RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1001015 SEPARATION DATE: 20041116

BOARD DATE: 20120309

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SSgt/E-5 (3S071 / Personnel Craftsman), medically separated from the Air Force after 10 years of active service. The medical basis for the separation was chronic pain right lower extremity (RLE) (causalgia) status post (S/P) open reduction internal fixation (ORIF) distal fibula and IM (intramedullary) rod right tibia for fracture (Fx). She sustained a distal fracture of the tibia and fibula with involvement of the ankle joint in an all terrain vehicle (ATV) accident in May 2003. Despite surgical intervention and aggressive physical therapy (PT), she did not respond adequately to treatment to perform within her Air Force Specialty (AFS) or meet physical fitness standards. She was issued a permanent L4 profile andunderwent a Medical Evaluation Board (MEB). “Chronic pain right lower leg s/p ORIF distal fibula and intrarticular tibia fracture s/p IM rodding for nonunion” were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAWAFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The PEB adjudicated the chronic pain right lower extremity (RLE) (causalgia) s/p ORIF and IM rod right tibia as a single unfitting condition, rated 20% with application of DoD and Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “I am unable to sit or stand for extended periods of time, [sic] I have to constantly take narcotics just to get through my day without pain. I can no longer do many of the things I use [sic] to be able to do such as hold many jobs, exercise, dance, run, athletics, etc. I feel the rating of 20% was not significant enough to aptly describe the difficulty this injury has caused me and the drastic changes I've had to sacrifice and make to get by on a daily basis.” She additionally lists all of her VA conditions of PTSD, major depressive disorder (MDD), migraines, hysterectomy as well as the fractures of the tibia and fibula.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20040921** | | | **VA (10 Mos. After Separation) – All Effective 20041117\*** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Pain RLE S/P ORIF Tibia/IM Rod Tibia for Fx | 8520-8599 | 20% | S/P Tibia/Fibula Fx with Titanium Rod | 5262 | 30% | 20050902 |
| ↓No Additional MEB/PEB Entries↓ | | | S/P Hysterectomy | 7617 | 50% | 20050902 |
| Recurrent MDD | 9434 | 30%\*\* | 20090414 |
| 0% x 8 \*\*\*/ Not Service Connected x 5 | | | 20050902 |
| **Combined: 20%** | | | **Combined: 80%** | | | |

\* VA rating based on exam most proximate to date of permanent separation. \*\*VARD 20090721 30% effective 20041117, C&P Exam dated 20090414; also used STRs; \*\*\* Chronic migraines and right ankle scar increased to 10% effective 20070118 and 20070928, respectively

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Chronic Pain Right Lower Extremity Status Post Surgery for Fractured Distal Fibula and Tibia. The CI incurred a complex comminuted fracture of the lower one third of the right tibia (shin bone) extending to the ankle, and a displaced right distal fibula fracture in a twisting injury on 25 May 2003 while riding an ATV, almost 18 months prior to separation. The next day, she underwent surgical reduction and fixation of the tibia and fibula fractures with subsequent healing (bony union) of the fibula and the distal articular portion of the tibia. However the proximal diaphyseal portion of the tibia fracture did not heal (non-union), and required a second surgery on 8 December 2003. The tibia fracture then healed successfully but remained in about 10 degrees of varus (a slight bow legged position). At the time of surgery, the orthopedic surgeon noted the varus position was “both clinically and radiographically mild,” and that surgical correction was not indicated. She continued to have persistent pain of the right ankle and lower leg which precluded her ability to meet duty requirements. At an orthopedic examination, 20 July 2004, she was noted to have hypersensitivity at all incision sites and to be limited in walking and standing. Minimal improvement had been noted over the previous few months. A slight varus (angulation) of the right tibia was noted. There was diffuse swelling of the right lower extremity and ankle. Diminished sensation was noted in both lower extremities in a stocking glove distribution. Muscle strength was normal (5/5) and symmetric. The right ankle range-of-motion (ROM) was the same as the uninjured left ankle (both demonstrated dorsiflexion of 15 degrees, plantar flexion of 50 degrees, eversion 20 degrees and inversion 35 degrees; indicated as normal by the orthopedic surgeon). Imaging showed a healed tibial fracture. The orthopedist thought that she had early right lower extremity causalgia and right ankle synovitis and recommended further surgery to remove the fibular hardware and a right ankle synovectomy. At the MEB examination, 25 August 2004, just under three months prior to separation, the CI noted that her pain was aggravated by standing and sitting and that she had swelling at the ankle and pain at the knee incision site. An antalgic gait was noted and she used a cane. She was tender to palpation at the medial proximal tibia and distal lateral fibula. In mid September (two months prior to separation) she underwent the surgery proposed by her orthopedic surgeon. At follow-up, she was recovering from surgery satisfactorily and the cam walker was discontinued. Motor strength of the right lower extremity was normal (5/5 extensor hallicus longus, tibialis anterior and gastro-soleus muscles).

The VA Compensation and Pension (C&P) examination was three months after separation and five months after the hardware removal and ankle synovectomy. The CI reported right leg pain limited her ability to walk or stand for more than 10 minutes. On examination, posture and gait were normal. No assistive devices were documented. The examiner noted loss of five degrees of dorsiflexion of the right ankle compared to the left (15 degrees dorsiflexion of the right ankle, 20 degrees dorsiflexion of the normal left ankle). Both ankles plantar flexed to 45 degrees. Examination of the right knee demonstrated full painless range of motion. Mild (1+) right ankle swelling was present. The right lower extremity surgical scars were non-tender. Right lower extremity weakness below the knee was documented as was decreased sensation below the knee. The examiner stated that a possible non-union was noted on examination, however, X-rays obtained that day showed healed fracture without non-union. Lack of endurance was the noted and pain was also a factor. The PEB adjudicated the right lower extremity condition as causalgia, s/p IM rod and ORIF, coded 8520-8599 and rated at 20%. The VA adjudicated its rating using VASRD code 5262 for impairment of tibia and fibula due to malunion with knee or ankle disability and assigned the maximum rating of 30% for marked disability. The Board considered both approaches reasonable. The Board notes that with an essentially normal exam, other than the pain and non-anatomical sensory loss, a coding of 8720 for neuralgia would have been appropriate. A maximum rating of 20% is available for causalgia IAW VASRD §4.124. Board considered use of the 5262 code for malunion of the tibia and fibula with ankle impairment as it also described the medical condition including the pain which affected ankle function. As a determination of moderate disability under the code 5262 (for malunion of the tibia and fibula with ankle impairment) would not provide an advantage to the CI, the Board considered if the examinations supported the VA adjudication of marked disability for a 30% rating. The Board reviewed both exams and noted the MEB evaluations were prior to her final surgery to remove hardware. It also noted that the VA exam was four months following from surgery and may still have reflected the acute affects of surgery as a VA C&P examination three years later showed normal ankle range of motion and gait (although she turned her foot out when walking), along with normal sensory and motor exams. The right lower extremity weakness on the first C&P examination was inconsistent with other examinations. The Board noted that there was no weakness present in the MEB examination, the post-operative orthopedic examination after the final surgery for removal of hardware, or on a C&P examination three years later. Right ankle ROM was only mildly limited in dorsiflexion near separation compared to the normal left ankle. The pain was persistent, though, as well as the limitations in standing and walking from pain and decreased endurance. The Board noted that the primary limitation on all three exams and in the record was from pain, particularly with use. The records document the use of an ankle brace after the first surgery, but the use of one is not noted on the MEB exam or either C&P exam. She was noted to use a cane prior to the final surgery and to be on crutches after surgery. Otherwise, there is no record of use of an assistive device such as a cane. Post-separation VA records do document the use of a brace though. Most exams noted motor function to be normal. Gait was described as antalgic at times, but normal on other exams including the C&P exam proximate to separation which was after the final surgery. A mild varus deformity of the right tibia was consistently described when documented as well as eversion of the right foot. While reduced endurance was noted on the initial VA C&P exam, this was observed only a few months after surgery. The Board also considered if separate ratings were in order for the pain attributed to causalgia and functional impairment due to the condition. IAW VASRD §4.14, avoidance of pyramiding, the same symptoms cannot be used to support separate codes. Accordingly, the Board cannot use both code 8520 and 5262 for the right lower extremity condition since the impairments are based on pain. The Board did consider code 5271 for limitation of motion of the ankle, but neither offers a higher rating than obtained from codes 8520 and 5262. ROM was minimally limited in dorsiflexion and was normal three years after separation. The motor exam was normal other than in the post-operative recovery period. Although there was malunion with respect to the 10 degrees of varus angulation, the orthopedic surgeon concluded it was of minor clinical significance. The Board concluded that the evidence of the examinations supported a moderate limitation under code 5262, offering no rating advantage to the CI. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the right lower extremity condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD), MDD, migraines, and hysterectomy. The Board notes that the diagnosis of PTSD was not made while on active duty and that it has been denied by the VA for service-connection. The CI was noted to have both an adjustment disorder and situational depression while on active duty, but was not diagnosed with MDD. In addition, she maintained an S1 profile throughout her career and her commander stated that she was a “phenomenal supervisor and mentor…” and noted no limitations other than from her right lower extremity condition. The CI had migraine headaches from early in her career for which she was on prophylactic medications. After a whiplash injury in 2002, she noted an increase in headaches. There is no record that the headaches resulted in absence from duty. These were not determined to be medically unacceptable nor did her commander comment upon them. The hysterectomy was in 1997, seven years prior to separation. Other than post-operative recovery, this did not limit her duty performance. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were gastro-esophageal reflux disease (GERD), laparoscopic dermoid cystectomy complicated by pneumonia postoperatively, laparoscopic lysis of pelvic adhesions and tonsillectomy. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically significant during the MEB period, none were the basis for limited duty and none were implicated in the commander’s statement. 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. Hallux valgus, rhinitis and eczema/tinea pedis conditions were determined to be service-connected 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. In the matter of the right lower extremity pain condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the PTSD major depressive disorder, migraines and hysterectomy or any other conditions eligible for Board consideration, the Board unanimously recommends that it cannot recommend any findings of unfit for additional rating at separation.

**RECOMMENDATION:** The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Pain RLE s/p ORIF with Right Tibial IM Rod | 8520-8599 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100901, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2010-01015

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings