RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1000096 SEPARATION DATE: 20011020

BOARD DATE: 20110714

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (91B10, Combat Medic) medically separated for a bilateral ankle condition. He injured his right ankle in early training and had repeated injuries to both ankles over the ensuing two years. He underwent bilateral ankle surgery in 1998 for instability, but post-operatively had residual pain. He did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Chronic right ankle pain status post arthroscopy, chronic left ankle pain status post operative repair, and bilateral ankle degenerative joint disease were forwarded to the Physical Evaluation Board (PEB) as separate medically unacceptable conditions IAW AR 40-501. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The PEB combined the MEB diagnoses as a single unfitting condition, bilateral ankle pain status post surgical reconstruction, rated 10%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals and was medically separated with a 10% rating.

CI CONTENTION: “Disability rating was issued for only one ankle and did not take into consideration radiating effects. MEB was for bilateral ankle reconstruction issues. Additionally there are radiating problems to knees, hips, and back due to transfer of weight and gait. The VA will not give me additional ratings for my knees, hips or back because they were not included as problems in my med records prior to discharge. As a Medic, I self-treated most issues. I had been prescribed levequin to treat bronchitis throughout my military service. This medication has been proven to be a leading cause to tendon weakness/tears. I had bi-lateral ankle reconstruction surgery, bi-lateral flat feet, and 60% of my body covered in lypomas [sic]. Not to mention acid reflux from years of motrin treatment for all my ailments. I also have bi-lateral knee, back, and hip pain as a secondary to my ankles. … I asked for multiple issues to be a part of my MEB. They only allowed me to put one issue up for consideration for the MEB board. … Some issues were never placed in my medical records.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20010723** | | | **VA (5 Mo. Prior to Separation) – Effective 20011021** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Ankle Pain | 5099-5003 | 10% | Residuals Left Ankle Injury | 5271 | 10% | 20010501 |
| S/P Right ankle Surgery | 5271 | 0% | 20010501 |
| ↓No Additional MEB Entries↓ | | | Bilateral Pes Planus | 5276 | 10% | 20010501 |
| Multiple Lipomas | 7819 | 10% | 20010501 |
| 0% X 2 / Not Service Connected X 3 | | | 20010501 |
| **Combined: 10%** | | | **Combined: 30%** | | | |

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ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant disability he currently experiences from his service connected conditions and complications. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of service connected conditions. This role and authority is granted by Congress to the Veterans Administration. The Board evaluates VA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s assertion that his knee, hip and back conditions are related to his unfitting ankle condition and therefore should be subject to additional disability rating; although, the Board must note that a causality linkage of these contended conditions with the unfitting primary condition, even if conceded, is not a basis in itself for separation disability rating. A concomitant condition of this nature must itself be independently unfitting to merit additional rating. Finally, the Board may concede that the CI self-managed some of his conditions and complications as asserted in the contention; but the only conditions eligible for Board consideration are those documented in the core DES file. The core DES file consists of the MEB referral document (DA Form 3947), the PEB adjudication document (DA Form 199), the narrative summary (NARSUM) (including any addendums or referenced examinations), the MEB physical exam, the commander’s statement, the physical profiles, and any written appeals or internal DES correspondence.

Bilateral ankle condition. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM –  Ankles | MEB ~4 mo Pre-Sep | | VA C&P~4mo Pre-Sep | |
| Left | Right | Left | Right |
| Dorsiflexion (0-20) | 5° | 10° | 20° | 20° |
| Plantar Flexion (0-45) | 30° | 30° | 45° | 45° |
| Comment | No pain noted on exam. | | No pain noted on exam. | |
| §4.71a Rating | 10% | 10% | 10% | 0% |

In assigning probative value to these two examinations, the Board agreed that the MEB examination and radiographs were more consistent with the repetitive injury history and history of surgical intervention which was documented in the clinical notes. The Board first evaluated the PEB coding approach of combining the separate MEB conditions (as elaborated above) under the single analogous 5003 code, achieving a 10% rating by invoking the USAPDA pain policy. The Board must apply separate codes and ratings in its recommendation, since compensable ratings for each ankle joint are achieved IAW VASRD §4.71a. This is consistent as well with the VA rating decision. The MEB examiner noted that the CI had bilateral ankle pain since 1996. He had repeated injuries to both ankles culminating in operative intervention in 1998. Despite the operations, he had residual bilateral ankle pain and “decreased mobility and subjective instability.” Each ankle demonstrated radiographic evidence of mild degenerative joint disease. The VA rating examination performed contemporaneously with the MEB exam yielded the normal ROM measurements recorded above, “without pain” but noting that “there may be a Deluca issue for the left ankle.” The VA radiographs of both ankles were interpreted as normal. In assessing the appropriate the VA Schedule for Rating Disabilities (VASRD) code for rating each ankle, the Board judges that the MEB’s ROM measurements (tempered somewhat by the much improved VA measurements) satisfy a threshold for moderate limitation of motion under the 5271 code for each ankle. Even if compensable ROM impairment is not conceded and compensable ratings IAW VASRD §4.59 (painful motion) not substantiated, the record abundantly justifies application of §4.40 (functional loss) to achieve the minimum compensable rating (10%) for each ankle in this case. The Board deliberated the option of recommending a 20% for the left ankle under the 5271 code for limited motion. This would assign “marked” limitation reflecting the MEB measurement of 5⁰ dorsiflexion (normal 20⁰). This rationale was weakened, however, by the closely timed VA measurement of normal dorsiflexion and plantar flexion and the MEB’s concurrent plantar flexion (the more critical motion from a functional standpoint) of 30⁰ (normal 45⁰). The Board therefore recommends separate ratings of 10% for each ankle under the 5271 code.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for bilateral flat feet, knee, hip and back pain secondary to his bilateral ankle condition. As elaborated above, none of these conditions merit a service rating solely on the basis of their association with the unfitting primary condition. Although the pes planus, knee and back complaints were mentioned on the MEB physical examination, they were not clinically active during the MEB period and were not noted in the MEB’s narrative summary. The commander’s statement and the physical profile documented only the ankle impairments, and therefore no link to fitness can be drawn for any of the other contended orthopedic conditions. The CI also contends that the multiple subcutaneous lipomas and bronchitis should be rated, but these two medical conditions, likewise, are devoid of documentation justifying them as unfitting and ratable. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

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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. As discussed above, PEB reliance on the USAPDA pain policy for rating bilateral ankle pain was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the bilateral ankle pain condition, the Board unanimously recommends that each joint be separately adjudicated as follows: an unfitting right ankle condition rated 10%, and an unfitting left ankle condition rated 10%; each coded 5271 and rated IAW VASRD §4.71a. In the matter of the bilateral flat feet, knee, hip, back pain, subcutaneous lipomas and bronchitis 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.

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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** |
| Arthritis with Surgical Residuals, Right Ankle | | 5271 | 10% |
| Arthritis with Surgical Residuals, Left Ankle | | 5271 | 10% |
| **COMBINED (1.9% BLF)** | | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100218 w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

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Deputy Director

Physical Disability Board of Review

SFMR-RB

DEPARTMENT OF THE ARMY

ARMY REVIEW BOARDS AGENCY

19D1 SOUTH BELL STREET 2ND FLOOR

ARLINGTON, VA 222D2-4508

11 AUG2011

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB *I* WRAMC, Building 7, Washington, D.C. 20307-5001

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for AR2011 0015877 (PD201000096)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of

Review (DoD PDBR) recommendation and record of proceedings pertaining to the

subject individual. Under the authority of Title 10, United States Code, section 1554a,

I accept the Board's recommendation to modify the individual's disability rating to 20%

without recharacterization of the individual's separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be

corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided

to the individual concerned, counsel (if any), any Members of Congress who have

shown interest, and to the Army Review Boards Agency with a copy of this

memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

CF:

( ) DoD PDBR

( ) DVA

Deputy Assistant Secretary

(Army Review Boards)