RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900680 SEPARATION DATE: 20031031

BOARD DATE: 20110722

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (6300, Avionics) medically separated for a left hip condition. In November 2002, he fractured his left femoral neck during a formation run while in recruit training. He was treated (including surgery and rehabilitation) but did not respond adequately to perform his required military duties or meet physical fitness standards. The CI was placed in the Medical Rehabilitation Platoon, and underwent a Medical Evaluation Board (MEB). His left femoral neck fracture condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB found the left hip condition unfitting, and assigned a rating of 10%. The CI accepted the PEB findings, and was medically separated with 10% disability IAW applicable Navy and DoD regulations.

CI’s CONTENTION: He elaborates no specific contention regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Navy IPEB – dated 20030904** | | | **VA (7 mo. Pre Separation) – All Effective 20031101** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Hip Fracture | 5255 | 10% | Left Femoral Neck Fracture | 5255 | 20% | 20030321 |
| ↓No Additional MEB/PEB Entries↓ | | | Scar on Left Leg | 7804 | 10% | 20030321 |
| **Final Combined: 10%** | | | **Total Combined: 30%** | | | |

ANALYSIS SUMMARY:

Left hip fracture. This Marine fractured his left femoral neck during a formation run, as a basic recruit. He underwent open reduction and internal fixation (ORIF) surgery. An MEB was initiated in January 2003, but was terminated because the fracture failed to heal. Due to the femoral nonunion, he underwent a Pauwel’s osteotomy to stimulate healing and re-align the hip joint. One week later (1 March 2003) the Pauwel’s osteotomy was revised due to unacceptable malrotation of the fracture fragments. After surgery, the CI began physical therapy (PT) and rehabilitation. However, it was determined that he would not be able to complete his Marine Corps basic training, and an MEB was then re-initiated.

On 21 March 2003, the CI had a VA compensation and pension (C&P) evaluation. At that time, he was only three weeks post-operative and was not yet bearing any weight on his left leg. He was concerned about his left leg muscle atrophy and his leg length discrepancy. The examiner noted a slight decrease in left quadriceps strength, and left hip motion was limited by pain.

In the MEB narrative summary (NARSUM) of 19 June 2003, the examiner did not mention any of the CI’s symptoms. On examination there was restricted left hip motion, and one centimeter of leg length discrepancy. Radiographs showed that the osteotomy and femoral neck fracture were well healed, and there was some heterotopic ossification in the gluteus medius muscle. In the treatment record, three range of motion (ROM) evaluations were in evidence, which the Board weighed in arriving at its recommendation. These three exams are summarized below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM –  Left Hip | VA C&P – 7 mo. Pre-Sep | MEB – 4 mo. Pre-Sep | VA C&P – 46 mo. Post-Sep |
| Flexion (90⁰ is normal) | 90⁰ | 90⁰ | 80⁰ |
| Extension (0⁰ is normal) |  |  | 30⁰ |
| Abduction (45⁰ is normal) | 50⁰ |  | 25⁰ |
| Adduction (45⁰ is normal) |  |  | 50⁰ |
| Comment | only 3 weeks post surgery |  |  |
| §4.71a Rating | 10% (painful motion) | 10% (painful motion) | 10% (painful motion) |

The Board carefully reviewed all evidentiary information available. The first VA C&P examination was conducted just three weeks after surgery. At that time, the CI was required to be on crutches and he had not completed his hip rehabilitation. Three months later, the June 2003 MEB examination was very cursory in its scope. It failed to mention any symptoms, and did not document a complete ROM examination or gait analysis. A much more complete evaluation was done at the August 2007 C&P examination, but that was almost four years after separation.

The Board noted that the left hip condition was essentially non-compensable based on the ROM criteria in VASRD hip and thigh codes 5250 through 5253. However, the Board determined that even though there was not actual malunion, the CI’s painful, disabling hip condition was analogous to femoral malunion. Therefore, the Board felt that the analogous code 5299-5255 would best fit the CI’s left hip condition at the time of separation from service.

The Board then directed its attention to the appropriate rating. The Board’s deliberations settled on arguments for a 10% (slight hip disability) vs. 20% (moderate hip disability) rating recommendation. Because of the 35 degree loss of flexion, the leg length discrepancy, and the heterotopic ossification the Board felt that the left hip disability was greater than slight. After due deliberation considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a 20% rating for the chronic, painful left hip condition.

Remaining Conditions. Left thigh surgical scar, and several other conditions were noted in the Disability Evaluation System (DES) file. None of these conditions were the basis for limited duty and none were implicated in the non-medical assessment. These conditions were all 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. No other conditions were service connected with a compensable rating by the VA within twelve months of separation, or contended by the CI. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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. In the matter of the left femoral neck fracture, the Board unanimously recommends a rating of 20% (coded 5299-5255) IAW VASRD §4.71a. In the matter of the surgical scar, 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 the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Femoral Neck Fracture | 5299-5255 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091106, 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 XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 16 Aug 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (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 31 October 2003.

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

Assistant General Counsel

(Manpower & Reserve Affairs)