RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1000018 SEPARATION DATE: 20060831

BOARD DATE: 20100609

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve Lance Corporal (0331, Machine Gunner) medically separated from the Marine Corps in August 2006. The medical basis for the separation was a partial left Achilles tendon rupture and complete laceration of right tibialis anterior tendon, status post (s/p) repair with significant adhesions as well as keloid formation. The CI did not respond to treatment adequately to perform within his military occupational specialty (MOS) or to participate in a physical fitness test, and underwent a Medical Evaluation Board (MEB). Non-traumatic rupture of left Achilles tendon and open wound of right lower leg and ankle with tendon involvement were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the left Achilles tendon condition and the right anterior tibialis tendon condition as unfitting, rated each at 10%, with application of SECNAVINST 1850.4E, DoDI 1332.39 and Veteran’s Administration Schedule for Rating Disabilities (VASRD), respectively. The CI made no appeals, and was medically separated with a combined 20% disability rating.

CI’s CONTENTION: He elaborates no specific contentions regarding coding or rating and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB**  | **VA (9 Mo. after Separation) – All Effective Date 20060901** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Partial L Achilles Tendon Rupture s/p Non Surg  | 7802 | 10% | 20060713 | Resid Shrapnel Inj Partial L Achilles Tendon Rupture  | 7805 | 0% | 20070531 |
| Lac of R Tibialis Ant Tendon, s/p Repair w/ Adhesions & Keloid  | 7802 | 10% | 20060713 | Resid Shrapnel Injury, R Tibialis Ant Tendon s/p Repair | 5312 | 10% | 20070531 |
| ↓No Additional MEB Entries↓ | Posttraumatic Stress Disorder  | 9411 | 30% | 20070606 |
| Resid Shrapnel Scar, R Neck Below R Ear | 7800 | 10% | 20070531 |
| Resid Shrapnel Scar, R Lat Neck | 7800 | 10% | 20070531 |
| Tinnitus | 6260 | 10% | 20070523 |
| 0% x 4/ Not Service Connected x 2 |
| **TOTAL Combined: 20%** | **TOTAL Combined: 50%**  |

ANALYSIS SUMMARY: The CI had a laceration of the right tibialis anterior tendon, a laceration to the left Achilles tendon, multiple superficial fragment wounds, and a neck fragment wound from mortars. He underwent repair and subsequent closure of the lacerated right tibialis anterior tendon. Shrapnel was also removed from the area around the previously closed left Achilles tendon injury. Due to painful scars and inability to wear boots, a MEB was initiated in March of 2006 (five months pre-separation).

Left Achilles Tendon. MEB orthopedic exam revealed a left lower extremity transverse surgical scar over the Achilles tendon (no size noted) approximately six to seven centimeters from the insertion at the ankle. The CI's range of motion (ROM) was normal and he was able to dorsiflex and to do a toe raise against gravity. There was significant tenderness to palpation around the scar site. At the VA compensation and pension (C&P) exam on 31 May 2007 (nine months post-separation) the CI had no specific complaints concerning this scar. The scar was 0.5 cm in diameter, superficial, non-tender, hyperpigmented, and showed no elevation or depression. There was no induration or inflexibility of the scar, and no limitation of motion was caused by the scar. The VA rating decision was 0% for scars which are not considered disabling because of limitation of function of the affected part (coded 7805). The Board considered the MEB orthopedic exam to have greater probative value than the VA exam due to proximity to separation. The CI’s scar was superficial, did not affect function, showed no evidence of underlying soft tissue damage (as it had already been repaired), but the scar was tender to palpation. There is only one rating for a tender scar under the 7804 code, i.e. 10%. Neither the PEB nor the VA used that code; however, the PEB gave the rating consistent with that code. By precedent the Board does not alter a code unless it would result in a higher rating. After due deliberation and in consideration of all the evidence, the Board recommends 10% as the fair permanent separation rating for the left Achilles tendon scar, coded 7802 IAW VASRD §4.118.

Right Tibialis Anterior Tendon. The lacerated tibialis anterior tendon was surgically repaired in May 2005, and healed slowly after debridement and physical therapy for right ankle weakness and limited ROM. By November 2005 the CI was pain free and able to run up to a mile without difficulty. By January 2006 the only complaint was irritation due to retained shrapnel over his anterior tibia when he wore boots. This was removed on 10 January 2006. At the MEB orthopedic exam on 12 May 2006 the CI complained of pain in both of the lower extremities with heavy exercise, and was unable to run. Examination of the right lower extremity showed a three by five centimeter keloid surgical scar over the right tibialis anterior tendon. Although the right ankle ROM was within normal limits, there were adhesions that caused significant tenting and pulling of the skin resulting in pain. The sensation to that extremity was intact. There were multiple superficial shrapnel wounds that were well-healed, without evidence of infection. Motor strength was 5/5.

The CI was seen by the VA on 1 August 2006, one month prior to discharge. The CI reported that his scar improved with physical therapy. He was unable to wear boots or footwear that covered the injured region due to pain associated with the scar. The CI reported difficulty with certain movements such as leg positions required for squatting. On physical examination, there were no signs of inflammation. There was a scar which appeared to be adhesed to the tibialis anterior tendon. The scar moved when the CI moved his right ankle. Muscle strength was full at 5/5 with dorsiflexion and plantar flexion. The CI had no function of his extensor hallicus longus. On some of the VA exams in 2005 extensor hallicus longus function was listed as intact. He had some tingling to light touch through the dorsal foot and intact sensation to light touch on the plantar foot surface. The CI was diagnosed with an adhesed scar over his tibialis anterior tendon and was referred to plastic surgery for recommendations (no further surgery was recommended). At the VA exam, the CI complained of scar pain from pressure to the area such as wearing socks or boots. The scar was 8.5 x 4 cm at the widest part, was reported as deep and there was adherence to underlying tissue. There was depression of the surface contour along with induration and inflexibility of some portions of the scar. There was also inflexibility of the skin when the CI flexed his ankle, but no limitation of motion. The VA rated the condition at 10%, coded 5312 for a muscle group XII moderate injury.

Although the PEB used the 7802 code (superficial and nonlinear scars 144 square inches or greater) the VA rated it as a muscle injury that involved the muscles controlling dorsiflexion of the foot, extension of the toes and stabilization of the arch, and rated the right leg condition at 10%, as did the PEB. IAW VASRD § 4.56 (evaluation of muscle disabilities)**,** there is well defined criteria for determining the level of severity. A moderate disability indicates through and through or deep penetrating wound of short track from a single bullet, small shell or shrapnel fragment, without explosive effect of high velocity missile, residual of debridement, or prolonged infection. Findings typically include some loss of deep fascia or muscle substance or impairment of muscle tonus and loss of power or lowered threshold of fatigue when compared to the sound side. The CI’s injury and residuals clearly met these criteria. The Board determined that the residual disability on the right leg was painful scar and would have chosen the code 7804; however, that coding did not result in any rating advantage to the CI over the code chosen by the PEB or the VA. All three coding options would result in a 10% rating for the right leg condition. By precedent the Board does not change the PEB coding unless there is a rating advantage for the CI. After due deliberation and in consideration of all the evidence, the Board recommends 10% as the fair permanent separation rating for the right tibialis anterior tendon condition, coded 7802 IAW VASRD §4.118.

Remaining Conditions. Other conditions identified in the Disability Evaluation System (DES) file were multiple shrapnel wound scars, acid reflux, occasional right shoulder pain, hand tremors, and acne. None of these conditions carried attached profiles and none 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. PTSD and tinnitus were noted in the VA rating decision, but were not found 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 left Achilles tendon condition and IAW VASRD §4.118, the Board unanimously recommends no change in the PEB rating of 10% coded 7802. In the matter of the right tibialis anterior tendon condition and IAW VASRD §4.118, the Board unanimously recommends no change in the PEB rating of 10% coded 7802. In the matter of the other shrapnel wound scars, acid reflux, occasional right shoulder pain, hand tremors, acne, 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, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Residuals Shrapnel Injury, Partial Achilles Tendon Rupture, Tender Scar, Left Ankle | 7802  | 10% |
| Residuals, Shrapnel Injury, Right Tibialis AnteriorTendon, Status Post Repair | 7802 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100107, 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

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 21 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 PDBR 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)