RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000776 SEPARATION DATE: 20030228

BOARD DATE: 20111104

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (6172, Helicopter Crew Chief), medically separated for status post bilateral bunionectomy with residual pain. He did not respond adequately to treatment and to fully perform within his military occupational specialty (MOS) or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Bilateral bunionectomy was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW NAVPERS 18068F. Bilateral knee pain, bilateral cataracts, and trigeminal neuralgia also appeared on the MEB submission but were noted to be medically acceptable by the MEB examiner. The Informal PEB (IPEB) adjudicated the bilateral bunionectomy condition as unfitting, rated 10%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The IPEB categorized the bilateral knee pain, minimal cataracts and trigeminal neuralgia as not unfitting category III conditions. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “The conditions were not rated under the guidelines of Veteran Affairs; rated improperly.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20020815** | | | **VA (18 Mo. Pre Separation) – All Effective 20030301** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| S/P Bilateral Bunionectomy | 5299-5003 | 10% | S/P Left Bunionectomy | 5280 | 10% | 20010824 |
| S/P Right Bunionectomy | 5280 | 10% | 20010824 |
| Bilateral Cataracts Minimal | CAT III | | Bilateral Cataracts | 6027 | 0% | 20010824 |
| Trigeminal Neuralgia | CAT III | | Trigeminal Neuralgia | 8405 | 0% | 20010824 |
| Bilateral Knee Pain | CAT III | | PFS, Right Knee | 5262-5024 | 10% | 20010824 |
| PFS, Left Knee | 5262-5024 | 10% | 20010824 |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20020513 |
| 0% x 8 / Not Service Connected x 6 | | | 20020509 |
| **Combined: 10%** | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY:

Bilateral Great Toe Condition: The CI was first evaluated for his foot pain in April 1997 but did not seek follow-up care. He was seen again in June 1999, placed on an eight month LIMDU and referred to podiatry. He was treated with orthotics and physical therapy but declined surgery so he was medically boarded in October 1999. No PEB action was taken at that time and he remained on active duty. By October 2001, due to his increasing foot pain, the CI elected to have surgery and was placed on another eight month LIMDU. He had surgical correction of the bunions with an Akins osteotomy on the right foot in January 2002 and left foot in April 2002. The CI was seen by podiatry in August 2002 and was released from care with no restrictions to activity. Podiatry had also recommended the removal of the surgical pins to decrease likelihood of subcutaneous irritation, but the CI declined this procedure. At his Compensation and Pension (C&P) exam, ten months prior to separating, (and just one month after his second surgery) the CI complained of constant foot pain that worsened with standing, walking, running or wearing boots. His ambulation was somewhat impaired because he was wearing orthopedic boots on both feet due to the recent surgeries. The examiner noted that his feet were without signs of abnormal weight bearing but he had flat feet bilaterally. Examination of the feet revealed no painful motion, edema, instability or weakness. There was tenderness to palpation of both arches, the heads of both first metatarsals as well as both great toes. Both first toes appeared to be thickened due to the surgeries. Hallux valgus was present bilaterally with 30 degrees of angulation as well as five degrees of dorsiflexion at both first MTP joints. Radiographs of his feet revealed surgical changes of the proximal phalanges and metatarsals of each great toe with satisfactory position of the screws and pins, as well as moderately severe bilateral pes planus with hind foot valgus. His final diagnosis was; pes planus with hind foot valgus, bilateral hallux valgus and status post bilateral bunionectomy. At his MEB narrative summary (NARSUM) exam six and one-half months prior to separation, the CI reported that he was unable to walk or stand for significant periods of time, or participate in physical training due to his foot pain. Examination revealed paresthesias over the dorsal aspect of the metatarsophalangeal (MTP) joint and first digit of each foot and mild tenderness to palpation over the volar aspect of the MTP joints extending to mid foot bilaterally. Range of motion (ROM) was mildly decreased at the ankle in flexion and extension bilaterally and there was mild to moderate weakness in extension to the point where the CI had some difficulty standing and walking on the balls of his feet. The feet were normal in appearance with the exception of bilateral scarring and mild medial deviation of the first digits bilaterally. Deep tendon reflexes and plantar reflexes were within normal limits and symmetric. Final limitations included, no prolonged standing, marching or running. In summary, it was noted by the examiner that the CI’s, “physical limitations may be rescinded based on patients level of subjective pain, which has remained stable over time, despite repeated efforts at physical therapy and repeated normal exams”.

The PEB rated the bilateral great toe condition with the analogous code 5299-5003 (painful motion due to arthritis) at 10%. The VA rated each great toe at 10% using code 5280 (hallux valgus, operated with resection of metatarsal head). The Akin osteotomy procedure performed on both of the CI’s great toes involved resection of the metatarsal head. In light of this surgical procedure, the Board determined that the 5280 code was more accurate and appropriate to the CI’s condition. Despite having uncomplicated corrective surgery, the CI clearly had bilateral great toe pain with use and on palpation prior to separation. This pain was sufficient to affect his activity level and make him unfit for the continued duty as a Marine. After due deliberation, considering all of the evidence, the Board unanimously recommends a disability rating of 10% for each great toe condition coded 5280.

Other PEB Conditions: The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were bilateral cataracts, trigeminal neuralgia and bilateral knee pain. None of these conditions were profiled or implicated in the commander’s statement. The MEB examiner noted that no condition other than the bunion condition would prevent the CI from being found fit for duty. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions: Other conditions identified in the DES file were pes planus and tinnitus. Several additional non-acute conditions or medical complaints were also documented. The pes planus condition appeared on the limited duty board, but was not implicated in the commander’s statement or noted to be medically unacceptable. 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, 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the bilateral foot condition and IAW §4.71a, the Board unanimously recommends a rating of 10% for each foot coded 5280. In the matter of the bilateral cataracts, trigeminal neuralgia, bilateral knee pain, pes planus, tinnitus or any other medical 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 Bunionectomy Residuals | | 5280 | 10% |
| Left Bunionectomy Residuals | | 5280 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100712, 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 8 Nov 11 ICO XXXXXXXX

(c) PDBR ltr dtd 10 Nov 11 ICO XXXXXXXXXX

(d) PDBR ltr dtd 10 Nov 11 ICO XXXXXXXXXXXXX

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. XXXXXXXXX1716: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 28 February 2003.

b. XXXXXXXXXX3144: Correction of records to reflect placement on the Temporary Disability Retired List at 40 percent (increased from 30 percent) with no change to final separation from the Naval Service due to physical disability rated at 10 percent.

c. XXXXXXXXXXX6878: Placement on the Permanent Disability Retired List at 30 percent effective date of discharge (15 July 2002).

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

Assistant General Counsel

(Manpower & Reserve Affairs)