RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1100358 SEPARATION DATE: 20090826

BOARD DATE: 20120328

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (13B, Cannon Crewmember) medically separated for tenosynovitis of the right ankle. 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). The right ankle condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Seven other conditions, as identified in the rating chart below, were listed on DA Form 3947 as medically acceptable. The PEB found the right ankle condition unfitting, and rated it 10% for painful motion IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was thus separated with a 10% disability rating.

CI CONTENTION: The CI states, “PEB separated me from Active Service due to an ankle injury. The other medical conditions listed in my MEB proceedings do not meet Army Retention Standards, even though it is stated that they do. I believe that the rapid pace of my MEB/PEB and my psychological state at the time of delivery of results from the board contributed to my not requesting a review of my PEB findings.”

RATING COMPARISON:

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| --- | --- |
| **Army PEB – dated 20090507** | **VA (1 mo. Post-Separation) – All Effective 20090827** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Ankle Pain | 5099-5003 | 10% | Right Ankle Strain | 5024-5271 | 10% | 20090708 |
| Left Shoulder Pain | Not Unfitting | Left Shoulder Pain | 5024 | 10% | 20090708 |
| PTSD | Not Unfitting | PTSD | 9411 | 50% | 20090715 |
| Headaches  | Not Unfitting | TBI w/Headaches | 8045 | 40% | 20090708 |
| Left Ear Hearing Loss | Not Unfitting | Left Ear Hearing Loss | 6100 | 0% | 20090706 |
| Tinnitus | Not Unfitting | Tinnitus | 6260 | 10% | 20090706 |
| Back Pain | Not Unfitting | Degenerative Disc Disease | 5243 | 10% | 20090708 |
| Abnormal Liver Function | Not Unfitting | Liver Condition  | 7345 | NSC | 20090708 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 4 / Not Service Connected x 3 | 20090708 |
| **Combined: 10%** | **Combined: 80%**  |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that service ratings should have been conferred for other conditions. The Board is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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 separation. However the Department of Veterans’ Affairs, operating under a different set of laws, is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Right Ankle Condition. The CI injured his ankle in August 2006 when he tripped over a curb. Magnetic Resonance Imaging (MRI) showed partial rupture of his anterior talofibular and calcaneofibular ligaments. Shortly later, he was deployed to Iraq. His ankle pain increased and he had several additional ankle sprains during the deployment. Then, he was injured by an improvised explosive device (IED), and was aeromedically evacuated to Madigan Army Medical Center, Fort Lewis WA. In August 2008, repeat MRI showed posterior tibial tendon tenosynovitis, along with thickening of the anterior ligaments. In February 2009, the CI was evaluated by podiatry and it was determined that surgery was not indicated. Due to his persistent ankle problems, an MEB was initiated. At his March 2009 MEB exam, 5 months prior to separation, the CI reported ankle pain, and inability to do exercises that involved jumping. Exam of his right ankle revealed some tenderness to palpation (TTP). Single heel raises were painful but possible. There was no edema. Pulses, sensation, and reflexes were normal. Range-of-motion (ROM) was full, and is summarized in the chart below.

At his July 2009 VA Compensation and Pension (C&P) exam, 7 weeks prior to separation, the CI complained of weakness, swelling, giving way, tenderness and pain. Flare-ups usually occurred once per day, due to physical activity. The ankle pain was worse with prolonged standing or walking. He had a normal gait and did not require any assistive devices for ambulation. There was some TTP noted, but no edema, instability, deformity, guarding, malalignment or subluxation. Muscle exam revealed no paralysis, weakness, atrophy or loss of tone. Two goniometric ROM evaluations were in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

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| Right Ankle | Separation Date: 20090827 |
| Goniometric ROM | MEB – 5 mo. Pre-Sep | VA C&P – 1½ mo. Pre-Sep |
| Dorsiflexion (20⁰ is normal) | 20⁰ | 20⁰ |
| Plantar Flexion (45⁰ is normal) | 45⁰ | 45⁰ |
| Comments | Pain with motion  | Pain with motion |
| §4.71a Rating | 10%\* | 10%\* |

 \*10% based on §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all evidentiary information available, and directed its attention to its coding and rating recommendations based on the evidence just described. The PEB and the VA chose different coding options for the right ankle condition, but both assigned a disability rating of 10%. The right ankle motion was essentially non-compensable based on the VASRD §4.71a ankle codes (5270 through 5274). However, IAW VASRD §4.40, §4.45, and §4.59; a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. The CI did indeed have pain with motion, as reported in his history and during his exams, and therefore qualifies for a 10% rating. All evidence considered, the Board recommends no change from the PEB’s rating decision for the right ankle condition. The Board unanimously recommends a rating of 10% for the right ankle condition.

Posttraumatic stress disorder (PTSD). The CI developed PTSD symptoms after returning from Iraq in September 2005. He was treated, and was able to manage his symptoms. He deployed again in August 2007, and was exposed to significant combat stressors including the loss of fellow soldiers and being wounded by an IED. After returning to Fort Lewis, he began to have panic attacks, anxiety and depression. He successfully underwent treatment with medication, biofeedback, and counseling. At his February 2009 treatment assessment, the CI reported that the panic attacks had nearly stopped. He had fully recovered from any depression issue and his remaining symptoms had subsided to a manageable level. He was taking classes to complete his associate’s degree. He was happily married and had a 17 month old son. He planned to continue his biofeedback sessions, and hoped to return to full duty. At his February 2009 MEB mental health (MH) evaluation, 6 months prior to separation, the CI reported that his anxiety had improved. He still had some insomnia and irritability, but he no longer had panic attacks. He could better tolerate exposure to combat reminders. On mental status exam (MSE), the CI said “I’m better.” His mood was congruent, and affect was euthymic. Behavior, speech, thought content, thought process and impulse control were all normal. Judgment was good and his insight was broad. There were no suicidal or homicidal ideations. His intelligence appeared to be average. Global Assessment of Functioning (GAF) score was 71-80 with predominately normal functioning in all spheres. The examiner opined that the CI’s residual anxiety would not impact his ability to perform assigned military duties. His condition was stable and prognosis was good. The examiner determined that the CI met retention standards and was fit for full, unrestricted military duty from a psychiatric perspective. On follow up MH visits in April and May 2009; the CI denied depression, anxiety, nightmares, or forgetfulness.

At his July 2009 MH C&P exam, 6 weeks prior to separation, the CI reported irritability, anxiety, insomnia, difficulty concentrating, poor memory, lack of motivation to engage in activities he used to enjoy, and social isolation. He also reported increased startle response, hyper-vigilance, intrusive recollections of traumatic events, sadness, hopelessness and feeling overwhelmed. Panic attacks were occurring less than once a week. He was still happily married, and his relationship with wife and son was “excellent.” He had just started terminal leave and was not working yet. On MSE, his affect was anxious. He had impaired attention, difficulty focusing and moderate memory impairment. He denied delusions, hallucinations or suicidal/homicidal ideation. Thought processes, judgment, and abstract thinking were normal.

The Board carefully examined the evidence with regard to the CI’s mental condition. There is disparity between the CI’s MH examinations, with significant implications regarding the Board's rating recommendation. The Board deliberated its probative value assignment to these conflicting evaluations, and carefully reviewed the file for corroborating evidence in the 12-month period prior to separation. The Board’s recommendation must incorporate a probative value judgment between the disparate evidence from the service treatment record (STR), and the C&P examination. The probative value judgment has to acknowledge a normal tendency to maximize symptoms in the context of VA rating evaluations with their attendant secondary gain pressure, but the Board concedes the validity of all evidence unless contradicting evidence can be cited. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for the mental condition. The Board unanimously agrees that the PTSD condition was not unfitting at the time of separation from service.

Headaches. In January 2009, the CI had a neurology evaluation for headaches as part of his MEB work-up. The headaches began in June 2008, after an IED explosion that left him unconscious. The CI stated that the headaches were occurring three to four times a week. The pain was in the right temporal region, and ranged in severity from 1/10, to 4/10. The head pain was associated with photophobia, phonophobia and lightheadedness. He was taking Gabapentin, and he reported that the medicine had decreased the frequency and severity of the headaches. The pain was not incapacitating, and he denied any lost time from work or any emergency room visits due to headaches. His neurological exam was completely normal except for some decreased hearing. MRI of the brain was unremarkable. The examiner determined that the headaches were non-disabling, and met Army retention standards. At his July 2009 general medical C&P exam, the CI reported that his headaches were occurring two to three times a week and would last an hour. He was taking Maxalt for the headaches, with good response. The neurological exam was normal. A week later, at his MH C&P exam, the CI reported that his headaches were only occurring two to three times per month. All evidence considered, the Board determined that there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for the headache condition.

Other MEB/PEB Conditions. Left shoulder pain, sensorineural hearing loss, tinnitus, back pain, and abnormal liver function were all adjudicated by the PEB as not unfitting. All of these conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that any of them significantly interfered with performance of required military duties. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Traumatic brain injury (TBI), vertigo, shrapnel wound to right eye, knee pain, pes planus, wheezing, chronic cough, heartburn, indigestion, and several other conditions were also noted in the file. None of these conditions carried profiles. 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. No other conditions were service-connected with a compensable rating by the VA within 12 months of separation, or specifically contended by the CI. 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 unanimously recommends no change in the PEB adjudication. In the matter of the PTSD, headaches, shoulder pain, hearing loss, tinnitus, back pain, abnormal liver function, TBI, vertigo, shrapnel wound, knee pain, pes planus, wheezing, chronic cough, heartburn, indigestion, or any other condition 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, due to Tenosynovitis  | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110414, 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)