RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900606 SEPARATION DATE: 20080717

BOARD DATE: 20110217 TDRL DATE: 20060228

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (2111, Small Arms Repairer) who sustained a right femoral neck stress fracture in February 2005. After initial conservative treatment he underwent pinning of the right femoral neck. Following surgery he remained symptomatic and was unable to perform his military duties. The Medical Evaluation Board (MEB) referred him to the Physical Evaluation Board (PEB). The PEB found his right femoral neck stress fracture condition unfitting and placed the CI on the Temporary Disability Retired List (TDRL) with a 30% rating. After a follow-up TDRL evaluation, the PEB recommended a permanent rating of 10% for the right femoral neck stress fracture condition. The PEB upheld the 10% rating on reconsideration and the CI was removed from the TDRL.

CI CONTENTION: The CI states, “Was rated 10% for scar on right thigh, which overlooks the fact that I have three pins that were inserted in my right femur for a right femoral neck stress fracture. The pins were never removed.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Navy IPEB – Dated 20080717** | | | | | **VA (31 mo. Pre- Separation) – All Effective 20060301** | | | |
| **Condition** | **Code** | **Rating** | | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL - 20060228** | **TDRL** | | **Sep.** |
| Right Femoral Neck Stress Fracture | 5003-5255 | 30% | | 10% | Stress Fracture of Right Femur | 5255 | 0% | 20051212 |
| 5024-5252 | 10% | Hearing Officer Decision 20070529 |
|  |  | | Surgical Scar Right Thigh | 7804 | 10% | 20060506 |
| **TOTAL Combined: 10%** | | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 20%** | | | |

ANALYSIS SUMMARY:

Femoral Neck Stress Fracture. This Marine sustained a stress fracture of the right femoral neck in February 2005 when he developed increasing pain while running and hiking. Despite several months of conservative non-weight bearing care, his symptoms persisted and he underwent pinning of his right femur on 9 Jun 05. Postoperatively he reported constant pain, which he graded as a 2-3/10 on average and 5/10 at maximum. He was unable to run or tolerate any prolonged high impact activities but he was able to swim and cycle for exercise. Despite treatment with Percocet, his continued pain and loss of motion interfered with his ability to perform his military duties. His commander noted that he “is not capable of performing the very basic tasks that are required of an armorer. Most weapons that require maintenance weigh more than 10 pounds, the maximum weight that he is capable of lifting. Due to his inability to lift/move weapons from one location to another, he is a burden to those Marines that work with him. He is currently assigned in the Infantry Weapon Repair Shop as a permanent armored sentry for the armory. This is the only job that he can perform. It is requested that B--- be released from active duty immediately in order to be back filled with a Marine that is capable of performing all assigned tasks.” The commander did not identify any conditions other than the right femoral neck stress fracture. The only documented physical limitations were those attributed to the adjudicated condition. He was initially placed on limited duty from 10 May 05 until 10 Nov 01, with no weight bearing for the perioperative and recovery period. An additional limited duty covered the period from 31 Oct 05 until 10 May 06 with no running, forced marches, field work, lifting greater than 10 pounds, and participation in physical readiness tests.

The Medical Board examination on 15 Nov 05 noted decreased range of motion (ROM) of the right hip secondary to upper thigh pain. The 2 Nov 05 narrative summary (NARSUM) documented tenderness to palpation at the incision site with decreased hip motion. It was noted that his condition should be watched with regular follow-ups for possible development of avascular necrosis of the femoral head. The NARSUM did not formally identify any other medical conditions at separation. It was felt unlikely that the CI would return to full duty and was referred to the PEB for determination of fitness for service. The PEB on 21 Dec 05 found his right femoral neck stress fracture condition (code 5003-5255) unfitting and placed the CI on the TDRL with a 30% rating, effective 1 Mar 06, after 16 months of active service.

The VA Compensation and Pension (C&P) examination on 12 Dec 05 demonstrated limited ROM secondary to pain and tenderness to palpation at the incision site. X-rays showed a healed fracture of the right femoral neck. Motor strength was documented as 4/5 on the right and 5/5 on the left. His gait was normal and sensory function was intact. The VA Rating Decision of 6 May 06 awarded 10% for the scar right thigh status post surgery condition for a superficial scar that is painful on examination. The status post stress fracture of the right femur condition was given a noncompensable evaluation since there was no malunion of the femur with slight knee or hip disability. The VA Rating Decision of 29 May 07 assigned a 10% evaluation for the status post stress fracture of the right femur condition based on painful motion of a major joint.

The NARSUM of 3 Jun 08 (TDRL follow-up evaluation) noted an ongoing complaint of constant pain with inability to run or do prolonged impact activities. His ROM was significantly improved and the examiner noted no tenderness to palpation over the greater trochanter or the incision site. Hip flexion was 115 degrees and abduction was not documented but was 35 degrees on the VA C&P examination on 12 Dec 05. X-rays showed normal hardware placement with no signs of avascular necrosis. Overall, he was felt to be doing well two years status post pin fixation of the femoral neck stress fracture. After this follow-up TDRL evaluation, the PEB, on 24 Jun 08, recommended a permanent rating of 10% for the right femoral neck stress fracture condition (code 5003-5255). On reconsideration, the PEB upheld that rating on 17 Jun 08. The CI was separated, with severance pay, from the TDRL effective 17 Jul 08. As with the VA decision a higher rating of 20% was not warranted since flexion of the thigh was not limited to 30 degrees, abduction of the thigh was not lost beyond 10 degrees, or there was no malunion of the femur which resulted in moderate knee or hip disability.

The Board did consider utilization of codes 5252 and 5253 for limitation of thigh motion but there was no documentation of ratable motion deficits. The CI contention noted specific concern over the retained pins from surgery however such retained hardware does not warrant specific rating consideration in and of itself. After careful consideration of all information related to the right femur stress fracture condition, the Board unanimously recommends no change in the PEB adjudication with a permanent separation rating, after TDRL, of 10% coded 5003-5255, IAW VA Schedule for Rating Disabilities (VASRD) §4.71a and §4.59.

Scar Right Thigh Status Post Surgery Condition. This condition was rated by the VA at 10% for a painful scar. There was no evidence that a painful surgical scar interfered with his military duties. The Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation.

Other Conditions. No other conditions were service connected with a compensable rating by the VA within twelve months of separation.

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 right femoral neck stress fracture condition and IAW VASRD §4.71a and §4.59, the Board unanimously recommends no change in the PEB adjudication. In the matter of the scar right thigh status post surgery condition, the Board unanimously agrees that it cannot recommend a finding 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.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Right Femoral Neck Stress Fracture | 5003-5255 | 30% | 10% |
| **COMBINED** | **30%** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090918, 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 XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 25Feb 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.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)