RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: USMC

CASE NUMBER: PD0900709 BOARD DATE: 20100804

SEPARATION DATE: 20011215

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SUMMARY OF CASE: This covered individual (CI) was an active duty Cpl (0621, Field Radio Operator) medically separated from the Marine Corps in 2001 after 2.8 years of service. The medical basis for the separation was a right ankle condition. The CI injured his right ankle in boot camp and continued to have recurrent ankle instability and sprains despite aggressive physical therapy. He did not respond adequately to continued conservative measures to meet the physical requirements of his specialty and surgery was not indicated. Following two periods of Limited Duty (LIMDU), his right ankle instability continued to limit his duty performance and he underwent a Medical Evaluation Board (MEB). The right ankle condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. Other conditions included in the narrative summary (NARSUM) and Disability Evaluation System (DES) packet will be discussed below. The PEB obtained additional medical information on the CI’s knee and low back conditions. The PEB found the CI unfit only for his right ankle condition at 10% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations. The CI did not appeal for a formal PEB and was thus medically separated with a 10% disability rating.

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CI CONTENTION: The CI states: ‘I was only compensated for my Right ankle sprain, my thoracolumbar strain, thoracic strain, lumbar strain with degenerative disc disease & spondylolisthesis, my Hiatal Hernia with gastroesophageal Reflux disease were all service connected but unconsidered disabilities. My back condition has become worse, which my VA rating has increased but now I also suffer from depression from the chronic pain on my back & ankle.’

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20011030** | | | | **VA (1 Mo. Pre-Separation) – All Effective 20011216** | | | | |
| **Condition** | | **Code** | **Rating** | **Condition** | | **Code** | **Rating** | **Exam** |
| Right Ankle Instability | 5299-5271 | | 10% | Residuals, Right Ankle Sprain | 5299-5271 | | 10% | 20011114 |
| ↓No Additional NAVMED 6100/1 Entries↓ | | | | Lumbar Strain …DDD L4-S1 | 5003-5293 | | 10%\* | 20011114 |
| Residuals, Thoracic Strain | 5299-5291 | | 10% | 20011114 |
| Hiatal Hernia …GERD | 7399-7346 | | 0%\* | 20011114 |
| Left Foot … Bunion | | 5280 | 0% | 20011114 |
| Right Foot … Bunion | | 5280 | 0% | 20011114 |
| Hypertension | | 7101 | 0% | 20011114 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 30%\*** | | | | |

\*VA combined rating of 40% from 20060110 (increased lumbar condition to 20% and Hiatal Hernia…GERD to 10%)

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ANALYSIS SUMMARY:

Right Ankle Condition. The principle disability of the ankle was episodic instability with multiple sprains. The original MEB exam of 20010301 did not have measured range-of-motions (ROMs), but did note ‘minimal gait abnormalities.’ It was updated by the PEB requested re-exam of 20010919. The measured ROM limitations of the ankle from the military exam and the VA exam accomplished prior to separation are in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| **Ankle/Foot ROM** | **Normal** | **PEB exam - 20010919** | **VA exam - 20011114** |
| Dorsiflexion (movement upward) | 0-20° | 10⁰ | 15⁰ |
| Plantar flexion (movement downward) | 0-45⁰ | 45⁰ | 35⁰ |
| Inversion (turned inward) | 0-35° | 15⁰ | - |
| Eversion (turned outward) | 0-25° | 10⁰ | - |
| Combined | 125° | 80° | - |

The military exam at the time of PEB also demonstrated mild laxity (Grade I anterior drawer), significant tenderness, and a slight effusion (swelling). There were no motor or neurologic deficits noted on any exam. The CI had been prescribed an ankle brace and his X-rays were normal. The VA exam noted use of an ankle brace, demonstrated ankle ligament laxity, crepitus (noise on motion), and painful motion. The examiner stated: ‘GAIT: When he walks, his gait is antalgic to the right. His right ankle rolls outward. His toes are both pointed outward. He has limited function of standing and walking due to low back pain and right ankle pain. ‘ Both the PEB and the VA chose the 5299-5271 code for limited motion of the ankle and rated 10% for ‘moderate’ severity. Since the principle disability of the CI’s lower extremity was frequent ankle sprains due to laxity and the CI had an abnormal gait with limited standing and walking, analogous coding of the foot was considered. The other possible codes were 5270 for ankylosis (frozen joint) of the ankle, or 5284 Foot injuries, other. Ankylosis does not accurately describe the condition of the CI’s ankle joint. The Board deliberated on the potential coding using 5284 at either ‘moderately severe’ (20%), or ‘moderate’ (10%), and rejected the invocation of §4.40 for partial functional loss as not substantiated. After careful deliberation, the Board adjudged that the CI’s level of disability was fairly categorized by the PEB and VA and that no alternative coding would justify a rating greater than 10%. There is not reasonable doubt in the CI’s favor, therefore, to justify a Board recommendation for other than the 10% rating assigned by the PEB for the ankle condition.

Lower Back Condition. The CI contentions for ‘thoracolumbar strain, lumbar strain with degenerative disc disease and spondylolisthesis’ are lower back conditions which are all considered under the same Spine rating criteria IAW VASRD §4.71a. The lower back condition was mentioned on the DD Form 2697 and on the DD Form 2807-1 as ‘Recurrent/chronic mechanical low back pain (does have L5 spina bifida occulta)’. There was no history of trauma. There is evidence that the PEB examined this condition in detail with additional information requested and received from the treatment facility, without an unfit finding. As discussed above, gait abnormalities and the restrictions noted in the Commander’s comments could be attributed to either or both conditions. Radiographs were mildly abnormal with spondylolisthesis at L5 and ‘degenerative disc space disease L4-5 and L5-S1.’ The potential for overlap of the effects of this back condition on the ankle condition, or of the ankle condition on the back condition was considered. The NARSUM addendum noted ’His low back pain has significantly improved with chiropractic treatment and pool therapy.’ Treatment notes indicated the back symptoms were intermittent with waxing and waning. The initial VA exam was accomplished prior to separation and closer to the date of separation. The VA examiner noted pain limited ROM of the lower back of 5-10° short of normal in each axis along with spasm, and tenderness. There was no associated ratable radiating nerve condition. The VA additionally noted worsening of the CI’s back condition 4 years after separation, with an increase in rating for the lumbar spine. All evidence considered proximate to the CI’s date of separation, there is not reasonable doubt in the CI’s favor supporting the addition of the lower back condition as an unfitting condition for separation rating.

Abdominal/Gastrointestinal (GI) Condition. This includes the CI’s contention of Hiatal Hernia with Gastroesophageal Reflux Disease (GERD). This condition was mentioned on the DD Form 2807-1 as heartburn and indigestion treated with medication. The examiner noted ‘GERD symptoms for over 18 months, good results with H2 blockers, NCD.’ There was no evidence of severe or constant pain, protracted vomiting and/or diarrhea or any other potentially unfitting symptoms for GI disease. The NARSUM addendum noted GERD as under treatment with medication and stable. This was judged to be within standards and not identified as an impairment in the Commander’s statement. All evidence considered, there is not reasonable doubt in the CI’s favor supporting adding any abdominal condition as additionally unfitting and ratable.

Other Conditions: The CI’s contended upper back condition (Thoracic Strain) was not documented in the DES package. A few additional relatively minor conditions [Left Foot (Bunion), Right Foot (Bunion) and Hypertension] were noted in the VA rating decision, but were not documented 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. The CI’s contended depression was not in evidence at the time of separation and the worsening of his ankle and lower back conditions cannot be adjudicated by the Board. The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for conditions which will predictably worsen over time. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration. These and any contended conditions not covered above remain eligible for Board of Corrections for Naval Records (BCNR) consideration. The Board, therefore, has no reasonable 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. 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 lower back and abdominal/castrointestinal conditions, or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. In the matter of the right ankle condition and IAW VASRD §4.71a, the Board recommends by a majority vote that there be no change in the PEB adjudication. The single voter for dissent (who recommended adopting the VA rating 5299-5284 at 20%) did not elect to submit a minority opinion.

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RECOMMENDATION: The Board recommends that there be no recharacterization of the CI’s disability and separation determination.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091130, 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

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 11 Aug 10

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