RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: Marine corps

CASE NUMBER: PD0900701 SEPARATION DATE: 20020531

BOARD DATE: 20110427

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl (0331, Machine Gunner) medically separated from the Marine Corps in 2002. The medical basis for the separation was bilateral ankle degenerative joint disease (DJD)*.* Following a left ankle injury, he did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS) or participate in a physical fitness test. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Bilateral ankle DJD, ankle impingement and loose bodies, and status post arthroscopic debridement left ankle for tibiotalar spur were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the bilateral ankle DJD condition as unfitting, rated 10%, with application of SECNAVINST 1850.4E. The ankle impingement and loose bodies was a contributing condition not separately ratable, and the post-surgical condition was not separately unfitting or ratable. The CI made no appeals, and was medically separated with a 10% combined disability rating.

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CI CONTENTION: “My left ankle has gotten worse and required a 2nd surgery. Shortly after military discharge in May of 2002, I found that my back was in bad condition. My back is the worse of the two evils and I have pain on a daily basis.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20020417** | | | **VA (10 Mo. After Separation) – All Effective Date 20020601** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Ankle DJD | 5299-5003 | 10% | Bilateral Ankle DJD, S/P Left Ankle Arthroscopic Debridement\* | 5010-5271 | 20% | 20030322 |
| Ankle Impingement and Loose Bodies | CATII | |
| S/P Arthroscopic Debridement L Ankle for Tibiotalar Spurring | CATIII | |
| ↓No Additional MEB / PEB Entries↓ | | | 0% x 0 / Not Service Connected x 3 | | | 20030322 |
| **Combined: 10%** | | | **Combined: 20%** | | | |

\*VA initially rated 10% based on service records, CI did not show for C&P examination scheduled for 20020917, rating increased to 20% (VARD April 3, 2003) effective day after separation based on 20030322 examination 10 months after separation.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service incurred conditions have had on his quality of life. However, the military services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. The VA, however, can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations compared to VA Schedule for Rating Disabilities (VASRD) standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. Furthermore, a “crystal ball” requirement is not imposed on the service PEBs by the Board, and the 12-month window specified in DoDI 6040.44 is appropriate for rating comparisons but not for new developments after separation. The Board’s threshold for countering Disability Evaluation System (DES) fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations but remains adherent to the DoDI 6040.44 “fair and equitable” standard.

Bilateral Ankle DJD. The CI injured his left ankle during a training exercise in January 2001, approximately six months after entering active duty. Radiographic findings at the time of injury demonstrated changes of the left ankle consistent with his report of a significant left ankle injury in high school with ligamentous tears (three by CI report) requiring casting for ten weeks. He recovered from the old injury, entered active duty, and successfully participated in military training for six months until re-injury during training. His left ankle pain did not improve over a nine-month period of conservative treatment, and he subsequently underwent arthroscopic surgical debridement of a bone spur and loose bodies. Intra-operative findings revealed significant degenerative changes. The CI’s symptoms improved post-operatively; however, he remained unable to perform military duties including running and high impact or high load activities. The narrative summary (NARSUM) on February 1, 2002 refers to bilateral ankle pain, but only details the left ankle documenting decreased range of motion (ROM) without instability. There was one record entry for a minor twisted right ankle for which there were no further medical record entries. A bone scan however did show symmetric changes of both ankles in ligamentous areas. The VA compensation and pension (C&P) examination, 10 months after separation, also demonstrated decreased ROM of the left ankle; however, the gait was recorded as normal. Compared to the MEB NARSUM values, the C&P examination did reflect some increased loss of dorsiflexion, but there was increased plantar flexion for an unchanged total ROM. There was no instability of the left ankle on examination. All examiners also documented decreased ROM of the left subtalar joint. The C&P examination of the right ankle revealed normal findings. X-rays of the ankles confirmed DJD of the left ankle, while the right ankle x-ray was normal. The Board also noted the VA C&P spine examination (March 2003) report that the CI injured his back playing basketball approximately three months after separation, a fact that was considered by the Board to be an indicator of the level of ankle impairment at the time of separation. These examinations are summarized in the chart below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM | PT - 8 Mo. Pre-Sep | | C&P - 10 Mo. After-Sep | |
| ANKLE | Right | Left | Right | Left |
| Dorsiflexion (0-20) | 15⁰ | 5⁰ | 20⁰ | 0⁰ |
| Plantar Flexion (0-45) | 40⁰ | 25⁰ | 45⁰ | 30⁰ |
| Comment |  | Pain with motion; decreased toeoff; No instability; Air splint | Unremarkable Normal ROM | crepitus on ROM; decreased in overall function |
| §4.71a Rating | 0% | 20%\* (PEB 10%) | 0% | 20%\*\* |

\*PEB rated bilateral DJD coded 5299-5003

\*\*VA rated bilateral ankle DJD coded 5010-5271 – initially rated 10% based on service records

The PEB rated the condition 10% under diagnostic code 5299-5003 for degenerative arthritis consistent with the diagnosed condition and VASRD rating criteria. Rating using 5003 allows for two rating options based on presence of X-ray findings and occasional incapacitating episodes (10% and 20%). Following surgery, there was persistent limitation from high intensity physical activity but there were no incapacitating episodes documented consistent with a 10% rating under 5003. The PEB, in adjudicating a rating, noted the pre-existing ankle condition but made no deduction (0%). The Board agreed the CI’s left ankle degenerative arthritis condition was due to trauma. Although the degenerative changes were likely present prior to entry and initially caused by a pre-service injury, it is likely that military training caused permanent worsening of the left ankle condition beyond the natural progression of the disease. The VA initially rated the condition 10% based on service treatment records (the CI did not show for a C&P examination scheduled for September 17, 2002) using diagnostic code 5010 for traumatic arthritis which directs rating using 5003 criteria. Subsequently, the VA rated the condition 20% using diagnostic code 5010-5271, arthritis due to trauma, rating based on loss of ROM (code 5271) shown in a C&P examination 10 months after separation. VASRD diagnostic code 5271, ankle limitation of motion, provides two options: moderate 10%, and marked 20%. All members agreed the right ankle did not attain a minimum rating using 5271 or any other code, and further noted that there was no evidence showing a right ankle disability that would have been unfitting alone. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.7 (higher of two evaluations), the Board recommends a separation rating of 20% using diagnostic code 5010-5271, arthritis due to trauma, limitation of ankle motion, marked (20%) for the left ankle, and 0% for the right ankle. The Board considered rating under different coding options, but a higher rating benefiting the member did not result.

Other Contended Conditions. The CI’s application asserts that a compensable rating should be considered for a back condition because “shortly after military discharge in May of 2002, I found that my back was in bad condition. My back is the worse of the two evils and I have pain on a daily basis.” Except for a recruit screening examination in June 2000, for complaint of one week of back pain with a one year history of occasional back pain extending prior to entry onto active duty, service treatment records are silent for complaints of, or care for back pain. At the time of the MEB history and physical examination (DD Form 2807), there was also no active complaint of back pain. VA spine C&P examination (March 2003) records the onset of back pain three months after separation while playing basketball. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that this condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the stated condition was subject to service disability rating.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the Disability Evaluation System (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. The Board thus has no basis for recommending any additional unfitting conditions for separation rating.

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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. In the matter of the bilateral ankle DJD, the Board, by a vote of 2:1 recommends a rating of 20% for the left ankle and 0% for the right ankle, coded 5010-5271 IAW VASRD §4.71a. The single voter for dissent (who recommended no recharacterization) elected not to submit a minority opinion. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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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.

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Left Ankle Degenerative Joint Disease | | 5010-5271 | 20% |
| Right Ankle Degenerative Joint Disease | | 5010-5271 | 0% |
| **COMBINED (Incorporating BLF)** | | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090811, 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 11 May 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 31 May 2002.

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)