RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: marine CORPS

CASE NUMBER: PD1000092 sEPARATION DATE: 20070615

BOARD DATE: 20110517

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt (3521, Organizational Automotive Mechanic) medically separated from the Marine Corps in 2007. The medical basis for the separation was bilateral medial tibial stress syndrome (MTSS). The CI was experiencing bilateral leg pain which localized to anterior and medial aspects of the lower legs, along the tibial border. The CI underwent extensive physical therapy including orthotics, nonsteroidal anti-inflammatory (NSAIDS) medication, and rest. Despite being placed on limited duty (LIMDU) for three periods ranging from three to six months, the CI was unable to return to full duty and was referred to the Medical Evaluation Board (MEB). The MEB forwarded pain in limbs and other early complications of trauma conditions to the Physical Evaluation Board (PEB). The PEB adjudicated bilateral MTSS as unfitting, rated 10% each, applying the bilateral factor. The PEB adjudicated exertional compartment syndrome as category II (conditions that contribute to the unfitting condition). The CI did not appeal and was medically separated with a 20% combined disability rating.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: “In 2008, it was found that my thoracolumbar strain is now diagnosed as thoracolumbar strain with L5-S1 disc protrusion in contract with the right S1 nerve root causing mild asymmetric spinal canal stenosis and mild degenerative disc disease at L4-L5 with the numbness of the toe from right S1 compression without ankle weakness.”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20070404 (8 mo pre sep)** | | | **VA (3 mo post sep) – Effective 20070616** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| MTSS Bilateral Factor Applied | 5399-5312 | 10% | MTSS/Shin Splints/L | 5262 | 0% | 20070904 |
| 5399-5312 | 10% |
| Exertional Compartment Syndrome | Category II | | MTSS/Shin Splints/R | 5262 | 0% | 20070904 |
| ↓No Additional MEB Entries↓ | | | Thoracolumbar Strain | 5237 | 10% | 20070904 |
| Tinnitus | 6260 | 10% | 20070904 |
| Other X2/ NSC X 2 | | | 20070904 |
| **TOTAL Combined: 20%** | | | **TOTAL Combined: 20% from 20070616** | | | |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member’s medical conditions, compensation can only be offered for those medical conditions that cut short a service members career, and then only to the degree of severity present at the time of separation. However, Veteran Affairs (VA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate service connected conditions and to periodically re-evaluate a veteran for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time.

Bilateral MTSS. The CI was found unfit due to bilateral MTSS with exertional compartment syndrome as category II. The MEB narrative summary (NARSUM) on 21 November 2006, eight months pre-separation, noted the CI had swelling, tension and pain in the bilateral anterior and medial aspects of his lower extremities, with numbness radiating to the soles of his feet. Tibia/fibula x-rays showed a possible stress fracture involving the mid anterior left tibial cortex. This was ruled out by a bone scan on 26 September 2006 which showed mild bilateral shin splints and sesamoiditis without evidence of a recent stress fracture. The orthopedic examination on 21 November 2006, eight months pre-separation, documented pain along the anterior tibialis bilaterally. The NARSUM addendum on 11 December 2006, six months pre-separation, documented that there was worsening of the CI’s symptoms with less activity required to produce symptoms, despite PT, shoe inserts and activity modification.

The VA compensation and pension (C&P) examination on 4 September 2007, three months post-separation, noted that he had bilateral shin splint pain described by the CI as 9/10 with 10 being the worst. Pain was precipitated by walking up stairs, hills/inclines, and by prolonged walking or standing. An x-ray of the tibia/fibula done at the time showed cortical bone thickening of the midshaft of each tibia, suggesting a stress fracture type injury. A nuclear bone scan done at the same time showed mild bilateral shin splints and sesamoiditis without evidence of a recent stress fracture. The VA examination was closer in time to the point of separation from service, and, although the symptoms were described as more severe pain than what was found by the PEB, the VA considered the condition as mild and granted a rating of 0%.

The VA and PEB chose different coding options for the CI’s bilateral shin conditions. The PEB used the VA Schedule for Rating Disabilities (VASRD) as per §4.73, code 5312 (group XII muscle function: dorsiflexion; extension of toes; and stabilization of arch) rated 10% (moderate) for each shin with the bilateral factor applied. The CI had the diagnosis of exertional compartment syndrome as category II, and this was not rated. However, the symptoms and disability of tibial stress syndrome and exertional compartment syndrome overlap and are thus not separately unfitting. The VA coded the bilateral conditions as 5262 (tibia and fibula impairment of) rated 0%. The VA considered the CI’s shin conditions (left MTSS and right MTSS) as rating individually for mild disability IAW §4.71a, using rating code 5262, and awarded the CI a rating of 0% for the left shin and awarded the CI a rating of 0% for the right shin.

The VA examination was closer in time to the point of separation from service, and, although the symptoms were described as more severe pain than what was found by the PEB, the VA considered the condition as mild and rated both legs as 0% each. The Board by precedent will not revoke or lower a disability rating granted to a CI by the PEB. After due deliberation, considering all of the evidence there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the bilateral MTSS condition.

Other Contended Condition. The CI’s application asserts that compensable ratings should be considered for the lumbosacral spine condition. Thoracolumbar strain was initially rated by the VA at 10% three months after separation. Seventeen months post-separation, the VA increased the rating to 20%. The low back pain was listed on the NARSUM addendum only under past medical history. The LIMDU was for the CI’s shin problems. There were no service treatment records indicating visits for back pain. There was no indication that this condition contributed to the CI’s LIMDU for his shin condition. This condition were reviewed by the action officer and considered by the Board. There was no evidence for concluding that the condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the stated condition was not subject to service disability rating.

Remaining Condition. The tinnitus was rated 10% by the VA. This condition was not mentioned in the DES package. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered eligible by the DES. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. The Board thus has no 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 bilateral medial tibial stress syndrome condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the lumbosacral spine condition 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. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bilateral Medial Tibial Stress Syndrome – Left | 5399-5312 | 10% |
| Bilateral Medial Tibial Stress Syndrome – Right | 5399-5312 | 10% |
| **COMBINED\*** | **20%** |

\*Bilateral factor applied

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100110, 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 XXX, FORMER USMC

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 26 May 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. XXX’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)