RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000626 SEPARATION DATE: 20021011

BOARD DATE: 20110610

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

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Lance Corporal (0311, Infantryman) medically separated from the Marine Corps in 2002. The medical basis for the separation was osteochondral defect of the lateral talar dome. The CI injured his left ankle after jumping from a ledge on 8 August 1999. He was treated conservatively and placed on eight months of limited duty (LIMDU). His pain persisted and he underwent surgical repair of a chondral defect of the left lateral talar dome. He was placed on another LIMDU and continued rehabilitation. He did not respond adequately to perform within his military occupational specialty (MOS) or to participate in a physical fitness test, and underwent another Medical Evaluation Board (MEB) with referral to Physical Evaluation Board (PEB) which recommended separation. The CI appealed, and his separation was terminated to allow a second surgery on 8 August 2001. He remained unable to meet the requirements of his MOS. Osteochondral defect of the lateral talar dome, status post open ankle arthrotomy and debridement of the talar dome, and status post arthroscopy for osteochondritits dessicans were determined to be medically unacceptable by the (fourth) MEB, and were forwarded to the PEB. The PEB adjudicated the osteochondral defect of the lateral talar dome as an unfitting condition and the status post arthroscopy for osteochondritis desiccans and status post open ankle arthrotomy and debridement of talar dome conditions as category II, related to the unfitting diagnosis. The PEB rated the condition at 10% with application of SECNAVINST 1850.4E and the VA Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating after an additional LIMDU period, which the CI requested.

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

CI CONTENTION: “I have been trying to re-open my case on my lumbar spondylosis because it has limited my daily movement and pain has been increasingly worse.” He also lists: arthroscopic debridement in left ankle – 20%, tinnitus – 10% and adjustment disorder and depression - 10%.

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

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20020530** | | | **VA (15 Mo. after Separation) – All Effective 20021012** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Osteochondral Defect of the Lateral Talar Dome | 5299-5003 | 10% | L Ankle S/P Arthroscopic Debridement | 5271 | 20% | 20040116 |
| S/P Arthroscopy for Osteochondritits Dessicans | | Cat II |
| S/P Open Ankle Arthrotomy and Debridement of the Talar Dome | | Cat II |
| ↓No Additional MEB Entries↓ | | | Lumbar Spondylosis | 5293 | 20% | 20040116 |
| Tinnitus | 6260 | 10% | 20040115 |
| NSC x 2 | | | 20040115 |
| **FINAL Combined: 10%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 40%** | | | |

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

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his significant impairment from his service-incurred musculoskeletal conditions which have worsened over time. It is a fact, however, that the Disability Evaluation System (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. The mere presence of a diagnosis is not sufficient to render the condition unfitting. However, the Department of Veterans Affairs, 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.

Left Ankle. The CI had a distal avulsion fracture of the tibia; arthroscopic repair of a chondral defect of the left lateral talar dome was performed on 8 January 2000. Symptoms persisted and debridement of the left ankle with open arthrotomy of a bony spur and cartilaginous damage removal was performed on 8 August 2001. An orthopedist recommended return to full duty; however, the CI stated that he could not stand for longer than thirty minutes or walk without pain. He was again referred for PEB consideration. Two goniometric range of motion (ROM) exams bracketing separation are in evidence.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –  Ankles | MEB ~ 8 Mo. Pre-Sep | VA C&P ~ 15Mo. Post-Sep |
| Left | Left |
| Dorsiflexion (0-20) | 15⁰ | 20⁰ (pain at 15⁰) |
| Plantar Flexion (0-45) | 60-70⁰\* | 45⁰ (Pain at 35⁰) |
| Comment |  | DeLuca: Pain with repetition |
| §4.71a Rating | 10% | 10% \*\* |

\*Likely was a measurement error, \*\*VA awarded 20%

A MEB exam on 29 January 2002 (eight months prior to separation and seven months after the second surgery) noted no swelling, edema, or ecchymosis. A positive drawer sign persisted, but squeeze test was negative. The VA compensation and pension (C&P) exam was performed 16 January 2004, fifteen months after separation. Symptoms included ankle pain when he pivoted, when cold, and at times with walking. He was working for the US Postal Service a mail carrier. Gait and posture were normal and steady without the use of an assistive device. No evidence of effusion or edema was noted. DeLuca criteria were negative except for pain with repetitive use. Examination of the feet did not reveal evidence of abnormal weight bearing. Imaging was unremarkable. Sensory and motor exams were normal as were deep tendon reflexes. The PEB coded the ankle as 5299-5003, analogous to arthritis rated 10%. The VA coded the ankle as 5271, limited ROM rated 20% for marked limitation of motion. The Board noted that the limitation of motion of dorsiflexion was only a reduction of 5 degrees and that there was no limitation of motion on plantar flexion at the VA examination. The Board did not consider this to be marked (20%) and determined that it was at most moderate (10%). Alternatively, if considered to be mild (0%), the presence of painful motion, IAW VASRD §4.59, would also grant a rating of 10%. After due deliberation, in consideration of the totality of the evidence, the Board concluded that there was no cause to recommend a change from the PEB fitness adjudication for the left ankle condition. If the MEB/PEB examination were used to rate the limitation of motion, the reduction of dorsiflexion was the same as in the VA examination, and the Board would result in the same rating of 10% due to painful motion.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for lumbar spondylosis, tinnitus, and an adjustment disorder with depression. A single entry in the record for back pain was dated 23 May 2002. At that time, the CI complained of one day of back pain, and was returned to full duty. The Board also notes that the CI checked “no” for item 12c, for history of back pain, on the MEB history, 23 January 2002. Neither tinnitus nor adjustment disorder with depression was documented in the service treatment record. None of these conditions were documented in the DES file. 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 determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. No other conditions were noted in the MEB summary, identified by the CI on the MEB physical, or found elsewhere in the DES file. A right ankle condition, bilateral hearing loss 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 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 that they were inconsistent with the VASRD in effect at the time of the adjudication. In the matter of the left ankle condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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** |
| Osteochondral Defect of the Lateral Talar Dome | 5299-5003 | 10% |
| **COMBINED** | **10%** |

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100419, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President, 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 XXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 23 Aug 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. XXXX’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)