RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine CORPS

case number: pd1000095 SEPARATION DATE: 20070331

BOARD DATE: 20110525

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

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl (0311, Infantry Rifleman) medically separated from the Marine Corps in 2007. The medical basis for the separation was status post (s/p) right [*sic* (*correct side is left*)] 4 compartment fasciotomies and left ankle posttraumatic arthritis with pain and decreased range of motion (ROM) as a direct result of an improvised explosive device (IED) blast while in armed conflict in Iraq. The CI sustained shrapnel wounds to his left lower leg, developed compartment syndrome and also sustained a L4 transverse process fracture and an L5 spinous process fracture. On 15 October 2005, the CI underwent a 4 compartment fasciotomy and irrigation of debridement of the left leg with viable muscle, resulting in persistent numbness in the distribution of his superficial peroneal nerve and left ankle stiffness and pain. In spite of physical therapy (PT) and periodic anti-inflammatory medications, his condition did not improve. The CI agreed to undergo surgery to remove the left ankle anterior osteophytes; however, while his ROM improved, the sensation in the superficial peroneal nerve did not return and he continued to have persistent numbness on the dorsum of his left foot and left ankle pain with any sort of impact activity. The CI was placed on limited duty (LIMDU) twice and was in the midst of the third LIMDU when he decided there was no improvement and he could not continue on active duty in this limited stage. Despite surgical intervention along with extensive PT and non steroidal anti-inflammatory medications, the CI was unable to either perform within his military occupational specialty (MOS) or engage in physical training. He was consequently referred to the Medical Evaluation Board (MEB). The MEB forwarded “other fibromatoses of muscle, ligament and fascia, injury to peroneal nerve and traumatic arthropathy involving ankle and foot” to the Physical Evaluation Board (PEB). The informal PEB adjudicated the s/p right (*correct side is left*) 4 compartment fasciotomies as unfitting, rated 10% and the left ankle posttraumatic arthritis with pain and decreased range of motion as unfitting, rated 10% and coded analogously to arthritis (5299-5003); with possible application of SECNAVINST 1850.4E which was in effect at the time. The PEB adjudicated the left superficial peroneal nerve injury” as category II (conditions that contribute to the unfitting conditions). The CI made no appeals and was medically separated with a 20% combined disability rating.

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

CI CONTENTION: The CI states: ‘’Unable to run, stand or walk for long periods of time. Troubles with incline and decline such as stairs. Limited ankle mobility and on constant pain medication.” He additionally lists all of his VA conditions and ratings as per the rating chart below. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20070116** | **VA (2 Mo. after Separation) – All Effective 20070401** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Ankle Posttraumatic Arthritis with Pain and Decreased Range of Motion | 5299-5003 | 10% | Status Post Shrapnel Wound of the Left Ankle with Left Anterior Distal Tibia Chip Fracture, Status Post 4 Compartment Syndrome Fasciotomy and Left Ankle Arthroscopy | 5311 | 30% | 20070523 |
| Status Post Left (Right on PEB) 4 Compartment Fasciotomies | 5399-5312 | 10% | Fasciotomy Scar, Lateral Aspect of Left Lower Leg | 7804 | 10% | 20070523 |
| Fasciotomy Scar, Medial Aspect of Left Leg | 7804 | 10% | 20070523 |
| Left Superficial Peroneal Nerve Injury  | Cat II | No corresponding VA entry |
| ↓No Additional MEB/PEB Entries↓ | Posttraumatic Stress Disorder | 9411 | 30%\* | 20071121 |
| Lumbar Traumatic Sprain Injury, Status Post L4 Transverse Process Fracture and L5 Spinous Process Fracture  | 5237 | 20% | 20070523 |
| Tinnitus | 6260 | 10% | 20070612 |
| 0% x 3/Not Service Connected x 1 | 20070523 |
| **Combined: 20%** | **Combined: 70%** |

\*VA rating per Decision Review Officer from initial VA exam.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred conditions have had on his quality of life. However, 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, as well as the fairness of PEB fitness adjudications. 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.

Left Lower Extremity. All of the CI’s unfitting conditions and ratings were due to a single injury (IED blast with shrapnel). The military and VA examinations proximate to separation were only slightly different (VA more limited ankle motion). However, the VA and the PEB chose different coding options that significantly impacted the rating. The PEB rated separate components of ankle painful motion (5299-5003) at 10% and a group XII muscle injury (5399-5312) at 10% (moderate). The VA combined the left ankle chip fracture, fasciotomies, and decreased ankle motion for coding under a group XI muscle injury rating of severe at 30%. The Board carefully considered the special provisions of §4.55 (principles of combined ratings for muscle injuries) and §4.56 (evaluation of muscle disabilities) in determining the fair and equitable rating in this case.

The CI was sent to the National Naval Medical Center in Bethesda for surgery due to the significant shrapnel injuries to his left ankle and a small chip of the distal tibia. The CI had the following surgical procedures: a four compartment fasciotomy of the left lower extremity (LLE), a split thickness skin graft to LLE medial ankle, with a second surgical irrigation and debridement. The orthopedic examination four months prior to separation documented that the CI was unable to run due to persistent left ankle stiffness and pain. On physical examination, there was limited ankle dorsiflexion and plantar flexion. At the MEB exam four months prior to separation it is documented that the CI had significant LLE injury and that he had compartment syndrome, necessitating the emergent four compartment fasciotomies. At this exam, the CI was found to also have residual persistent numbness in the distribution of the superficial peroneal nerve along with a left ankle anterior osteophyte. The CI continued to complain of left ankle stiffness and pain despite PT and medications. The CI underwent surgical removal of the left ankle anterior osteophytes; however, he still had the persistent left ankle pain and the sensation of the superficial peroneal nerve did not return. The CI still complained of left ankle pain with any sort of impact activity and stiffness along with persistent numbness on the dorsum of the foot. The examiner opined that the CI had left ankle post-traumatic arthritis with pain and ROM. The examiner recommended that the CI not engage in any “physical readiness test, running, heavy lifting, prolonged walking, standing, crawling or entering any area where the CI’s unsteady gait would pose a danger to him or others. Additionally the CI is not to be deployed, aboard ship or sent to any remote area.” Service treatment records documented prolonged hospitalization for ankle wound and chip fracture treatment including fasciotomies, requirement for debridement and skin grafting. The CI had consistent complaints of loss of power, weakness, lowered threshold of fatigue and pain, and inability to perform his MOS. There was one entry documenting impairment of coordination. There was evidence of the shrapnel wound healing following skin grafting with depressed contour and partially fixed to underlying tissue, with evidence of decreased strength on testing with subjective complaints of endurance impairment.

The VA compensation and pension examination (C&P) on 23 May 2007 two months post-separation documented that the CI continued to have complaints of left ankle tightness, decreased ROM with pain on walking up or down stairs, daily pain with activity or recreational walking. The CI stated that he rarely walked more than five or ten minutes, and then required rest, only walking as far as he needed to go (indicated as at most two blocks). The examiner documented that the CI had left ankle tenderness to palpation (TTP) with ankle pain on flexion and extension. The flexion was limited to 5° and the extension was limited to 10°. The examiner stated that the CI was unable to perform any kind of left ankle repetitive testing. The CI had continued hypersensitivity of his left shin and was painful to touch with just a minor blow. The CI was on decreased dosage of narcotic medication for pain relief. The CI had depressed dish shaped scar above his left ankle which measured 6.6cm x 4.4 cm which was partially fixed to the underlying tissue and tender to touch. The fasciotomy scars were documented as well healed with tender to the touch.

Left Ankle Posttraumatic Arthritis with Pain and Decreased Range of Motion. The CI had two complete goniometric ROM evaluations with four ROM evaluations in evidence which the Board weighed in arriving at its rating recommendation. All exams are summarized in the following chart.

|  |  |  |  |
| --- | --- | --- | --- |
| Left AnkleGoniometric ROM | Orthopedic Clinic ~4 Mos. Pre-Sep (20061211) | MEB~ 4 Mos. Pre-Sep (20061220) | VA C&P~2 Mos. Post-Sep (20070523) |
| Dorsiflexion (0°-20°) | 2° | “about 10-°15°” | 10° |
| Plantar Flexion (0°-45°) | 20° |  | 5° |
| Inversion |  |  | 0° pain |
| Eversion |  |  | 0° pain |
| Injury 20051008L ankle ant osteophyte scope: 20061010 | Good subtalar motionc/o: Persistent pain; inability to run; persistent numbness of dorsum foot; Joint stiffness | Decreased sensation dorsum of foot; good subtalar motion; motor exam 4-5/5; “… unsteady gait may pose a danger …”c/o: Persistent numbness on dorsum of foot; persistent L ankle pain with any sort of impact activity | Decreased ROM; TTP ant/inf; pain with flexion / extension; L ankle scar depressed and partially fixed to underlying tissue (+tender); unable to do any kind of repetitive testing; gait slow o/w wnlc/o: pain when on feet <20 minutes; chronic tightness, rarely walks more than 5-10 minutes then rests; daily pain with activity, pain going up/down stairs |
| §4.71a Rating | 20% (PEB 10%) | 20% (PEB 10%) | 20% (VA 30% muscle rating) |
| §4.73 Rating w/ sep §4.71a (vs combined w/o §4.71a) | 10%(30%) | 10%(30%) | 30% (VA 30% muscle rating) |

The PEB coded the left ankle posttraumatic arthritis with pain and decreased ROM condition analogous to 5003 arthritis, degenerative rated at 10%. Given the restricted ROMs noted in the table above, alternative coding of 5010-5271 (arthritis, due to trauma; rated as ankle, limited motion) with marked limitation of motion (20%) may have been met absent any additional contribution from any muscle or nerve disability.

Status Post Right 4 Compartment Fasciotomies. The PEB rated this (per PEB worksheet) “5399-5312 - 10% fasciotomy” which is at the 5312 moderate muscle injury level. It appeared to include the mild decreased sensation to the dorsum of the foot (category II) and motor 4-5/5.

Left Superficial Peroneal Nerve Injury. The PEB found the left superficial peroneal nerve injury as a category II condition. S/p the fasciotomies, the CI was found to have a persistent numbness in the distribution of his superficial peroneal nerve. On physical examination, it was documented that the CI had “decreased sensation on the dorsum of his foot.” This condition was listed on the LIMDU form. There is no indication of disability or interference in performance of duties attributable to this specific condition. Any motor component is expressly included in the CI’s unfitting muscle rating above IAW §4.55 (principles of combined ratings for muscle injuries) paragraph (a). After a review of all evidence, the Board therefore has no reasonable basis for recommending the left superficial peroneal nerve injury as a separate unfitting condition for separation rating.

The Board considered the above data in determining the fair and equitable ratings for the CI’s LLE condition. For determining the level of muscle disability, the Board used §4.55 and §4.56 (evaluation of muscle disabilities). The CI’s muscle injury IAW §4.56 would be considered moderately severe (20%) to severe (30%) (either 5311 or 5312). The CI had shrapnel injuries to his left ankle with a small chip of the distal tibia, prolonged hospital treatment with a four compartment fasciotomy, a split thickness skin graft with a second surgical irrigation and debridement, a depressed and partially adherent tender scar at the wound site, decreased sensation to the dorsal foot, and decreased strength on testing with subjective complaints of decreased endurance. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 30% for the LLE condition coded 5399-5312 for “s/p post shrapnel wound of the left ankle with left anterior distal tibia chip fracture, s/p 4 compartment syndrome fasciotomy and left ankle arthroscopy.”

Mental Health Condition. Posttraumatic stress disorder (PTSD) was rated 30% by the VA based on examination eight months after separation. However, 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 by the DES. The Board therefore has no eligible basis for recommending PTSD as an unfitting condition for separation rating.

Lumbar Conditions. Lumbar traumatic sprain injury, s/p L4 transverse process fracture and L5 spinous process fracture was rated 20% by the VA. This condition was documented on the MEB history and physical on 13 December 2006 that the CI was noted to have chronic low back pain. The hospital discharge summary from October 2005 indicated, “ortho consult ruled out spinous fracture on 17 October.” The lumbar condition was noted as one of the diagnoses that required the CI be placed on LIMDU all three times. However the narrative summary (NARSUM) did not mention the lumbar condition, nor was this condition mentioned on the PEB worksheet. There were scant treatment notes specifically for back treatment with some notes indicating continued low back pain complaint. The VA compensation and pension (C&P) examination on 23 May 2007 two months post-separation documented that the CI had a fractured L4-L5 from the 8 October 2004 blast and that the CI “wakes with pain” and “activity is limited by pain.” The CI stated that he had more pain with bending or stretching. On examination, it was documented that flexion was 55 degrees to point of pain; extension 30 degrees to point of pain; lateral flexion was 30 degrees each side with pain at that level; rotation was 25 degrees right; 25 degrees left with slight pain on the left; straight leg raising was 60 degrees right; and 45 degrees left to a point of tightness. He was unable to do any kind of repetitive testing. The VA rated this examination 20%, using code 5237 lumbosacral or cervical strain (forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees). This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that the back condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that this condition was not subject to service disability rating.

Other Conditions. The tinnitus condition was rated 10% by the VA. This condition was mentioned by the CI on the MEB history and physical form along with decreased hearing right much greater than left. There was no indication that the CI could not understand speech or that tinnitus or hearing loss interfered with the performance of duty. This condition did not rise to the level of unfitting. All evidence considered, there is not reasonable doubt in the CI’s favor supporting the addition of any condition as a condition 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 posttraumatic arthritis with pain and decreased ROM and s/p right 4 compartment fasciotomies, the Board, by a vote of 2:1, recommends a consolidation of the two conditions into a single condition of s/p shrapnel wound of the left ankle with left anterior distal tibia chip fracture, s/p 4 compartment syndrome fasciotomy and left ankle arthroscopy, coded IAW VASRD §4.73 at 30%. The single voter for dissent (who recommends no recharacterization) did not elect to submit a minority opinion. In the matter of the left superficial peroneal nerve injury condition or any other medical conditions eligible for Board consideration, the Board unanimously recommends no recharacterization of the PEB adjudications as not separately unfitting (category II). In the matter of PTSD, tinnitus, right ear tympanic membrane perforation, scar right calf, and donor site scar left thigh 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 recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Status Post Shrapnel Wound of the Left Ankle with Left Anterior Distal Tibia Chip Fracture, Status Post 4 Compartment Syndrome Fasciotomy and Left Ankle Arthroscopy | 5399-5312 | 30% |
| **COMBINED** | **30%** |

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

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 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 13 Jun 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 30 percent (increased from 20 percent) with transfer to the Permanent Disability Retired List effective 31 March 2007.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid disability separation pay if warranted, and notification to the subject member once those actions are completed.

 Assistant General Counsel

 (Manpower & Reserve Affairs)