RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000008 SEPARATION DATE: 20090130

BOARD DATE: 20110217

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl/E-4 (0352, Machine Gunner) medically separated from the Marine Corps in 2009 after three years of active service. The medical basis for the separation was mild degenerative joint disease (DJD) of the left ankle. While deployed to Iraq from January to August 2006 the CI suffered an inversion ankle sprain. He did not respond adequately to perform within his military occupational specialty or participate in a physical fitness test. He was issued two limited duty (LIMDU) periods and underwent a Medical Evaluation Board (MEB). Mild DJD of left ankle was addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB). The informal PEB adjudicated the left ankle condition as unfitting with associated (CAT II) osteochondral defect and chronic left ankle pain, rated 10%; with possible application of the SECNAVINST 1850.4E. On request for reconsideration this was re-affirmed by the PEB. The CI made no further appeals and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “I was notified that there have been changes to the disability rating system and I feel that my rating should be higher due to the additional injuries…cont. PTSD, disc in lower back, GERD.” As a matter of policy, all service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20081105** | | | | **VA (8 Mo. Pre-Separation) – All Effective 20090131** | | | |
| **Condition** | | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Ankle DJD … | | 5003 | 10% | Left Ankle Trauma, Residual | 5271 | 10% | 20080521 |
|  | Osteochondral Defect | CAT II | |
|  | Chronic Left Ankle Pain | CAT II | |
| ↓No Additional MEB/PEB Entries↓ | | | | Left Ankle Scars | 7804 | 10% | 20080521 |
| PTSD | 9411 | 30% | 20080520 |
| Lumbar Spine DDD | 5242 | 10% | 20080521 |
| GERD | 7346 | 10% | 20080521 |
| Left Index Finger Fracture | 5229 | 0% | 20080521 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 50%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, that the gravity of his unfitting ankle condition and additional conditions which merit consideration for a higher separation rating. It is a fact, however, that the DES (Disability Evaluation System) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation, or for conditions that were not unfitting for continued service. This role and authority is granted by Congress to the Veterans Administration.

Left Ankle Condition. CI initially injured his ankle in basic training and was treated with compression and nonsteroidal anti-inflammatory drugs. While in Iraq under fire, he suffered a significant inversion injury of the left ankle which did not respond to conservative management including physical therapy. The CI had significant lateral left ankle instability. He underwent surgical lateral ankle stabilization in February 2007 along with removal of a loose fragment in the joint. The CI stated that he continued to have pain in the left ankle, although the stability of the ankle improved. He had a diagnostic ankle arthroscopy with subsequent subchondral drilling of the talar dome in November 2007. Magnetic Resonance Imaging (MRI) did show evidence of osteochondral injury. He continued rehabilitation and the last entry on 20080617 notes pain free full range of motion (ROM) although AP/PA mobs were decreased*.* The NARSUM exam, almost nine months prior to separation, noted a slight antalgic gait, but made no comment on ROM. The VA Compensation and Pension (C&P) exam, eight months prior to separation, noted a normal gait. The exam was normal with the exception of several, hyperpigmented, tender post-surgical scars. ROM was measured with the goniometer. Active dorsiflexion: 15⁰ with pain (normal 20⁰); active plantar flexion: 30⁰ with pain (normal 40⁰); ROM of the left ankle was primarily limited by pain, but also by lack of endurance after repetitive use. Other DeLuca criteria were negative. Records indicated that the CI did not have loss of use of the foot or interference with normal walking following the MEB. Using either military or VA exams, the CI’s ankle would meet the criteria for moderate limitation of motion under code 5271 (ankle, limited motion of). The PEB rating of 10% under code 5003 also would be correct at 10% with application of §4.59 (painful motion). Neither coding scheme is predominate or would be ratable at higher than 10%. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the left ankle condition of 10% disability IAW the VA Schedule for Rating Disabilities (VASRD) §4.71a.

Other Conditions; (Posttraumatic Stress Disorder (PTSD), Residual Ankle Scars, Lumbar Spine Degenerative Disc Disease (DDD), Gastro-Esophageal Reflux Disease (GERD), and Left Finger Fracture). The remaining conditions were mentioned in the DES file, but no symptoms rose to the level of being unfitting. There were neither LIMDU periods nor were these mentioned in the non-medical assessment (NMA) as impacting duty performance. The NMA attributed all impairment of duty to the left ankle condition. The record specifically annotates that the PTSD condition did not impact duty performance. Mechanical low back pain, GERD and the finger fracture have one to two medical record entries each and no indication of permanent duty impairment. No mention is made of the post-surgical scars other than in passing and there was no restriction from wearing military footgear. It is noted that the VA granted a 30% disability rating for PTSD based on exam accomplished while on active duty. The MEB history, taken one week later notes “PT denies significant sx of Combat Stress/PTSD”. The mere presence of a diagnosis is not sufficient for indicating unfitness or for separation rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of any of the above conditions as unfitting conditions for separation rating. No other active medical conditions were included in the DES file and there is no evidence that would implicate them as unfitting. No other conditions were contended or rated by the VA within 12 months of separation. 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. 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 left ankle condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication of 5003 at 10%. In the matter of the PTSD, residual ankle scars, lumbar spine, GERD, or left finger 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.

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** |
| Mild to Moderate Degenerative Joint Disease Of The Left Ankle | 5003 | 10% |
| **COMBINED** | **10%** |

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 DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 25Feb 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.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)