RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900547 SEPARATION DATE: 20070515

BOARD DATE: 20101222

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SUMMARY OF CASE: Data extracted from the available records reflects that this covered individual (CI) was SSgt, Military Policeman medically separated from the Marine Corps in 2007 after nearly eight years of service. The medical basis for the separation was Right Foot, Moderate Flatfoot. While deployed to Iraq, the CI’s vehicle was struck by an IED (explosive device) and he sustained injuries to his right foot and ankle and left knee. He had surgery to remove shrapnel from his left knee. He also had surgery for fixation of medial malleolus fracture and navicular fracture in addition to closed reduction of metatarsal shaft fractures of the fourth and fifth metatarsals. He underwent several months of physical therapy, the Return to Readiness Program at French Creek Gym at Camp Lejeune, and another surgery to the right foot approximately one year after the IED injury. He was on limited duty for two six month periods from October 2005 through October 2006. However, he continued to have significant problems and was not able to return to full duty. The CI was referred to the Physical Evaluation Board (PEB), found unfit for continued Naval service, and separated with a 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: “When my file went before the PEB, the injuries sustained warranted military retirement. When I joined the Marine Corps there were no physical or psychological problems with my body. When I separated from active duty service there were problems with both. My PEB only addressed a small portion of these problems and at the time there was no guidance given to me and I was unaware of the full extent of injuries I had sustained. In addition the doctor who performed my surgeries was a reservist who completed his obligation and returned to his civilian sector. So the medical report that was submitted to the PEB was written by a podiatrist not my orthopedic surgeon. As for the physical injuries, I am no longer able to perform many of the daily activities I was once able to do. The loss of motion from my injuries limits me daily and the pain has not diminished, but has worsened as arthritis has set in. As for my psychological well being, I never received any type of post deployment screening or advice on how to deal with the trauma of being injured in combat. I am appealing that the board to reevaluate my file and consider my case for medical retirement.”

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\*\* Rating Comparison Table is located on the next page.RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service ReCon PEB** | | | | **VA (Exams 3 Months after Separation)**  **All Effective 20070516** | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Foot, Moderate Flatfoot | 5276 | 10% | 20070214 | Status Post Right Foot Surgical Repair | 5299-5284 | 0%  10% | 20070824  Appeal |
| Right Foot Talonavicular Arthritis |  | CAT II | |
| Right Foot Metatarsalgia |  | CAT II | |
| Right Ankle Equinus Moderate |  | CAT II | | Residuals Status Post Right Ankle Surgery | 5271 | 10% | 20070824 |
|  |  | Not in DES | | Tinnitus | 6260 | 10% | 20070824 |
|  |  | Not in DES | | Cervical Strain | 5237 | 10% | 20070824 |
|  |  | MEB H&P | | Thoracic Spine Strain | 5237 | 10% | 20070824 |
|  |  | NARSUM | | Insomnia Associated with Thoracic Spine Strain | 9304 | 10% | 20070824 |
|  |  | NARSUM | | Residuals Status Post Left Knee Surgery (claimed as bilateral knee pain shrapnel to left) | 5260  5024 | 0%  (10%) | 20070824  (20080916) |
|  |  | NARSUM | | Residuals Fractured Nose Status Post Surgical Repair | 6599-6502 | 0% | 20070824 |
|  |  | NARSUM | | Scars, Right Forearm | 7805 | 0% | 20070807 |
|  |  | NARSUM | | Scars, Right Hand, Heel of Palm | 7805 | 0% | 20070807 |
|  |  | NARSUM | | Scars, Left Shin | 7805 | 0% | 20070807 |
|  |  | NARSUM | | Scars, Left Lateral Thigh | 7805 | 0% | 20070807 |
|  |  | NARSUM | | Scars, Right Thoracic Spine | 7805 | 0% | 20070807 |
|  |  | NARSUM | | Scars, Chin, Underside | 7805 | 0% | 20070807 |
|  |  | NARSUM | | Scars, Right Shin | 7805 | 0% | 20070807 |
|  |  | NARSUM | | Scars, Left Elbow | 7805 | 0% | 20070807 |
|  |  | NARSUM | | Scars, Left Knee | 7805 | 0% | 20070807 |
|  |  | NARSUM | | Scars, Right Foot | 7805 | 0% | 20070807 |
|  |  |  | | 6 X Non Service-Connected | | | |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **50% from 20070516**  **50% from 20080916 with Bilateral factor of 2.7% for diagnostic codes 5284, 5271, 5024** | | | |

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ANALYSIS SUMMARY:

Lower Extremity: Right Foot and Ankle. On 12 July 2005 the CI’s vehicle was struck by an IED while in Iraq. He suffered injury to both lower extremities, primarily to the right foot and left knee, and had loss of consciousness. Shrapnel was removed from his left knee on the date of injury. He was evacuated to Falllujah, Baghdad, and ultimately Camp Lejeune over several days, where he underwent open fixation surgery for the right ankle medial malleolus fracture, right navicular fracture and closed reduction of metatarsal shaft fractures of the right 4th and 5th metatarsals. He underwent several months of physical therapy and also the Return to Readiness Program at French Creek Gym. The therapy helped to some degree, but he was still left with some continuous chronic degree of discomfort. The CI subsequently underwent surgery to remove the plantar eminences off the fourth and fifth metatarsal condyles in June 2006. In October 2006 he stated that his daily pain was approximately 2 out of 10 increasing to 4 out of 10 with exertional type activities or higher impact activities, such as running or increased amounts of standing. By March 2007 his pain had increased to 2 to 3 out of 10 at rest and 4 to 5 out of 10 with exertion. The examination completed for the October 2006 Medical Evaluation Board (MEB) Narrative Summary (NARSUM) revealed a mildly antalgic gait and 5/5 muscle strength in the right foot in addition to decreased right ankle range of motion with less than ten degrees of dorsiflexion secondary to discomfort. Pain was also present with plantar flexion against resistance for the examination did not note at what degree of motion the pain occurred. Another MEB NARSUM was completed 20070308, approximately two months prior to separation. This examination was similar to the examination from October 2006 except by this time the gait was considered moderately antalgic and muscle strength in the right foot was now 4/5 due to discomfort.

Most of his discomfort is described as localized to the plantar aspect of his right forefoot and to the medial midfoot area. He complained of discomfort to the internal joints to the area. Description of pain is sharp, with throbbing in his knees and foot. The CI stated he had weakness to his right foot after prolonged amounts of walking or standing. He also complained of pain in his ankle and under the toes where the bone was shaved, any prolonged sitting with pressure on the area such as driving causes discomfort to his knees and to his right foot. The CI stated he had difficulty sleeping at night due to discomfort to the injured areas. Plain film x-rays of his right foot demonstrated well-healed, but plantarally displaced metatarsal fractures of the fourth and fifth. There were some moderate posttraumatic arthritic changes located to the midtarsal region of the patient's right foot. There were two screws extending through the medial malleolus of the ankle consistent with the reported surgical procedure. Medications in October 2006 were Toradol 50 mg 1 per day, Motrin 800 mg 3x per day as needed, and Trazodone 10 mg 1 per evening for sleep.

The same provider performed both evaluations described above and he noted a clear worsening of the CI’s foot and ankle condition over the course of five months. His initial diagnoses in October 2006 were:

1. Right foot, moderate flatfoot
2. Right ankle equinus moderate
3. Right foot talonavicular arthritis
4. Right foot metatarsalgia all secondary to terries explosion or IED

In March 2007, the diagnoses were:

1. Right foot moderate right foot weakness secondary to post traumatic injuries secondary to the IED blast occurring on 12 July 2005
2. Right foot moderate equinus
3. Malunion right foot fourth and fifth metatarsal fractures
4. Right foot fourth and fifth hammertoes secondary to muscle imbalances
5. Right foot posttraumatic talonavicular arthritis
6. Right foot metatarsalgias secondary to malunion
7. Moderate decrease usage of right foot secondary to posttraumatic injuries

The sequential evaluations and characterizations of the condition demonstrate that more functional limitations were present in March 2007 as compared to October 2006. The MEB in October 2006 was performed four months after the CI’s foot surgery of July 2006. An addendum was provided to the PEB in December 2006 and it documented that at six months post surgery, the CI’s condition had not changed significantly from the October 2006 evaluation and the provider recommended continuing the previous duty limitations. However, by the time of the March 2007 MEB, the CI’s condition had clearly worsened. It appears that the PEB did not consider the March 2007 MEB as its initial findings (20070118) as well as its reconsideration (20070214) were published prior to this MEB. Their findings were presumably based on the October 2006 MEB and the December 2006 Addendum letter. However, the CI did not separate until May 2007, two months after the March 2007 MEB. The Board considered this evaluation in determining the CI’s condition at the time of separation from service.

The VA C&P examinations of the feet and ankles were completed in August 2007, approximately three months after the CI separated from service. The VA examination of the right foot also documented pain at rest and increased pain with activity, swelling, warmth, redness, stiffness, and lack of endurance. Flare-ups occurred more than once a week, especially after prolonged walking or exercise. The CI was able to stand up to one hour and could walk more than ¼ mile but less than one mile. He used orthotic inserts as well as an ankle brace. The right foot was tender to palpation and the gait was documented as normal. The right foot had the following effects on daily activities:

CHORES: Mild to moderate--right foot

SHOPPING: None

EXERCISE: Moderate to severe--right foot

SPORTS: Moderate to severe--right foot

TRAVELING: Moderate to severe--right foot

FEEDING: None

BATHING: None

DRESSING: None

TOILETING: None

DRIVING: Moderate to severe right foot

The VA ankle examination noted a brace was needed for walking intermittently but frequently. This examination noted the CI would stand for 15 to 30 minutes and could walk more than ¼ mile but less than 1 mile. It documented right ankle pain, stiffness, weakness, and weekly flare-ups with increased pain, decreased mobility, stiffness, warmth and redness. The right ankle had significantly limited range of motion (ROM) due to pain. The provider noted significant effects on occupational activities due to pain and the following effects on daily activities:

CHORES: Mild--right ankle

SHOPPING: None

EXERCISE: Moderate to severe-right ankle

SPORTS: severe--right ankle

RECREATION: Mild

TRAVELING: Moderate to severe--right ankle

FEEDING: None

BATHING: None

DRESSING; None

TOILETING: None

GROOMING: None

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Right Ankle**  Movement | Normal ROM | ROM Military  20061025 | ROM Military  20070308 | ROM VA  20070830 |
| Dorsiflexion | 0 - 20 | <10 due to pain | <10 due to pain | 10 with Pain at 5 |
| Plantar flexion | 0 - 45 |  |  | 40 with Pain at 15 |
| Gait |  | Mildly antalgic | Moderately antalgic | Normal |
| Notes |  | Strength 5/5; pain with plantar flexion; | Strength 4/5 due to dis-comfort; pain with plantar flexion; palpable osseous masses below 4th and 5th metatarsal heads | Tender to palpation |

Multiple VA C&P examinations in August 2007 noted the use of right foot orthotic and right ankle brace. Both MEB NARSUMs and multiple progress notes in the STR noted an antalgic gait but the VA examination of the feet and ankles noted a normal gait. However, a subsequent VA C&P examination done for Brain and Spinal Cord in February 2008 noted an antalgic gait. The CI had moved to Florida after separating from service to attend college. The STR therefore has no specific information about the effects of his condition on his ability to obtain or maintain employment. The initial VA rating decision (VARD) 20070907 stated: “Service medical records for the period September 20, 1999 to May 15, 2007 could not be obtained for review. If records are located at a later date this decision will be reconsidered. If a different decision results, that decision will be effective as of the date of the original claim.” The initial rating for the right foot was 0% and this was later increased to 10% without an additional C&P examination. The new rating had the same effective date as the original rating, 20070516. The decision to increase the rating was based on review of the service medical records as well as VA treatment records from 20050813 to 20080612. The 10% rating was continued in 2009 based on a VA C&P examination of 20081016. The VARD noted normal gait, atrophy of the 4th and 5th toes and muscles, painful motion, moderate tenderness to palpation of the plantar surface. Non-weight bearing X-rays documented abnormal findings of deformity of the heads of the 4th and 5th metatarsals with subcortical cyst formation and irregularity of the cortical margins bilaterally. The VARD stated a rating of 20% was not warranted because there was no evidence of right foot edema, disturbed circulation, weakness, tenderness, heat, redness, or instability. However, the MEB and VA evaluations did show weakness and tenderness and the CI reported heat and redness with flares of his right foot condition.

The Board determined that as the multiple VA and MEB examinations were within several months of each other, the probative value of each examination considered above is high. While the October 2006 MEB noted a diagnosis of moderate flatfoot, this finding was not present on any physical examination in the STR. While the VASRD code 5276 could be used analogously, it appears that the malunion of the metatarsal fractures with subsequent pain, arthritis, and painful motion of the right foot and ankle as well as the inability to perform or sustain prolonged or exertional activities are the conditions that limited the CI’s ability to perform the required duties of his rank and rating. As the limited ROM of the right ankle is due to pain and not a mechanical limitation it is difficult to determine if this limitation is due to the foot injury or as a sequela of the ankle fracture or both. The VA separated the ankle ROM limitation and rated it separately. It appears the CI had constant pain in his right foot and ankle with intermittent flares of increased symptoms. He reported swelling, warmth, redness, stiffness, and lack of endurance at these times. Flare-ups occurred more than once a week, especially after prolonged walking or exercise. An antalgic gait was noted intermittently and this most likely occurred with flares. The malunion of metatarsal bones would definitely be considered moderately severe if the decreased ROM of the ankle is included in this rating. However, even if the ankle is considered a separate condition, the foot condition could still be considered moderately severe if the frequency and severity of all symptoms and functional limitations are considered. The CI had increased symptoms more frequently than once a week with significantly increased pain, swelling, warmth, redness, stiffness, and lack of endurance. He was not able to stand for prolonged periods of time without exacerbating his symptoms and he was not able to engage in activities such as running, softball, weightlifting, basketball, or martial arts. Travel and driving with the accompanying prolonged sitting also exacerbated his symptoms. While he was a college student and was not seeking employment, these physical limitations would limit the jobs available to him. After a lengthy discussion the Board determined that the ankle condition should not be rated separately and with all symptoms combined, the condition was considered moderately severe.

Other Conditions in the DES. Thoracic Spine Strain; Insomnia Associated with Thoracic Spine Strain; Residuals Status Post Left Knee Surgery; Residuals Fractured Nose Status Post Surgical Repair; and multiple scars. There is no evidence in the STR that any of these conditions prevented the CI from performing duties required for his rank or rating.

Other conditions Not in the DES. Tinnitus and Cervical Strain

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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 determined by simple majority that the CI’s condition is most appropriately rated at a 20% for 5283 Right 4th and 5th Metatarsal Malunion with Post-Traumatic Arthritis and Weakness, status post IED Blast. The CI had significant injuries to his right foot and ankle after an IED blast. After multiple surgeries and physical therapy he was not able to return to full duty and continued to have symptoms that caused significant functional limitations. His symptoms would frequently worsen, especially with any attempt to perform prolonged activities such as standing longer than 30 minutes or walking more than ¼ mile. He experienced flare-ups more than once a week and these involved significantly increased pain, swelling, warmth, redness, stiffness, and lack of endurance. At the time of separation he required the use of an orthotic and an ankle brace. He also had significantly limited range of motion of his right ankle. Both conditions contributed to his inability to perform the tasks required of a Military Policeman in garrison and deployed settings and together were considered to be moderately severe.

The single voter for dissent (who recommended a combined rating of 30% with 20% for 5283 Right 4th and 5th Metatarsal Malunion with Post-Traumatic Arthritis and Weakness, status post IED Blast and 10% for 5271 Residuals Right Ankle, status post IED Blast) did not elect to submit a minority opinion.

The Board considered the following conditions and unanimously determined that none of these conditions prevented the CI from performing the duties required of his rank and rating: Thoracic Spine Strain; Insomnia Associated with Thoracic Spine Strain; Residuals Status Post Left Knee Surgery; Residuals Fractured Nose Status Post Surgical Repair; and multiple scars. Therefore these conditions were not unfitting at the time of separation from service and no disability ratings are applied.

The other diagnoses rated by the VA (Tinnitus and Cervical Strain) were not mentioned in the Disability Evaluation System (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 Service 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 4th and 5th Metatarsal Malunion with Post-Traumatic Arthritis and Weakness, status post IED Blast | 5283 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090908, 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, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 21 Jan 11

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

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 15 May 2007.

3. Please ensure all necessary actions are taken to implement this decision, including notification to the subject member once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)