RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000659 SEPARATION DATE: 20060415

BOARD DATE: 20111123

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (0331, Machine Gunner) medically separated for hallux valgus deformity of right foot with pes planus. The CI suffered a crush injury to his right foot. He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He underwent a Medical Evaluation Board (MEB). Two foot conditions (right foot injury and flat foot) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW NAVPERS 18068F. The PEB found the CI unfit due to hallux valgus deformity of right foot with pes planus, and assigned a disability rating of 10%. Crush injury to right foot was adjudicated as Category II (related to the unfitting foot condition). Overweight was added as Category IV (condition not constituting a physical disability). The CI made no appeals, and was thus separated with a 10% disability rating.

CI CONTENTION: The CI states, “Disabling posttraumatic stress disorder condition onset not diagnosed until post-separation. Currently rated by VA (PTSD) 30%.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Navy IPEB – dated 20060207** | **VA (12 mo. Post Separation) – All Effective 20060416** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Hallux Valgus with Pes Planus | 5276 | 10% | Crush Injury to Right Foot | 5284 | 30% | 20070406 |
| Crush Injury to Right Foot | Category II |
| Overweight | Category IV  | NO VA ENTRY |
| **TOTAL Combined: 10%** | **TOTAL Combined: 30%\*** |

\*Note: PTSD was later added with an effective date of 20071207, for a new combined rating of 50%.

ANALYSIS SUMMARY:

The Board acknowledges the sentiment expressed by the CI, that there should be additional disability assigned for PTSD, a condition diagnosed after separation from service. The military Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. Compensation can only be offered for those conditions that cut short a CI’s career, and then only to the degree of severity present at the time of separation. However the Department of Veterans’ Affairs (VA) operating under a different set of laws; is empowered to compensate service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the CI’s disability rating should his degree of impairment vary over time.

Right Foot Condition. In December 2004 while deployed to Iraq, the CI sustained a crush injury to his right foot. He was medically evacuated from theater, and received treatment at Naval Medical Center San Diego. He underwent an open reduction and internal fixation (ORIF) procedure. The CI did well post-operatively. In September 2005, he began weight bearing on the right foot. Shortly after that, he was able to walk without much difficulty but still had some pain. At his MEB orthopedic exam (21 December 2005), 16 weeks prior to separation, the CI was able to ambulate in sneakers, but still complained of right foot pain. He could not run, and had pain of his right foot and ankle after a day of vigorous walking. The surgical wound on his foot was well healed. There was moderate tenderness to palpation over the dorsum of the foot, and in the area of the ankle joint. His gait was slightly antalgic. The examiner noted that the CI had significant hyper mobility of his foot and would laterally load the right foot with ambulation. At his VA compensation and pension (C&P) exam (April 6, 2007), 12 months after separation, the CI complained of constant right foot pain. He did not wear a brace or special shoe, and reported no difficulty with activities of daily living. On exam there was no erythema or swelling. His surgical scars were well healed and non-tender. The right ankle was normal in appearance and there was no pain with ankle movement. Right ankle range of motion (ROM) was 15 degrees of dorsiflexion and 30 degrees of plantar flexion.

The PEB and VA took different approaches to coding the right foot condition. The PEB used the Veterans’ Administration Schedule for Rating Disabilities (VASRD) code 5276 (acquired flatfoot). The VA used code 5284 (foot injuries, other). The Board carefully examined all evidentiary information available. Since the disability had resulted from the crush injury, the Board determined that VASRD code 5284 (foot injuries, other) would be appropriate in this case. The Board noted that the CI had done well post-operatively. He was walking without significant difficulty prior to separation (no cane, braces or special shoes). However, due to the persistent pain and deformity, the Board determined that the right foot condition was moderately severe. After due deliberation, the Board unanimously recommends a disability rating of 20% for the right foot condition IAW VASRD §4.71a. It is appropriately coded 5284, and meets criteria for the 20% rating.

Other PEB Condition. The other condition adjudicated by the PEB was “overweight.” This condition was reviewed by the action officer and considered by the Board. All evidence considered, the Board unanimously agreed that the overweight condition was indeed Category IV and did not constitute a physical disability. There is not reasonable doubt in the CI’s favor supporting reversal of the PEB’s adjudication for the overweight condition.

Posttraumatic Stress Disorder (PTSD). As noted above, the PTSD was diagnosed after separation from service. There was no documented evidence in the service treatment record (STR) of PTSD symptoms or complaints present at the time of separation. On his post deployment survey (28 September 2005) and his MEB history and physical exam (4 January 2006), the CI denied any mental health symptoms or complaints. At his April 2007 VA C&P exam, he reported that his only health problem was right foot pain. The initial PTSD evaluation performed by the VA was almost two years after separation. The PTSD condition was not clinically active during the MEB/PEB period, and was not implicated in the non-medical assessment. This condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to separation rating.

Remaining Conditions. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. 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 foot condition and IAW §4.71a, the Board unanimously recommends a rating of 20%. In the matter of the overweight condition, PTSD, or any other 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, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
|  Right Foot Condition | 5284 | 20% |
| **COMBINED** | 20% |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20100610, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 1 Dec 11 ICO xxxxxxxxxxx

 (c) PDBR ltr dtd 6 Dec 11 ICO xxxxxxxxxxx

 (d) PDBR ltr dtd 6 Dec 11 ICO xxxxxxxxxxx

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

 a. XXX XX 4635: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 31 Dec 2003.

 b. XXX XX 0896: Separation from the Naval Sservice due to physical disability rated at 20 percent (increased from 10 percent) effective 15 April 2006.

 c. XXX XX 5197: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 15 September 2004.

3. Please ensure all necessary actions are taken to implement these decisions including notification to the subject members once those actions are completed.

 Assistant General Counsel

 (Manpower & Reserve Affairs)