RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX. BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000097 SEPARATION DATE: 20071231

BOARD DATE: 20110503

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl (0311, Rifleman) medically separated in 2007 for right ankle osteochondritis. The CI sustained a right medial malleolar ankle fracture from an improvised explosive device blast while in Iraq in 2005. The CI was evacuated for ankle surgery, followed by a second arthroscopic surgery. The CI did not respond adequately and was unable to perform within his military occupational specialty or to meet physical fitness standards, and was referred to a Medical Evaluation Board (MEB). The MEB forwarded open fracture of medial malleolus and disorder of bone and cartilage to the Physical Evaluation Board (PEB). The PEB adjudicated right ankle osteochondritis status post medial malleolar ankle fracture as unfitting rated 10%. The CI did not appeal, and was medically separated with a disability rating of 10%.

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CI CONTENTION: “The VA awarded me 80%.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20070608** | | | **VA (9 Mo. After Separation) – All Effective Date 20080101** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| R Ankle Fx & Osteochondritis | 5099-5010 | 10% | Traumatic R Ankle | 5010-5271 | 20% | 20080904 |
| ↓No Additional MEB/PEB Entries↓ | | | PTSD | 9411 | 30% | 20090128 |
| Chronic R Knee Strain | 5260 | 10% | 20080908 |
| Chronic L Knee Strain | 5260 | 10% | 20080908 |
| Soft Tissue Injury….. | 5284 | 10% | 20080908 |
| Retained Shrapnel L tibia | 5312 | 10% | 20080908 |
| Traumatic Brain Injury | 8045 | 10% | 20080910 |
| 0% x3/Not Service Connected x 2 | | | 20080908 |
| **Combined: 10%** | | | **Combined: 80%** | | | |

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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 final disposition. The Department of Veteran Affairs (VA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate for all service connected conditions and to periodically re-evaluate veterans for the purpose of adjusting the veterans’ disability rating should their degree of impairment vary over time.

Right Ankle Condition. There were two range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its recommendation. These examinations are summarized in the following chart.

|  |  |  |
| --- | --- | --- |
| ROM –  Right Ankle | MEB ~ 9 Mo. Pre-Sep  (20070517) | VA C&P ~9 Mo. After-Sep  (20080904) |
| Right dorsiflexion (0-20) | 5⁰ | 0-7⁰\* |
| Right plantar flexion (0-45) | 30⁰ | 45⁰ |
| Right ankle inversion | - | 10⁰ |
| Right ankle eversion | - | 5⁰ |
| Comments | Slightly antalgic gait tenderness medial shoulder of talus in the medial tibiotalar joint line | \*Right ankle with knee straight 0⁰ with knee bent 7⁰  -Tenderness noted; slightly shorter stride length with medial ankle valgus on the right; antalgic gait; crepitus |
| §4.71a Rating | 20% (MEB 10%) | 20% |

The MEB exam on 17 May 2007 nine months prior to separation documented that, although the CI had aggressive physical therapy, “with standing at the end of a long day, running and heavy physical activity including basketball, he continues to have pain and subsequent swelling in the ankle which lasts into the evening and takes approximately one day to resolve.” The examination findings included a slightly antalgic gait, favoring the right side, and some tenderness over the medial tibiotalar joint line. The compensation and pension (C&P) examination on 4 September 2008 was nine months post-separation. The CI had a slightly shorter stride with medial ankle valgus on the right and antalgic gait along with tenderness. The MEB and VA examinations were equally proximate in time to separation. The PEB rated the right ankle condition as 5099-5010 (arthritis, due to trauma) at 10%. The PEB 10% rating was likely with application of §4.45 VASRD (The joints), with the right ankle x-ray showing a displaced fracture through the distal metaphysis of the right tibia with extension to the tibiotalar joint. VA coded the right ankle as traumatic arthritis ankle with limited motion (5010-5271) at 20% which would indicate that they considered the limitation of motion to be marked. The Board considered that the CI’s primary disability was the limited ROM of the right ankle in both dorsiflexion and plantar flexion. While the limitation of plantar flexion was minimal in the MEB and VA exams, the limitation of dorsiflexion was somewhat marked in both examinations. The Board also noted that the CI had very little disability due to the fact that he could participate in strenuous exercise such as basketball. However, this did result in significant swelling. Thus the Board considered the limitation of motion as marked. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends that the condition be coded as 5010-5271 for limited motion with a separation rating of 20% for right ankle osteochondritis status post medial malleolar ankle fracture.

Posttraumatic Stress Disorder (PTSD). PTSD was rated 30% by the VA based on examination two years post-separation. The MEB history and physical (H&P) documented depression and anxiety post-deployment; however, PTSD was not mentioned in the narrative summary, nor was there a limited duty granted for any mental condition. The VA C&P exam on 28 January 2009 documented the only mental health treatment the CI had received was in 2008 at Bethesda Naval Hospital. At that time he was placed on an antidepressant until summer 2008. The CI has not sought treatment since that time. The examiner also noted the CI denied feeling depressed. The MEB H&P examination and the VA C&P post-separation PTSD examination were reviewed, and there was no indication that prior to separation any mental health condition rose to the level of being unfitting. No mental health impairments were noted on any limited duty or commander’s statement. The Board determined therefore that PTSD was not subject to service disability rating.

Other Conditions. Chronic right knee strain, chronic left knee strain, and traumatic brain injury were each rated 10% by the VA and were mentioned in the MEB H&P of the DES package; however, none were the bases for limited duty or were implicated in the commander’s statement, and therefore do not rise to the level of unfitting. The soft tissue injury and retained shrapnel in left tibia conditions were each rated 10% by the VA and the mandibular scars were rated 0% by the VA. None of these VA-rated conditions were mentioned in the DES package. The Board has no eligible basis for recommending any additional unfitting conditions for separation rating. Moreover, the Board does not have the authority under DoDI 60040.44 to render fitness or rating recommendations for any conditions not considered by the DES.

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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. In the matter of the right ankle condition and IAW §4.71a, the Board unanimously recommends a change in the VASRD code to 5010-5271 and a rating of 20%. In the matter of the mental health condition or any other medical condition 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Ankle Condition | 5010-5271 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100121, 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 XXXX, 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 Physical Disability Board of Review (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 20 percent (increased from 10 percent) effective 31 December 2007..

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)