RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100140 SEPARATION DATE: 20031023

BOARD DATE: 20120229

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (88M, Motor Transport Operator) medically separated for right ankle pain and right knee pain. 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 conditions (chronic right ankle pain, and chronic right knee pain) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The PEB found the right ankle and right knee conditions unfitting, rating them 10% and 0% respectively. The CI made no appeals, and was medically separated with a 10% combined disability rating IAW applicable Army and DoD regulations.

CI CONTENTION: The CI states, “Conditions are worse than what the rating was worth, since being separated, I have under gone two major surgeries on my right ankle and foot. I have had two joint fusions and on April 22, 2011 will have another ankle fusion. When the first injury occurred, I was diagnosed incorrectly, I was told that l had a sprained ankle, but the ankle was fractured and walked on a fractured ankle for over a year, causing serious problems, and eventually causing me to be medically discharged. Since 2001 I have had two ankle scopes, two ankle fusions, and another scheduled for April 22, 2011. Because of the right ankle issue and serious pain for over 10 years and all the surgeries my left knee has worn out. I did injure my knee in the Army but it only bothered me once in a while, now it is also in serious pain, but I more worried about my ankle as of now, I have had a permanent limp for over 4 years and I can't do very much walking. I can only walk about one block and the next day I am in bed all day long.”

RATING COMPARISON:

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| --- | --- |
| **Army PEB – dated 20030915** | **VA (5 mos. After Separation) – All Effective 20031024** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Ankle Pain | 5099-5003 | 10% | Right Ankle Pain | 5020-5271 | 10% | 20040324 |
| Right Ankle Neuritis  | 8625 | 10% | 20040324 |
| Right Knee Pain | 5099-5003 | 0% | Right Knee Strain | 5024 | 10% | 20040324 |
| ↓No Additional MEB/PEB Entries↓ | Left Knee Strain | 5024 | 10% | 20040324 |
|  | Tinnitus | 6260 | 10% | 20040329 |
| 0% x 3 / Not Service Connected x 2 | 20040324 |
| **Combined: 10%** | **Combined: 40%**  |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the significant impairment with which his conditions continue to burden him. The Board is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board’s authority resides in evaluating the fairness of DES fitness decisions and rating determinations at the time of separation. The Board also acknowledges the CI’s contention for service ratings for other conditions. While the DES considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. The DVA, however, 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.

Right Ankle Pain. In February 2001, the CI injured his right ankle while playing soccer. X-rays were read as negative for fracture, and he was diagnosed with right ankle sprain. Despite medication and physical therapy (PT), the ankle pain persisted. A bone scan suggested periosteal injury of the lateral aspect of the right ankle. In April 2002, the CI underwent right ankle arthroscopy with synovectomy. He had a second arthroscopy on 16 January 2003 with debridement of the synovitis, and removal of some fracture fragments. The CI has also suffered additional right ankle injuries which have aggravated the condition. He was issued a permanent profile, and an MEB was initiated. At his June 2003 MEB exam, 20 weeks prior to separation, the CI complained of ankle pain that was aggravated by activity. He said he was unable to walk, run, bicycle, swim, or drive a truck. No neurological deficits were noted. Ankle range-of-motion (ROM) had been measured previously by PT, and is shown in the chart below. The diagnosis was chronic, unremitting right ankle pain caused by osteochondrosis dissecans. At his March 2004 VA Compensation and Pension (C&P) exam, 21 weeks after separation, the CI complained of ankle pain which was 2/10 in severity. He denied any weakness, stiffness, swelling, heat, redness, instability, giving way, locking, fatigability or lack of endurance. He had a normal gait and did not require any assistive devices for ambulation. On exam there was no pain with motion; and no edema, instability, weakness, tenderness, abnormal movement, or guarding. Ankle ROM is shown in the chart below. X-rays revealed a small calcaneal spur, but were otherwise unremarkable. Two relevant goniometric ROM evaluations were weighed by the Board in arriving at its rating recommendation. These exams are summarized below. A ROM exam was also found in the MEB narrative summary (NARSUM), but the Board determined that it had diminished probative value due to certain inconsistencies.

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| --- | --- |
| Right Ankle | Separation Date: 20031023 |
| Goniometric ROM | PT – 6 mos. Pre-Sep(20030423) | C&P – 5 mos. Post-Sep(20040324) |
| Dorsiflexion (20⁰ is normal) | -10⁰ | 18⁰ |
| Plantar Flexion (45⁰ is normal) | 55⁰ | 40⁰ |
| Comments | ROM was improving | Pain after repetition |
| §4.71a Rating | 10% | 10% |

The Board carefully reviewed all evidentiary information available. Based on ROM, and IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD) codes for the ankle (5270 through 5274), the Board determined that 10% was appropriate for the right ankle. There was not sufficient evidence in the treatment record to justify a rating higher than 10%. Also, with normal neurological exams and no motor weakness, the Board determined that there was insufficient evidence to add neuritis as an unfitting condition. After due deliberation, and mindful of VASRD §4.3 (Reasonable doubt), the Board unanimously recommends a rating of 10% for the painful right ankle condition.

Right Knee Pain. At the time of his February 2001 ankle injury, the CI also injured his right knee and was diagnosed with knee sprain. In January 2002, x-rays and bone scan were normal. In June 2003, he hit his right knee while pulling a tire off the rim. He was treated with medication and rest. There were no profiles for his knee condition, and no surgeries. At his June 2003 MEB exam, 20 weeks prior to separation, the CI reported right knee pain. Examination of the right knee was normal. Right knee ROM is summarized in the chart below. At his March 2004 VA C&P exam, 21 weeks after separation, the CI complained of pain in his right knee. He denied any weakness, stiffness, swelling, instability, giving way, or locking. On exam, there was no pain with motion and no pain with repetition. No instability, weakness, tenderness, or guarding was noted. X-rays were normal. Knee ROM is summarized in the chart below.

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| --- | --- |
| Right Knee | Separation Date: 20031023 |
| Goniometric ROM | MEB – 3½ mos. Pre-Sep | VA C&P – 5 mos. Post-Sep |
| Flexion (140⁰ is normal) | 130⁰  | 140⁰ |
| Extension (0⁰ is normal) | 0⁰  | 0⁰ |
| Comments | no mention of pain | no pain with motion |
| §4.71a Rating | 0% | 0% |

The Board reviewed all of the available evidence. Based on ROM, and IAW the VASRD codes for the knee and leg (5256 through 5263), the Board determined that 0% was appropriate for the right knee. There was not sufficient evidence in the treatment record to justify a rating higher than 0%. Also, the Board determined that there was insufficient evidence to add ligamentous instability as an unfitting condition. After due deliberation, the Board unanimously recommends a rating of 0% for the right knee condition.

Remaining Conditions. Left knee strain, esophagitis, back pain, shortness of breath (SOB), hearing loss, and several other conditions were also noted in the DES file. None of these conditions carried profiles. They were reviewed by the action officer and considered by the Board. It was determined that none of the conditions could be argued as unfitting and subject to separation rating. Additionally, tinnitus and other 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 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 ankle condition, the Board recommends no change in the PEB adjudication. In the matter of the right knee condition, the Board recommends no change in the PEB adjudication. In the matter of the left knee strain, esophagitis, back pain, SOB, hearing loss, or any other conditions eligible for consideration; the Board unanimously agrees 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 Right Ankle Pain | 5099-5003 | 10% |
| Chronic Right Knee Pain | 5099-5003 | 0% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110321, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

 Deputy Assistant Secretary

 (Army Review Boards)