Left Calcaneus Fracture | Category II | |
| ↓No Additional MEB/PEB Entries↓ | | | Chronic Lumbar Strain | 5237 | 20% | 20070905 |
| Left Knee Sprain | 5260 | 10% | 20070905 |
| Scar on Left Ankle | 7804 | 10% | 20070905 |
| 0% x 1 / Not Service Connected x 1 | | | |
| **Combined: 20%** | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY:

Left Foot And Ankle Pain. In December 2005, this Marine fell off a helicopter and fractured his left calcaneus (heel bone). Open reduction and internal fixation (ORIF) surgery was performed, followed by postoperative rehabilitation. One year later, the CI was unable to run due to pain in the subtalar joint and tightness of the Achilles tendon. In December 2006, he had surgery for subtalar debridement and removal of hardware. Post-operatively, he remained unable to run. In May 2007, the CI underwent left subtalar fusion due to chronic pain and arthritis in that joint. Achilles lengthening was done to improve his ankle motion. Post-operatively, he continued to have pain and an MEB was initiated.

His MEB examination was on 12 July 2007, two months after his third surgery. His ankle motion was five degrees of dorsiflexion and 35 degrees of plantar flexion, with no subtalar motion due to the fusion. The examiner opined, “With his persistent pain and loss of subtalar motion he is going to have difficulty returning to running or climbing on aircraft.” Two months later at the VA Compensation and Pension (C&P) examination, the CI complained of pain, weakness, giving way, stiffness and lack of endurance. He was able to function without pain medication but had difficulty running, walking, or standing for an extended length of time. The CI walked with a limp but did not use a cane or assistive device. On exam, the left ankle showed some weakness but no swelling or inflammation. Range of motion (ROM) was five degrees plantar flexion and five degrees dorsiflexion. In the treatment record, two goniometric ROM evaluations were in evidence, which the Board weighed in arriving at its rating recommendation. These two exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –  Left Ankle | MEB – 4 mo. Pre-Sep | VA C&P – 2 mo. Pre-Sep |
| Dorsiflexion (20⁰ is normal) | 5⁰ | 5⁰ |
| Plantar Flexion (45⁰ is normal) | 35⁰ | 5⁰ |
| §4.71a Rating | Moderate limitation: 10% | Marked limitation: 20% |

The Board carefully reviewed all evidentiary information available and noted that both the PEB and the VA chose to use code 5271 (limited ankle motion), instead of 5284 (foot injury). The Board agreed that 5271 was the more appropriate code for this case, IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD) §4.7 (higher of two evaluations). The two codes cannot be used together because that would be pyramiding. The Board deliberated on whether the CI’s loss of ankle motion was “marked” (20%) or “moderate” (10%). The Board determined that the loss of motion at the ankle and subtalar joint was best described as “marked” and thus warranted a 20% rating. All evidence considered, the Board unanimously recommends a rating of 20% for the chronic, painful left foot and ankle condition. It is appropriately coded 5271 and meets criteria for the 20% rating.

Other PEB Conditions. As noted above, left calcaneus fracture status post ORIF was adjudicated by the PEB as category II. The Board unanimously agreed that the calcaneus fracture was indeed related to the unfitting condition, and did not constitute a separately unfitting condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB adjudication for the stated condition.

Other Contended Conditions. The CI asserts that compensable ratings should be considered for knee and spine arthritis. Both conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined that neither of the stated conditions was subject to service disability rating.

Remaining Conditions. Hemarthrosis, left ankle scar, obesity, headaches, back pain, knee pain, and several other conditions were also noted in the Disability Evaluation System (DES) file. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally, certain other conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. The Board does not have the authority to render fitness or rating recommendations for any conditions not considered by the DES. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation 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. In the matter of the left foot and ankle condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the spine arthritis (back pain), knee arthritis (knee pain), ankle scar, headaches, obesity, or any other conditions eligible for consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board therefore recommends that there be no re-characterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Foot and Ankle Condition | 5271 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090803, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 31 Aug 11

I have reviewed the subject case pursuant to reference (a) and, for the reasons set forth in reference (b), approve the recommendation of the Physical Disability Board of Review

Mr. XXXX’s records not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

Assistant General Counsel

Manpower & Reserve Affairs)