RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900501 SEPARATION DATE: 20030415

BOARD DATE: 20110413

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt/E-5 (0341, Mortarman) medically separated from the Marine Corps in April 2003. The medical basis for separation was tibialis posterior tendinopathy (TPT) of the left lower extremity (foot/ankle). Following a skateboarding accident, the CI underwent two surgeries on his left ankle. After surgery, he continued to have pain and was unable to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). TPT was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB found the left ankle condition unfitting, and rated it 10% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI accepted the PEB findings, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states, “I still cannot run. Frequent pain still experienced.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – dated 20030211** | **VA (n/a)** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Tibialis Posterior Tendonitis | 5299-5003 | 10% | No VA Claim Filed |
| No Additional MEB Entries |
| **Final Combined: 10%** | **TOTAL Combined: (n/a)** |

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ANALYSIS SUMMARY:

Left Ankle. This Marine had not been functioning in his MOS for two years, due to treatment and rehabilitation of his ankle injury. The MEB physician noted a tender surgical scar on the left foot and ankle, pain with palpation of the tibialis posterior tendon, and painless dorsiflexion, plantar flexion, and eversion. There was pain with left ankle inversion. The left foot was neurovascularly intact. Magnetic resonance imaging showed TPT. The PEB’s coding choice of 5299-5003 and 10% rating (assuming application of §4.59 – painful motion) is consistent with VASRD standards. The Board considered whether the tender surgical scar was an independently unfitting condition. In the absence of any direct reference to a painful scar as an impairment to the CI’s duty performance, or any indirect evidence such as modified wear of foot gear, the Board could not find cause to recommend that it be rated as an additionally unfitting condition. There was no evidence of ratable peripheral nerve impairment in this case. There is not reasonable doubt in the CI’s favor therefore to justify a Board recommendation for other than the 10% rating assigned by the PEB for the left ankle condition.

Remaining Conditions. Other conditions identified in the Disability Evaluation System (DES) file were tinea versicolor, right wrist pain and low back pain. None of these conditions were clinically significant during the MEB/PEB period, were associated with limited duty restrictions, or were implicated in the commander’s statement. 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.

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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. 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 left ankle condition IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the tinea versicolor, right wrist pain and low back pain, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Ankle Pain (due to Tibialis Posterior Tendinopathy) | 5299-5003 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090819, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 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 XXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 25 Apr 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)