RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1000462 SEPARATION DATE: 20080528

BOARD DATE: 20111222

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SRA/E-4 (1C651, Space System Operations Journeyman), medically separated for neuropathy of the right ankle with pain and numbness. He did not respond adequately to treatment and was unable to perform within his Air Force career field or meet physical fitness standards. He was issued a temporary P4 L2 S1 profile and underwent a Medical Evaluation Board (MEB). Sensory neuropathy (of the)right ankle secondary to trauma and post operative wound infection was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated the “right ankle pain and numbness due to neuropathy status post injury, surgery times five and wound infection (combat related)” condition as unfitting, rated 10%, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD) and coded 8725. The CI appealed to the Formal PEB (FPEB) and contended for 30% disability. The FPEB adjudicated the condition as “chronic right ankle pain and numbness due to neuropathy status post injury, surgery times four and wound infection with marked decrease in range of motion (combat related),” rated at 20% disability and coded 8725-5271. The CI made no further appeals and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states, “Still unable to perform daily tasks to the quality of living before injured, disability evaluation should have included PTSD.” He additionally lists anxiety, PTSD, sleep apnea, nerve damage and partial range of motion (ROM) on item 14. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20080409** | | | **VA (3 Mo. After Separation) – All Effective Date 20080529** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic right ankle pain and numbness due to neuropathy status post injury, surgery times four and wound infection with marked decrease in range of motion (combat related) | 8725-5271 | 20% | S/P Five Right Ankle Surgeries w/Decreased ROM | 5271 | 20% | 20080820 |
| Residual Scars, S/P Ankle Surgeries | 7804 | 10% | 20080820 |
| Residual Peripheral Neuropathy S/P 5 R Ankle Surgeries | 8520 | 10% | 20080820 |
| ↓No Additional MEB/PEB Entries↓ | | | PTSD | 9411 | 50% | 20080703 |
| 0% x 3/Not Service Connected x 2 | | | 20080820 |
| **Combined: 20%** | | | **Combined: 70%** | | | |

\* VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his PTSD condition and for the significant impairment from his service-incurred musculoskeletal conditions which have worsened over time. 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 conditions incurred in service or resulting in medical separation. The Board’s authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation and, for PTSD, at six months after separation. The Board also acknowledges the CI’s contention suggesting that Service ratings should have been conferred for other conditions documented at the time of separation. 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 member's career, and then only to the degree of severity present at the time of final disposition. However, the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate veterans for the purpose of adjusting the disability rating should his degree of impairment vary over time.

Right ankle Condition. There were 2 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.

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| --- | --- | --- |
| Goniometric ROM –  Right Ankle | PT ~ 8 Mo. Pre-Sep | VA C&P ~ 3 Mo. After-Sep |
| Right Dorsiflexion (0-20) | 5⁰ | 0⁰ with pain at 0⁰ |
| Right Plantar Flexion (0-45) | 10⁰ | 45⁰ with pain at 45⁰ |
| Comment | No comment on pain | Pain at end range.  No swelling or deformity.  Well healed surgical scars; scars smooth, but tender |
| §4.71a Rating | 20% | 10% |

Several ankle sprains of the right ankle are documented prior to December 2005 when the CI re-injured his right ankle while deployed. Non-surgical management, including physical therapy, braces, and medications, was unsuccessful. He underwent debridement of the right talar neck in October 2007 and debridement of the right peroneal tendon in February 2008. The second surgery was complicated by a post-operative wound infection requiring additional minor surgical procedures to manage wound complications. The MEB narrative summary (NARSUM), 5 October 2007 (seven months prior to separation), recorded symptoms of chronic pain at the incision site, aching and popping with walking, and, inability to run due to pain and a subjective inability to achieve adequate range of motion for running. The condition was not expected to improve. A sensory neuropathy of the dorsal cutaneous nerve (confirmed neurology evaluation) was noted; however, motor function was intact. Right ankle range of motion was decreased in dorsiflexion and plantar flexion. A 17 August 2007 examination by the same physician noted the range of motion to be slightly decreased in dorsiflexion. Physical therapy examination for the MEB recorded decreased dorsiflexion and plantar flexion. The 17 July 2007 neurology examination noted no gait abnormalities. The 18 June 2007 podiatry examination noted problems walking on uneven ground, but no pain with range of motion. The IPEB found right ankle pain due to neuropathy status post injury and surgery unfitting and rated it 10% under the VASRD code 8725 for neuralgia of the posterior tibial nerve. The FPEB adjudicated the right ankle condition as 8725-5271, noting both neuralgia of the posterior tibial nerve, and limitation of motion, rated 20%. The Board noted that the FPEB rated the ankle at 20% based on a marked decrease in both plantar flexion and dorsiflexion of the right ankle shown in the physical therapy examination. This is the maximum rating under code 5271 for limitation in ROM. The VA compensation and pension (C&P) examination on 20 August 2008, (three months after separation), noted that the CI complained of stiffness, but denied instability or locking. An antalgic gait was noted and he used a brace for the right ankle. Neither cane nor crutches were required. Physical exam revealed tender post-surgical scars, decreased, painful motion (above) without other evidence of swelling or deformity. Range of motion was greater in plantar flexion than the physical therapy examination; the limitation in dorsiflexion remained, consistent with the MEB NARSUM. The Board notes that at the VA PTSD exam on 3 July 2008, (two months after separation), the CI stated that he exercised on a daily basis and was able to do yard work. The VA coded the right ankle condition 5271 and rated it 20%. The VA also rated the surgical scars at 10%, coded 7804, scars, and the peripheral neuropathy at 10%, coded 8520, neuralgia of the sciatic nerve. The Board noted that while the MEB physical therapy range of motion examination would support a rating of 20% for marked limitation of motion, the C&P examination range of motion is consistent with moderate limitation of motion, primarily of dorsiflexion, more nearly approximating the 10% rating for ankle limitation of motion. The Board then considered the sensory neuropathy and post-surgical scars as additionally unfitting conditions for disability rating. Other than in the post-operative periods, there are no profiles limiting the wear of military clothing including boots, and it was not documented that he was unable to wear civilian footwear. IAW §4.3, reasonable doubt, the Board next considered if there were separately unfitting conditions causing impairment from pain due to both the surgical changes and neuropathy. However, IAW §4.14, avoidance of pyramiding, the Board concluded that it is not possible to separate the impairment from the two conditions due to overlap of symptom of pain with use. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The sensory component in this case has no separate functional implications. The pain component is subsumed under the right ankle as specified in §4.71a. Since no evidence of additional functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. As already noted above, the ROM documented by the C&P more nearly approximated moderate limitation than marked supporting a 10% rating for limitation of motion. When combined with the additional functional loss due to neuropathic pain, the Board agreed the rating was appropriately 20% with application of §4.4 to support a higher rating under the code for limited ankle motion. Even if a separate 10% rating for painful neuropathy were combined with 10% for moderate limitation of motion, there is no advantage to the CI for a higher disability rating separation. In summary, the Board concluded that the totality of evidence did not support a 20% rating for limitation of motion plus a separate 10% rating for the neuropathic pain. By precedent, the Board does not recommend separation rating for scars unless their presence imposes a direct limitation on fitness. Since there was no permanent limitation in the wear of military foot wear, no limitation was present. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the right ankle condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for anxiety, PTSD, sleep apnea, nerve damage and partial ROM. The nerve damage and partial ROM have been discussed. The other conditions were reviewed by the action officer and considered by the Board. The MEB NARSUM noted a history of phase of life problem, adjustment insomnia, depressed and frustrated with his medical condition. The Board notes that neither PTSD nor anxiety were diagnosed while on active duty and that the mental health condition was specifically noted not to be deployment related in the provider notes and no limitation in duty was placed because of it (physical profile S1 his entire career). Service treatment records show care by mental health providers in 2007 for intermittent depressed mood, concentration problems, and insomnia (insomnia since 2006). Although the commander noted some decreased concentration at work, enlisted performances reports for the rating periods March 2005 to March 2006, March 2006 to March 2007, and March 2007 to March 2008 documented excellent duty performance (firewall five reports, given only to the highest performers) while simultaneously earning high grades in college courses. A sleep study did show mild sleep apnea, but no treatment was prescribed. The CI did take sleep aids due to the pain from his right ankle. There was no evidence for concluding that any of these 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.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. Migraine headaches and several other non-acute conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. The Board notes that the CI had not seen for specifically for headaches since 2001, seven years prior to separation. 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 the right ankle condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the anxiety, PTSD, sleep apnea and migraine headaches or any other condition 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** |
| Chronic Right Ankle Pain and Numbness Due To Neuropathy | 8725-5271 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091217, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00462

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings