RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1100566 SEPARATION DATE: 20040409

BOARD DATE: 20120309

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO3/E-4 (AE3, Electrician) medically separated for left ankle pain. He suffered a fracture-dislocation of his ankle in April 2002. He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). The left ankle condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB found the left ankle condition unfitting, and rated it 20%. The CI made no appeals, and was thus separated with a 20% disability rating.

CI’s CONTENTION: “I have zero degree Dorsiflexion in my left ankle and the proper rating for my condition should be 30-40%. I also walk with severe pain no matter when or where. It hurts bad and they did not take that into consideration when evaluating me. I have no stability on my left leg because the pain and instability in my ankle prohibits it. Even the Naval Physical Therapist told me I won’t ever recover and it will only get worse with age as it has.” The CI has listed his VA conditions and ratings, and he further states, “My record shows I have between 0 degrees and 10 degrees of Dorsiflexion in my left ankle and there is also extreme pain in any activity that involves walking or running. I was rated at 20% just because I had marked limited motion from section 5271 of the same book. This is not the right rating for my injury.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Navy IPEB – dated 20031021** | **VA (6 mos. After Separation) – All Effective 20040410** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Ankle Condition | 5299-5003 | 20% | Left Ankle Condition | 5010-5271 | 20% | 20041001 |
| ↓No Additional MEB/PEB Entries↓ | Major Depressive Disorder | 9434 | 30% | 20040918 |
| Anterior Labral Repair | 5099-5024 | 10% | 20041001 |
| Cervical Neck Strain | 5237 | 10% | 20041001 |
| Lumbar Disc Disease with LBP | 5299-5243 | 10% | 20041001 |
| Pilonidal Cyst Scar | 7804 | 10% | 20041023 |
| 0% x 7/Not Service Connected x 1 | 20041001 |
| **Combined: 20%** | **Combined: 60%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the significant impairment with which his ankle condition continues to burden him. The Board wishes to clarify that it 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 evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation. The Board also acknowledges the CI's contention that service ratings should have been conferred 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 separation. 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. Additionally, the Board notes that the CI makes reference to the VA Schedule for Rating Disabilities (VASRD) §4.71a. The CI contends that his ankle should be rated under diagnostic code (DC) 5270 (ankylosis of the ankle). However, ankylosis means a fused or frozen joint, with complete loss of motion, so DC 5270 does not apply. This matter is discussed further below.

Left Ankle Condition. The CI suffered a left ankle fracture-dislocation in April 2002. Initial treatment included reduction and casting. One week later the fracture had lost position and surgery was recommended. On 3 May 2002, the CI had open reduction and internal fixation (ORIF) of the left ankle, with placement of a syndesmosis screw. Postoperatively the CI developed a superficial wound infection which was treated with antibiotics and wound care. At 12 weeks the fracture was healed. On 7 August 2002 the CI underwent surgery to remove a portion of the syndesmosis screw, which had broken. In spite of aggressive rehabilitation, the CI continued to have left ankle pain. Magnetic resonance imaging (MRI) was normal. Because of persistent pain, the CI underwent arthroscopy and tarsal tunnel release in January 2003. Findings included osteochondritis dissecans of the talar dome, which was treated with microfracture. Unfortunately, the left ankle pain did not resolve, and an MEB was initiated.

At the April 2003 MEB evaluation, one year prior to separation, the CI complained of left ankle swelling, morning stiffness and pain with weather changes. He was unable to run or play sports. He used occasional anti-inflammatory medication, and he used a left ankle brace when necessary. Examination found left ankle tenderness, but no instability. Range of motion was slightly restricted. X-rays showed some early degenerative changes in the ankle joint. The examiner diagnosed osteochondritis dissecans and posttraumatic arthritis, and opined that the CI had reached maximum medical improvement. As noted above, the Navy PEB found him unfit, and he was medically separated with a disability rating of 20%. On 1 October 2004, six months after separation, the CI had a VA Compensation and Pension (C&P) examination. He was taking narcotic medication and had tried nerve blocks for his ankle pain. He had daily flare-ups, especially when he walked on uneven surfaces or for a prolonged period. The CI was working in sales, and by the end of the day he had to get off the ankle due to pain. He denied instability or locking but did note fatigability and lack of endurance. Exam showed a mild ankle effusion with tenderness over the anterior ankle and weakness on toe-raise. There was no ankle instability but there was some mild weakness in dorsiflexion and plantar flexion. Ankle motion was mildly limited, and painful. Two relevant goniometric range-of-motion (ROM) evaluations were in evidence, and are summarized below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM - Left Ankle | MEB – 12 mos. Pre-Sep(20030430) | VA C&P – 6 mos. Post-Sep(20041001) |
| Dorsiflexion (20⁰ is normal) | 10⁰ | 5⁰ |
| Plantar Flexion (45⁰ is normal) | 40⁰ | 40⁰ |
| Comment | No Instability | No Instability |

The Board carefully reviewed all evidentiary information available. The PEB and the VA chose different coding options for the left ankle condition, but both had assigned a 20% rating. The MEB examination documented a fairly functional arc of motion of 50 degrees. The C&P exam, six months after separation, was very similar, with a functional arc of 45 degrees. The C&P exam also documented effusion, weakness, fatigability and loss of endurance. On both exams the ankle was stable. All Board members agreed that the most appropriate rating for the left ankle condition would be 20%. IAW VASRD §4.71a, the left ankle condition is appropriately coded 5271 (limited motion of the ankle).

As noted above, the CI contends that his condition justifies a higher rating because ankle dorsiflexion is between 0 and 10 degrees. The CI is referencing the disability rating for ankylosis, under DC 5270. With an arc of motion of 45 degrees, there is no ankylosis of the joint. Ankylosis means fusion, which is complete loss of motion. The angle mentioned under DC 5270 references the angle at which the ankle joint is fused or frozen. To receive a 30% rating there would have to be no motion at the ankle joint, and the joint would have to be frozen at an angle between 0 and 10 degrees of dorsiflexion. This is clearly not the case, and DC 5270 does not apply. After due deliberation, and consideration of all the evidence, the Board unanimously recommends a rating of 20% for the left ankle condition.

Remaining Conditions. Depression, intervertebral disc syndrome (IVDS), cervical strain, skin scars, shoulder pain, obesity, vision loss, allergic rhinitis, and several other conditions were also noted in the file. None of these conditions were clinically significant during the MEB/PEB period, none were the basis for LIMDU, and none were implicated in the commander’s 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, several other conditions were noted in the VA Rating Decision 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 left ankle condition and IAW VASRD §4.71a, the Board unanimously recommends a rating of 20%, coded 5271. In the matter of the depression, IVDS, cervical strain, skin scars, shoulder pain, obesity, vision loss, allergic rhinitis, 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 recommends that there be no change of the CI’s disability rating. However, the Board recommends that the VASRD code be changed, as reflected below.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Ankle Pain | 5271 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110801, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 President

 Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

 (b) CORB ltr dtd 2 Apr 12

 In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR the following individuals’ records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

 Assistant General Counsel

 (Manpower & Reserve Affairs)