RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900724 SEPARATION DATE: 20041130

BOARD DATE: 20110317

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt/E-5 (1341, Engineer) medically separated from the Marine Corps in November 2004. The medical basis for separation was left ankle pain. At his Medical Evaluation Board (MEB), the left ankle pain was determined to be medically unacceptable IAW NAVPERS 18068F. The CI was referred to the Physical Evaluation Board (PEB) and was found unfit for continued military service due to the left ankle condition. History of tibia/fibular fracture was determined to be Category II (contributing to the unfitting condition). Thoracic back pain was found to be Category III (not separately unfitting, and not related to the unfitting condition). The CI accepted the PEB findings, and was separated at 10% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Navy and DoD regulations.

CI’s CONTENTION (20091124): The CI states, “Too low of rating, unjust.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – dated 20040622** | **VA (10 weeks after Separation) – All Effective 20041201** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Left Ankle Pain | 5271 | 10% | Residuals fractured Tib/Fib (L) | 5284 | 30% | 20050210 |
| History of Tib/Fib Fracture | Category II |
| Thoracic Back Pain | Category III | Thoracic Musculoskeletal Strain | 5237 | 10% | 20050210 |
| ↓No Additional MEB Entries↓ | Mood Disorder | 9432-9435 | 30% | 20050210 |
| Loss of Sensation, Left Foot  | 8599-8520 | 10% | 20050210 |
| 0% x 2/NSCx2 |  |  | 20050210 |
| **TOTAL Combined: 10%** | **TOTAL Combined: 60%**  |

ANALYSIS SUMMARY:

Left Ankle Condition. This Marine injured his left ankle on 24 June 2001 when he slid into third base, while playing for the USMC softball team. He sustained a closed tibia/fibular fracture of the left lower leg (ankle region). The fracture was nondisplaced and was treated in a closed fashion followed by physical therapy (PT). After the fracture healed, the CI developed chronic left ankle pain. Magnetic Resonance Imaging (MRI) in January 2002 showed a posterior tibial-talar ligament tear with subacute osteochondral injury of the medial talar dome. The CI was put on limited duty status (LIMDU) on 12 March 2002 and PT was continued. He had minimal improvement with conservative therapy and continued to be followed by Orthopedics. In December 2002, the CI underwent orthopedic surgery to repair an osteochondral defect of the medial talar dome. Due to his left ankle pain and ongoing PT, the CI was again placed on LIMDU in June 2003. On 30 December 2003 the CI had a second surgery that included a bone graft to the medial talar dome, tendon debridement, and Achilles tendon lengthening. The left ankle continued to be painful despite the surgery, PT, and extended convalescence. Due to persistent symptoms and inability to perform his military duties, an MEB was initiated. At the time of the MEB (April 2004), the CI walked with a cane and was undergoing PT. The CI stated that the left ankle pain ranged from 4-7/10. The CI also complained of paresthesias in the lateral aspect of the left foot and ankle. Exam of the left ankle revealed well healed incisions, and diffuse tenderness. No sign of reflex sympathetic dystrophy. Range-of-motion (ROM) measurements are noted in the chart below. Inversion and eversion were well maintained through the hind foot and were not painful. There was decreased sensation to touch over the lateral aspect of his left foot. Motor strength was intact at 5/5 with eversion and inversion. Plantar flexion strength was 5/5. Dorsiflexion strength was 4+/5. No palpable hardware. No thinning of the skin. Capillary refill was less than three seconds. No gross atrophy. Deep tendon reflexes were symmetric to knee and ankle jerk. X-rays showed all hardware in place and tibia/fibula fracture well healed. As noted above, the Navy PEB (June 2004) adjudicated the left ankle condition as unfitting and rated it at 10%.

At his VA Compensation and Pension (C&P) exam (10 wks. after separation), the CI reported constant, severe left ankle pain. He had abnormal gait and used a cane. Exam of his left ankle revealed exquisite tenderness to light touch on the lateral aspect. Sensation to light touch and pinprick were absent on the lateral aspect of the left foot. Two goniometric ROM evaluations are summarized in the table below:

|  |  |
| --- | --- |
| Left Ankle | Separation Date: 20041130 |
| Goniometric ROM  | MEB – 20040412 | VA C&P – 20050210 |
| Dorsiflexion (20⁰ normal) | 0⁰ | 0⁰ |
| Plantar Flexion (45⁰ normal) | 40⁰ | 30⁰ |
| Comments | No mention of pain with motion | Pain throughout motion |
| §4.71a Rating | 10% | 20% |

The Navy PEB and the VA chose different coding options for the left ankle. The PEB rated the ankle with code 5271; “Ankle, limited motion.” The VA rated the ankle with VASRD code 5284; “Foot injury.” The VA ROM evaluation was closer to the separation date, and the Board felt that these ROM measurements had greater probative value. The ankle had lost an additional 10 degrees of flexion since the time of the MEB, and the Board felt that it met the criteria for a “marked” decrease of ankle motion. The Board felt that the PEB coding (5271) was more accurate and better fit the CI’s condition at the time of separation. After careful review of all available evidentiary information, the Board unanimously recommends a disability rating of 20% for chronic left ankle pain, with history of left ankle (tibia/fibular) fracture. The condition is appropriately coded 5271, and meets criteria for the 20% rating.

Thoracic back pain – The CI hurt his back during boot camp (1996) and has had episodes of pain in the right thoracic region since then. He was treated on and off with manipulation, PT, and anti-inflammatory medication. Imaging studies of the back (October 2003) were negative. The back condition was not mentioned in his commander’s statement. There is no clearly documented evidence that this condition caused a significant adverse effect on the performance of required military duties. This condition was judged by the Board to be not unfitting at the time of separation from service, and is not relevant for disability rating.

Remaining Conditions. Several other conditions were also documented in the Disability Evaluation System (DES) file. None of these other conditions carried attached profiles, and none were implicated in the commander’s statement. 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. Mood disorder was also noted by the Board. There is no evidence that this condition was a matter of record in the DES file. Therefore, mood disorder is considered outside the scope of the Board. 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 ankle condition, the Board unanimously recommends a rating of 20% (coded 5271) IAW VASRD §4.71a.

In the matter of the thoracic back pain, and 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 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** |
| Chronic Left Ankle Pain, status post fracture of tibia and fibula | 5271 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20091124, 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 29 Mar 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 30 November 2004.

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

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)