RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900626 SEPARATION DATE: 20060630

BOARD DATE: 20110406

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Sgt (Equipment Mechanic) medically separated from the Marine Corps for left ankle osteochondral lesion. In spite of multiple surgeries, medications, steroid injections, and physical therapy, the CI continued to have significant problems with his left ankle and was not able to fully perform his military duties. The CI was referred to the Physical Evaluation Board (PEB) and was found fit for duty. In January 2006, a PEB Reconsideration found him unfit for continued service, and he was separated at 10% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Navy and DoD regulations.

CI’s CONTENTION: “I believe that my rating should be changed because the injuries that I sustained while on active duty have had a substantial effect on the quality of my daily life. After two surgeries, countless rounds of Cortisone shots and months of physical therapy, my ankle is not in a better condition today. In February 2009, I had an MRI performed on my ankle. There are visible signs of defects within the ankle that may answer the question as to why my ankle continues to lock. Although I am able to work, I have a light duty request on file. I must wear an ankle brace everyday to allow me to perform my daily duties. I must regularly purchase insoles for my shoes. When I have been on my feet for long periods of time, I must ice my ankle down or take medications to numb the pain.” The CI then goes on to explain how the injuries have taken a toll on his relationship with his family. He lists several types of physical activities that are modified or limited because of his condition.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Navy PEB Reconsideration – Dated 20060126** | | | **VA (4 mo. Pre-Separation) – All Effective 20060701** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Ankle Osteochondral Lesion | 5299-5003 | 10% | S/P Strain, Brostrom Surgery and Degenerative Joint Disease, Left Ankle | 5003-5271 | 10% | 20060214 |
| Recalcitrant Left Ankle Pain | Category II | |
| ↓No Additional MEB Entries↓ | | | Muscle Strain Right Ankle | 5271-5019 | 10% | 20060214 |
| Muscle Strain Right Foot | 5284 | 10% | 20060214 |
| Patello-Femoral Syndrome Right Knee | 5260-5019 | 10% | 20060214 |
| Muscle Strain, Low Back | 5237 | 10% | 20060214 |
| Muscle Strain, Neck | 5237-5019 | 10% | 20060214 |
| Muscle Strain Left Wrist | 5215-5019 | 10% | 20060214 |
| Asthma | 6002 | 10% | 20060214 |
| Other conditions X6, all 0% | | | 20060214 |
| **FINAL Combined: 10%** | | | **TOTAL Combined: 60%** | | | |

ANALYSIS SUMMARY:

Left Ankle Condition. This Marine suffered a left ankle inversion injury in 1997. In spite of treatment, he continued to have persistent left ankle pain and swelling. In February 1999, he underwent surgery on the left ankle to repair the ankle ligaments. Subsequently, more surgery was done on the left ankle. The CI improved and was doing well until he twisted his ankle in April 2004. After this re-injury, the left ankle did not do well. The pain persisted despite medication, steroid injections, and physical therapy. He was unable to do a physical fitness test or perform his required military duties, so he was referred for PEB.

The MEB left ankle exam pm 28 November 2005 documented tenderness to palpation over the lateral ligaments. There was no ankle instability and he had good range of motion (ROM). The CI underwent a VA compensation and pension (C&P) exam on 14 February 2006 (four months prior to separation). At that time, he reported weakness, stiffness, swelling, and lack of endurance. ROM testing of the left ankle showed dorsiflexion of 10⁰ (with pain at 5⁰), and plantar flexion of 40⁰degrees (with pain at 30⁰). The two goniometric ROM evaluations are summarized below:

|  |  |  |
| --- | --- | --- |
| Left Ankle | Separation 20060630 | |
| Goniometric ROM | MEB - 20051128 | VA C&P - 20060214 |
| Dorsiflexion (20⁰ is normal) | 10⁰ | 10⁰  (Pain at 5⁰) |
| Plantar Flexion (45⁰ is normal) | 60⁰ | 40⁰  (Pain at 30⁰) |
| §4.71a Rating | 10% | 10% |
| Comment | Painful motion | Painful motion |

The Board carefully examined all of the evidentiary information available. The PEB and the VA chose different coding options for the left ankle condition, but both arrived at a 10% rating. Of the various coding options, it is clear that none offers any particular advantage to the CI, since all of the options lead to a 10% disability rating. After careful consideration of the evidence available, the Board unanimously recommends a 10% disability rating for the left ankle condition IAW VASRD §4.59, and §4.71a.

Other PEB Conditions. Recalcitrant left ankle pain was found by the Navy PEB to be Category II. All evidence considered there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for this condition.

Remaining Conditions. Additional conditions documented in the Disability Evaluation System (DES) file include asthma and bilateral pes planus (flatfeet). These conditions were not clinically significant during the PEB period, and were not implicated in the commander’s statement. They were reviewed by the action officer and considered by the Board. It was determined that neither could be argued as unfitting and subject to separation rating. Additionally, several other conditions were service connected by the VA, with a rating of 10% for each condition. There is no clearly documented evidence that any of these conditions were a matter of record in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES.

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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 chronic left ankle condition the Board unanimously recommends a disability rating of 10% (coded 5299-5003) IAW VASRD §4.71a. In the matter of the asthma, pes planus, 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 recommends that there be no recharacterization of the CI’s disability and separation determination.

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Ankle Condition (Pain and Limitation of Motion) | 5299-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091015, 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

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 3 May 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. XXXXX’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)