RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: USMC

CASE NUMBER: PD0900503 BOARD DATE: 20100623

SEPARATION DATE: 20090330

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SUMMARY OF CASE: This covered individual (CI) was CPL/E-4, 0311/Rifleman Marine medically separated from the Marine Corps in 2009 after three (3) years of service. The medical basis for the separation was Right Ankle Instability S/P open reduction internal fixation (ORIF) Fibular Fracture. The CI was referred to the Physical Evaluation Board (PEB), determined unfit for continued Naval service, and separated at 10% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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CI CONTENTION: The CI states: “The rating for the condition which rendered Cpl MB unfit should be changed because the severity of the injury is far worse than diagnosed in the determination. The range of motion of the Right Ankle is greatly diminished along with the flexibility and strength. The ankle is still swollen, and tender a year and a half after surgery. Cpl B constantly has a limp, and at times is not able to walk at all. His daily exercises have been changed significantly to include daily tasks such as driving, walking, shopping, and working. Cpl B is not able to stand or walk longer than 10 minutes before needing a break. The VA has described it as CHRONIC pain associated with the right ankle which radiates through the foot and leg. A CAT Scan conducted at Tripler Army Medical Center in August of 2008 showed "a well marginated defect in the posteromedial tibial plafond measuring approximately 10 mm x 6 mm x 6 mm deep. Subtle cystic changes are seen in the opposing talar surface... There is a 7 mm bone island present 2 cm superior to the tibial articular surface in the medial distal tibia. Also an MRI done through the VA shows swelling, developing arthritis, as well as the formation of bone spurs inside of the ankle joint Cpl MB deserves a review and an increased disability rating to 30% due to the following:

1) Sustained Swelling in the Right Ankle

2) Chronic pain in the right ankle versus Moderate pain

3) Severely decreased ROM, stability, and strength of the right ankle

4) Bone spurs inside of the right ankle joint

5) Well marginated defect in posteromedial tibial plafond 10 mm x 6 mm x 6 mm deep. 7 mm bone island 2 cm superior to tibial articular surface”

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RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB 20081216** | **VA (4 Months After Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Right Ankle Instability s/p ORIF Fibular Fracture | 5099-5003 | 10% | 20081216 | Right Ankle Fracture Injury Status Post Surgery, WithOsteochondritis Dissecans | 5271 | 20% | 20090805 | 20090401 |
| Right Ankle Pain | CAT II |  |  |  |  |  |  |  |
|  |  | Not in DES | Post Traumatic Stress Disorder  | 9411 | 50% | 20090804 | 20090401 |
|  |  | Not in DES | Chronic Right Knee Strain | 5260 | 10% | 20090805 | 20090401 |
|  |  | Not in DES | Tinnitus | 6260 | 10% | 20090811 | 20090401 |
|  |  | Not in DES | Left Ear Hearing Loss | 6100 | 0% | 20090811 | 20090401 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*):** **70% from 20090401**  |

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ANALYSIS SUMMARY:

The CI first injured his right ankle on January 18th 2008 during a non-lethal weapons training course. He was executing a tactic with a twisting maneuver and noticed a "pop." Immediately following this he was unable to bear weight on his right ankle. He sought treatment immediately following this injury and X-rays revealed a fibular fracture. He was referred on the same day for orthopedic consultation where they determined that he would require surgical repair. He underwent open reduction, internal fixation on January 25th 2008. He was placed in a cast for approximately two months and then placed in a walking boot for another two months. After this period he initiated physical therapy for approximately four months. Despite this treatment he continued to note activity limiting pain and instability in his right ankle. Due to his continued impairment, a PEB was initiated. The CI was unable to stand for prolonged periods, walk for an extended period, walk comfortably on uneven surfaces or hills, hike, or run. He was unable to complete a physical fitness test.

Both the narrative summary (NARSUM) and VA Compensation and Pension (C&P) examinations noted decreased range of motion (ROM) of the right ankle but the NARSUM examination did not document actual degree measurements. An earlier examination did document ROM measurements as noted in the chart below. Both NARSUM and VA C&P examinations noted a complaint of instability but no joint laxity was documented on examination. There were no motor, sensory, or other neurological abnormalities noted.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Ankle**Movement | Normal ROM | ROM Mil20080304Active ROM | ROM MilNARSUM20081029 | ROM VA20090805 |
| Right Dorsiflexion | 0 – 20 | 0 |  | 0-8 |
| Right Plantar flexion | 0 - 45 | 27 |  | 0-12 |
| Notes: |  | Decreased light touch secondary to pitting edema | Decreased range of motion in right ankle compared to left in both plantar and dorsiflexion. Pain localized to ankle with extremes of motion. Motor 5/5 bilateral. DTRs 2+ bilateral. No joint laxity/instability noted. Degenerative changes and effusion on MRI. | Effusion, tenderness, pain at rest. No motor or sensory loss. DTRs 2+ bilateral. No joint laxity/instability noted. |

Other Conditions Not in the Disability Evaluation System (DES):

Post Traumatic Stress Disorder, Chronic Right Knee Strain, Tinnitus, and Left Ear Hearing Loss

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BOARD FINDINGS IAW DoDI 6040.44, the Board used the Veteran’s Affairs Schedule of Rating Disabilities (VASRD) as the most favorable basis for rating. After careful consideration of all available information the Board unanimously determined that the CI’s condition is most appropriately rated at 20% for 5271 Ankle, Limited Motion of, Marked. The CI had pain-limited ROM of the right ankle with eight degrees of dorsiflexion and twelve degrees of plantar flexion and this is considered marked limited motion. Therefore, a 20% rating is warranted IAW the VASRD.

The other diagnoses rated by the VA (Post Traumatic Stress Disorder, Chronic Right Knee Strain, Tinnitus, and Left Ear Hearing Loss) were not mentioned in the Disability Evaluation System package and are therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Naval Records (BCNR) to consider adding these conditions as unfitting.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Ankle Instability s/p ORIF Fibular Fracture | 5271 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090809, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXX, EX-USMC, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 8 Jul 10

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (enclosure (1)).

2. The subject member’s official records are to be corrected to reflect the following disposition:

 a. Separation from the naval service due to physical disability rated at 20 percent (increased from 10 percent) effective 30 Mar 2009.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid funds if appropriate, and notification to the subject member once those actions are completed.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)