RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000847 SEPARATION DATE: 20081129

BOARD DATE: 20100729

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

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (5811, Military Police) medically separated for her left ankle condition which began after an inversion injury in August 2006. She underwent arthroscopic microfracture of the osteochondral defect (OCD) and gastrocnemius recession for equinus contracture in April 2007 and an osteochondral allograft in January 2008. Despite post-operative rehabilitation, she did not respond adequately to treatment and was unable to perform within her military occupational specialty (MOS) or meet physical fitness standards. She was placed on limited duty and underwent a Medical Evaluation Board (MEB). “Osteoarthrosis, localized, primary, other specified sites” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. Other conditions included in the Disability Evaluation System (DES) file are discussed below. The PEB adjudicated the left ankle condition (status post osteochondral allograft for an osteochondral lesion of the talus) as unfitting, rated 10%, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI did not appeal, and was medically separated with a 10% disability rating.

CI CONTENTION: “Permanent loss of mobility and flexibility in the left ankle. Chronic pain. Inability to walk more than 200 yards without pain, pain made severe with even slight overuse. Limited job selection due to disability (not able to stand for prolonged periods, no heavy lifting, etc).” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20080910** | **VA (2 Mo. Pre-Separation) – All Effective 20081130** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Ankle …  | 5299-5003 | 10% | L Ankle Osteochondral Lesion | 5270 | 30% | 20080908 |
| ↓No Additional MEB/PEB Entries↓ | R Shoulder Strain | 5203 | 10% | 20080908 |
| Lumbosacral Spine Strain | 5237 | 10% | 20080908 |
| L Hip Trochanteric Bursitis w/ Strain | 5255 | 10% | 20080908 |
| L Patellofemoral Pain Syndrome | 5260 | 10% | 20080908 |
| R Patellofemoral Pain Syndrome | 5260 | 10% | 20080908 |
| 0% x 3 / Not Service Connected x 1 | 20080908 |
| **Combined: 10%** | **Combined: 60%** |

ANALYSIS SUMMARY:

Left Ankle Condition. The Board considered the following post-operative range of motion (ROM) evaluations in its rating recommendation.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM –Left Ankle | Ortho ~ 5 Mo. Pre-Sep~ 5 Mo. Post-Op | MEB ~ 4 Mo. Pre-Sep~ 6 Mo. Post-Op | VA C&P ~ 2 Mo. Pre-Sep~ 8 Mo. Post-Op |
| Left Dorsiflexion (0-20) | 0-15⁰ | 0-5⁰ | -5⁰ |
| Left Plantar Flexion (0-45) | 0-45⁰ | 0-60⁰ | 5-35⁰ |
| Comment | Min pain w/ motion, TTP, well-healed scar, sensory intact | Healed incisions, tenderness, 5/5 LE strength; significant limp | Pain with ROM, TTP, min swelling, no instability; motor 5-/5; gait normal; no heel or toe walk |
| §4.71a Rating | 10% | 20% (PEB 10%) | 20% (VA 30%) |

Other ROM exams between three to five months post-operative and five to seven months pre-separation showed full plantar flexion (45-50⁰) and reduced dorsiflexion (10-15⁰), and would rate 10% for moderate limitation of ankle motion under 5271, ankle, limited motion. The narrative summary (NARSUM), four months pre-separation, noted full plantar flexion, but markedly reduced dorsiflexion. The examiner also noted tenderness along the tibialis tendon, pain at the osteotomy screws, healed incisions, and normal leg muscle strength. Radiographs demonstrated complete incorporation of the osteochondral fragment, with a small gap on the dome of the talus, likely fibrocartilage. The VA exam, two months pre-separation, documented more significant ROM reductions, with inability to dorsiflex (minus five degrees), and mildly reduced plantar flexion. The examiner also described pain with ankle motion, minimal swelling, and tenderness at the ankle. The CI endorsed reduced sensation over the medial ankle, and a history of ankle swelling, popping, and clicking. X-rays showed normal post-operative findings, with hardware in place and bony allograft changes to the talar dome. The examiner recommended reexamination in six months to assess additional healing of the allograft. The Board noted the VA’s reason for its 30%; that being, “This condition more closely approximates the 30% evaluation based on objective evidence of limited plantar flexion and dorsiflexion and changes found in x-ray with functional impairment,” coded as 5270, ankle ankylosis.

The Board considered the above data and multiple rating options. The CI’s ankle condition appeared to be deteriorating post-operatively. The MEB exam was approximately six months post-operatively and radiographs indicated continued healing. The VA exam was considered to have the highest probative value as it was closest to the date of separation. The evidence did not support coding under 5270 (ankylosis) as the ankle was not frozen and retained 30 degrees of plantar flexion. The VA’s rating assessment of the CI’s condition more closely approximating the 5270 30% rating was discussed for possible analogous 5299-5270 coding. Coding under 5273 (astragalus malunion) and 5274 (astragalectomy) were less accurate clinically and provided no advantage to the CI. Both exams proximate to separation could rate 20% under 5271 for “marked” limitation of ankle motion, since dorsiflexion was absent or nearly so. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the left ankle condition.

Remaining Conditions. Other conditions identified in the DES file were a history of sinusitis, history of left eye viral infection, history of staphylococcal infection with abscesses, right knee pain (VA 10% for right knee patellofemoral pain syndrome), and allergies to several drugs and vitamins. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant during the MEB period, none were the basis for limited duty, and none were implicated in the 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. Additionally right shoulder strain and tendinitis (10%), lumbosacral spine strain (10%), left hip trochanteric bursitis with strain and tendinitis (10%), left knee patellofemoral pain syndrome and chondromalacia (10%) 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 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. 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 left ankle condition, the Board unanimously recommends a rating of 20% coded 5271 IAW VASRD §4.71a. In the matter of the sinusitis, viral eye infection, staphylococcal infection with abscesses, right knee pain conditions 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 her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Ankle Pain, S/P Surgery | 5271 | 20% |
| **COMBINED** | **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) RECOMMENDATION

 ICO XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 23 Aug 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (reference (b)).

2. The subject member’s official records are to be corrected to reflect the following disposition:

 a. Separation from the naval service due to physical disability rated at 20 percent (increased from 10 percent) effective 29 November 2008.

3. Please ensure all necessary actions are taken to implement this decision including to the subject member once those actions are completed.

 Assistant General Counsel

 (Manpower & Reserve Affairs)