RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900711 SEPARATION DATE: 20041206

BOARD DATE: 20100526

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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 OS2/E-5 (OS-9502, Instructor) medically separated from the Navy in 2004. The medical basis for separation was a left foot condition. Following treatment including two surgeries and two periods of limited duty, the CI did not respond adequately to perform within his rating and underwent a Medical Evaluation Board (MEB). Degenerative joint disease of the left first metatarsalphalangeal joint along with three associated foot conditions were addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB). The associated left foot conditions were related category 2 conditions that contributed to the primary unfitting condition and were not separately ratable. The PEB adjudicated the degenerative joint disease of the first metaphalangeal joint as unfitting, rated 10%, with application of the SECNAVINST 1850.4E and DoDI 1332.39. The CI made no appeals, and was medically separated with 10% disability rating.

CI CONTENTION: The CI states: ‘’Continued chronic pain in my joints as well as my foot, posttraumatic stress and depression.”

RATING COMPARISON:

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| **Service IPEB – Dated 20040901** | | | **VA ( 1 Mo. Prior Separation) – All Effective 20041207** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| DJD Left Metaphalangeal Joint | 5280-5281 | 10% | Residuals Left Post Op Hallux Valgus and Sesamoid Fracture | 5280 | 10% | 20041109 |
| Left Great Toe Sesamoid Pathology, Metatarsalgia,  s/ p Hallux Varus Surgery and  Excision Left Lateral Sesamoid | Category II | |
| ↓No Additional MEB / PEB Entries↓ | | | Scar Left Foot | 7804 | 10% | 20041109 |
| Left Elbow Condition | 5207 | 10% | 20041109 |
| Left Shoulder Tendinitis | 5203 | 20% | 20041109 |
| Left Wrist Tendinitis | 5215 | 10% | 20041109 |
| **0% x 3** | | | |
| **Combined: 10%** | | | **Combined (*Includes Non-PEB Conditions*): 50%** | | | |

ANALYSIS SUMMARY: 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 the 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. 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. 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.

Left Foot Condition. The CI presented in June 2001 for evaluation for left foot pain of four and one half years duration in the region of the first metatarsophalangeal joint region (big toe). He was diagnosed with hallux varus (toe pointing inward) and inflammation about the accessory bones (sesamoids). In two separate surgeries he underwent removal of a sesamoid bone, thought to be causing pain and subsequently correction of the hallux varus deformity, February and August 2002, respectively. He continued to experience daily pain and was on extended limited duty. X-rays demonstrated degenerative changes. Because of his left foot condition he was unable to perform the full duties as an instructor that included marching students to various locations throughout the base, and physical fitness training three times a week. Foot wear restrictions limiting him to a soft shoe also prohibited going on board any vessel or into an industrial environment. At the time of the NARSUM, five months before separation, the surgical incisions were well-healed and he was noted to favor the foot on walking. There was “some decreased range of motion,” at 80° of dorsiflexion, and tenderness on palpation. The MEB history and physical examination a month later recorded restricted motion. The VA compensation and pension (C&P) examination one month before separation recorded functional impairments including requirement to wear an orthotic and an inability to run or tolerate prolonged standing. He was able to drive, climb stairs, walk, shop, and perform gardening activities including push a lawn mower. Gait was within normal limits, but there were signs of abnormal weight bearing and tender calluses. There was tenderness and pain with motion of the involved joint. VARSD diagnostic codes most closely matching the CI’s condition do not provide for a rating higher than 10% (5280, hallux valgus unilateral, whether operated with resection of metatarsal head, or severe if equivalent to amputation; 5279 metatarsalgia, anterior, unilateral or bilateral; 8281 hallux rigidus rated as 5280). The Board considered rating using diagnostic codes 5283, malunion of tarsal or metatarsal bones, and 5284, other foot injuries, which provide for ratings above 10%, (moderate 10%, moderately severe 20%, or severe 30%); however, members agreed that the CI’s foot condition did not exceed the 10% rating under these codes (moderate). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concurred with the ratings adjudicated by the PEB and recommends no change in the separation rating for the left foot condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD) and depression. Service treatment records show an evaluation in September 2001 for symptoms of depressed mood in setting of increased occupational and marital stressors. He was treated with medication but was determined to be fit for full duty. In 2003 he presented for evaluation of involuntary twitching of his shoulder muscles possibly related to stress, anxiety and dysthymia. Treatment with antidepressant medication was reported in the service treatment record to have resulted in improvement in his mood. At the time of the MEB history and physical examination on August 13, 2004, the CI reported his history of nervous trouble, depression and nervous twitch for which he continued to take medication. There was no evidence that the CI’s symptoms of depressed mood, anxiety or muscle twitch interfered with performance of duties, were the basis for limited duty or implicated in the commander’s assessment. At the time of separation, the CI filed a claim with the VA for movement disorder/nervous twitch but not PTSD or depression. The VA granted service connection for movement disorder/nervous twitch rated zero percent. These conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were scar left foot, pain in left elbow, pain in left wrist, pain in left shoulder, frequent heartburn, and seasickness. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period, carried attached profiles, or were implicated in the commander’s assessment. These conditions were 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. Additionally, hypertension, and moles/skin tags were noted in the VA rating decision proximal to separation, 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 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 great toe condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended PTSD and depression condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the left elbow, pain in left wrist, pain in left shoulder, frequent heartburn, and seasickness, 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.

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

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| DJD Left Metaphalangeal Joint | 5280-5281 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091214, 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 USN

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 13 Jun 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.

Assistant General Counsel

(Manpower & Reserve Affairs)