RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000718 SEPARATION DATE: 20090429

BOARD DATE: 20111130

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPL/E-4, (6062, Aircraft Intermediate Hydraulics Mechanic, medically separated for complex regional pain syndrome, right lower extremity. The CI’s injured her right ankle in boot camp in during a rope climb and after failing conservative treatment for chronic right ankle pain underwent two surgeries. She had two periods of limited duty (LIMDU) and developed a regional pain syndrome of her right ankle and foot. The CI was unable to perform within her military occupational specialty and was referred to a Medical Evaluation Board (MEB). The MEB forwarded “disorder of bone and cartilage unspecified; other specific muscle disorders, disorder of bone and cartilage unspecified; other postsurgical status; disturbance of skin sensation; mono neuritis of lower limb unspecified; tibialis tendinitis, and flat foot” to the Physical Evaluation Board (PEB) as medically unacceptable on NAVMED Form 6100/1. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated “ankle talus osteochondral lesion status post two micro fractures” as unfitting with the disability code of 5299-5276 rated 20% with probable application of SECNAVINST 1850.4E. The IPEB adjudicated three other foot/ankle diagnoses as category II conditions (“conditions that contribute to the unfitting conditions”). The CI appealed for reconsideration and the reconsideration PEB changed the primary unfitting condition to: “complex regional pain syndrome (CRPS), right lower extremity”, coded as 8799-8725 and rated 20%. The reconsideration PEB continued the category II conditions of “numbness and nerve pain in the toes and decreased sensation in the medial aspect of the foot; significant posterior tibialis tendon dysfunction and pes planus; and tight gastrocnemius status post resection”, with the addition of ankle talus osteochondral lesion status post two micro fractures as a category II condition. The CI was then medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “I respectfully request a review by the physical disability board of review (PDBR) based on the disability rating I received by the department of Veterans Affairs (DVA). I was rated 20% disabled by a Physical Evaluation Board (PEB) for the injury sustained to my right ankle and foot, which resulted in my early discharge from the Marine Corps. The DVA rated the same condition as a 50% disability. I have continued to have problems with my ankle and foot, and have received treatment through the DVA. I am limited in the activities I am able to participate in, and have constant pain. The treatments have helped but, as I was told when I first sustained the injury, there is nothing available at this time to repair the injury to 100%. Therefore, ask that you take the DVA rating into account as well as the treatments I have sought out while reviewing my case.” She additionally lists all of her VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service Reconsideration PEB – Dated 20090219** | | | **VA (2 Mo. Pre Separation) – All Effective Date 20090430** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Complex Regional Pain Syndrome, Right Lower Extremity | 8799-8725 | 20% | Healing Osteochondritis Dissecans s/p Arthroscopic Procedures with Reflux Sympathetic Dystrophy ligamentous injury, limitation of motion, muscle weakness and altered sensation of the right ankle, foot and lower leg, atrophy of the right calf, and residual tender scars | 5299-5262 | 50%\* | 20090202 |
| Numbness/Nerve Pain In Toes & Decreased Sensation In Medial Aspect of Foot | Related Category II | |
| Significant Posterior Tibialis Tendon  Dysfunction & Pes Planus | Related Category II | |
| Ankle Talus Osteochondral Lesion Status Post 2 Micro fractures | Related Category II | |
| A Tight Gastrocnemius Status Post Resection | Related Category II | |
| ↓No Additional MEB/PEB Entries↓ | | | R. Shoulder Strain & Tendinitis | 5201 | 10% | 20090202 |
| Right Low Back | 5237 | 10% | 20090202 |
| Right Hip Strain | 5252 | 10% | 20090202 |
| Tinnitus | 6260 | 10% | 20090228 |
| Laryngopharyngeal Reflux | 6516 | 10% | 20090304 |
| Anxiety Disorder w/ Insomnia | 9413 | 10% | 20090304 |
| 0% x 1/Not Service Connected x 2 | | | 20090304 |
| **Combined: 20%** | | | **Combined: 70%** | | | |

\*5299-5262 (Osteochondritis Dissecans) temporary pre-stabilization rating assigned from 20090430-date following separation for an unstabilized condition with severe disability, with gainful employment not feasible or advisable; RD letter 20100713 reflects downgrading 5299-5262 to 0% for failure to report to 20100609 reeval.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of her condition and predictable consequences which merit consideration for a higher separation rating. 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 resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12 month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40; however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Right Ankle Condition. There were two goniometric range-of-motion (ROM) evaluations and three non-goniometric evaluations in evidence which the Board weighed in arriving at its rating recommendation. The exams are summarized in the chart below.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Goniometric ROM: R Ankle | PT  ~ 4 Mo. Pre-Sep | NARSUM  ~ 4 Mo. Pre-Sep | Addendum  ~ 2 Mo. Pre-Sep | VA C&P  ~ 2 Mo. Pre-Sep | Pain Med Cl  ~ 10 Mo. Post-Sep |
| Dorsiflexion (0-20⁰) | 10⁰ | “tenderness to resisted inversion and eversion” | NE | 5⁰ | “dec” |
| Plantar Flex (0-45⁰) | 60⁰ | 30⁰ | “dec” |
| Eversion (5-15⁰) | 15⁰ | 12⁰ | “Normal” |
| Inversion (5-20⁰) | 30⁰ | 20⁰ | “Normal” |
| Comment:  Surgery ~ 10 Mo. Pre-Sep 20080630 | Pronounced pain; limited ankle function; using cushioned insoles; improved strength and function | Sig tender deep palpation posterior groove & tibialis tendon; weak peroneal strength 4/5 | normal gait, peroneal weakness 4/5; R. calf atrophy; R. foot with shiny coloration and cooler compared to L.; Allodynia over plantar surface; swelling of ankle and foot; discoloration extends to lower aspects of leg; | ROM’s w/ pain; Antalgic gait, unable to do heel/toe walking; atrophy R calf; soft tissue swelling, weakness; slight redness, heat, tenderness; motor weakness ext HL 4+/5, ankle 5-/5; increased sensitivity over lateral/plantar aspect of foot | normal gait, normal strength; R foot slightly cooler than L, no edema, no erythema, no hair loss, + pain with light touch medial ankle |
| §4.71a Rating\* | 10% | 10%-20%  (PEB 20%) | 10%-30% | 20%-30%  (VA 50%) | 10% |
| §4.124a Rating\* | 20% | 20% | 20%-30%  (R-PEB 20%) | 30% | 20% |

\* Ratings may overlap and are not independent

The narrative summary (NARSUM) four months prior to separation did not document ROM’s, and the PEB worksheet considered multiple physical therapy (PT) notes. There was significant tenderness in the posterior groove, posterior tibialis tendon; tenderness to resisted inversion/eversion in posterior tibialis tendon; and a peroneal strength of 4/5 on the right. A PT note one week prior to this MEB exam documented limitation in dorsiflexion and chronic pain. A NARSUM addendum (addendum MEB examination) completed two months prior to separation focused on the CRPS pathology, noting failure of acupuncture, PT, steroid injection, narcotic and non-narcotic pain medications and two lumbar sympathetic blocks. The CI complained of pins and needles in her toes, daily pain right foot pain (6/10), accompanied by color and temperature changes (hot and cold temperature alternating). The exam of the right ankle noted a normal gait, but did not document ROM’s. The peroneal strength was 4/5. There was calf atrophy. Her right foot exhibited a shiny appearance, cooler than the left; and allodynia over medial plantar area and foot plantar surface. With light pressure, she complained of pins and needles in 1st, 2nd 3rd toes. There was swelling of the right ankle and foot. Discoloration noted to extend from her right foot to the lower aspect of her right leg. Radiographs documented osteochondral defect of the talar dome with a chronic tear of the anterior talofibular ligament.

The VA compensation & pension (C&P) exam two months prior to separation indicated severe foot and ankle pain, weakness, popping and clicking, limited motion, unsteadiness; pain which disrupted her sleep, inability to squat or stair climb; difficulty with showering, dressing; and stiffness. The severity of the pain necessitated a transcutaneous electrical nerve stimulation (TENS) unit being prescribed which provided some relief. “Her pain is 3/10 with rest, 6/10 with moderate activity and flares to 8/10 with weather and motion.” The examiner noted that the CI tended to walk on the lateral aspect of the right foot and her shoes wore out more on the outside. She was getting some relief of pain with custom inserts. There was calf atrophy. There was also decreased sensation over the dorsal aspect of her toes. Radiographs demonstrated irregularity of the medial talar dome, but less dramatic than seen on previous examinations. Impression was interval healing of the osteochondritis with prior ligamentous injury. Pain medicine consult exam completed 10 months after separation documented 2/10 pain, constant, burning, numb, worse when sitting down TENS provided some relief but the sympathetic blocks provided no relief. There was noted redness of the right ankle and foot when she gets out of a shower. Her pain affects activities of daily living, leisure activities, physical activity and her emotions. Radiograph healing of the medial talar dome osteochondritis dissecans (OCD), evidence of prior ligamentous injury of the medial ankle vs intraarticular body from the OCD. Steady gait without assistance, right foot slightly cooler than the left, normal strength. The CI failed to show for a follow-up rating exam.

Based on the evidence above the Board evaluated the probative value of the exams for rating and determined that the VA exam two months pre-separation had the highest probative value. It materially agreed with the NARSUM addendum and included goniometric ROMs. The record consistently documented the right ankle and foot as interfering with performance of duty. The reconsideration PEB coded the complex regional pain syndrome, right lower extremity as 8799-8725 (posterior tibial nerve-neuralgia) at 20% (severe impairment). Complex regional pain syndrome (CRPS) was noted in the NARSUM addendum and the CI’s request for reconsideration, which for coding, is similar to the alternately diagnosed reflex sympathetic dystrophy (RSD). The VA used a temporary pre-stabilization rating that is not applicable to permanent DoD disability ratings. The Board’s scope prohibits a temporary rating with placement on the temporary duty retirement list (TDRL), and the Board must make a permanent separation rating recommendation.

The Board must also consider if the PEB category II conditions are separately unfitting, or unfitting when combined with the primary unfitting condition to the extent that they are separately ratable. The first category II condition to be considered was numbness and nerve pain in the toes and decreased sensation in the medial aspect of foot. Any symptoms or disability from this diagnosis are considered with any rating under IAW §4.124a—schedule of ratings–neurological conditions and convulsive disorders (the primary unfitting condition coded by the reconsideration PEB used the §4.124a schedule). The remaining three category II conditions; posterior tibialis tendon dysfunction and pes planus; ankle talus osteochondral lesion status post two micro fractures; and tight gastrocnemius status post resection combined reflected a right ankle impairment from a right ankle injury and surgeries. The PEB worksheet (JDETS) specifically addressed the avoidance of pyramiding in adjudicating the osteochondral (ankle bones) as category II and not separately ratable. These conditions were not neurologic injuries and were not considered under §4.124a (nerve) coding/rating. The Board deliberated if the limited motion of the ankle, absent the pain considered in the neurologic condition rating (CRPS or RSD) were to the level of being unfitting. Right ankle injury was documented in the LIMDU’s and the non-medical assessment statement. There were abnormal radiographs of the ankle equivalent to arthritis, ankle surgeries, and gastrocnemius resection, which even absent pain would have limited ankle motion.

The Board considered several different options for analogous coding to include 5284, foot injuries, other; 5262, tibia and fibula, impairment of (VA); 8725 neuralgia, posterior tibial nerve (PEB); and/or 8621 neuritis, external popliteal nerve (common peroneal). Regarding application of rating under §4.124a (nerve), the CI’s condition more closely approximated a neuritis IAW §4.123 than a neuralgia IAW §4.124 due to muscle atrophy, sensory disturbances, and constant pain. The nerve impacted was closer to the external popliteal nerve (common peroneal) than the posterior tibial nerve as the neurologic abnormalities were more proximal than the plantar foot and toes.

After due deliberation, the Board concluded that the preponderance of the evidence with regard to the functional impairment of the right ankle and foot conditions should be rated for both neurologic and musculoskeletal disabilities as an additionally unfitting condition. The Board concluded that the tenants of §4.14 (avoidance of pyramiding) would be applied to the extent possible to remove pain, or painful motion, from any musculoskeletal system rating determination. Therefore, the recommended ratings are complex regional pain syndrome, right lower extremity (including numbness and nerve pain) 8799-8621 at 10%; and significant posterior tibialis tendon dysfunction and pes planus coded 5099-5276 at 20% IAW Veterans Administration Schedule for Rating Disabilities (VASRD) §4.71a.

Remaining Conditions. Other conditions identified in the DES file were frequent indigestion or heartburn (VA reflux 10%), shoulder pain (VA 10%); knee pain, low back pain (VA 10%), hip pain (VA 10%), frequent trouble sleeping, nervous trouble, and panic attacks (VA anxiety d/o 10%), motion sickness; intermittent tinnitus (VA 10%); and ruptured eardrum. Several additional non-acute conditions or medical complaints were also documented. While the evidence showed the CI sought infrequent treatment for these conditions, none were significantly clinically or occupationally active during the MEB period, none carried attached duty limitations or LIMDU, and none were implicated in the commander’s non-medical assessment. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. 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 thus has no 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 complex regional pain syndrome, right lower extremity and category II condition, numbness and nerve pain in the toes and decreased sensation in the medial aspect of foot, the Board unanimously recommends a change in the PEB rating to 10% and a change in VASRD code to 8799-8621 IAW VASRD §4.124a. In the matter of the PEB category II conditions; posterior tibialis tendon dysfunction and pes planus; ankle talus osteochondral lesion status post two micro fractures and tight gastrocnemius status post resection condition, the Board unanimously recommends that it be added as an additionally unfitting condition, for separation rating; coded 5099-5276 and rated 20% IAW VASRD §4.71a. 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 recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Complex Regional Pain Syndrome, Right Lower Extremity | 8799-8621 | 10% |
| Significant Posterior Tibialis Tendon Dysfunction and Pes Planus | 5099-5276 | 20% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20100527, 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

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 19 Dec 11

I have reviewed the subject case pursuant to reference (a) and non-concur with the recommendation of the Physical Disability Board of Review as set forth in reference (b). I found the conditions for which the PDBR recommended additional ratings are not separately unfitting as defined by regulations. Therefore, xxxxxxxx records will not be corrected to reflect a change in either her characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

Principal Deputy

Assistant Secretary of the Navy

Manpower & Reserve Affairs)