RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1100577 SEPARATION DATE: 20080120

BOARD DATE: 20120510

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (68W, Nurse) medically separated for chronic left ankle pain*.* She was treated, but did not respond adequately to fully perform her military duties or meet physical fitness standards. She was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Left foot pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions (migraines and depression) were listed on the DA Form 3947 as medically acceptable. The PEB found the left ankle pain unfitting, and rated it 10% IAW the U.S. Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was thus medically separated with a 10% disability rating.

CI CONTENTION: “Hardware remains in left foot and ankle causing permanent nerve damage, limited range of motion, and pain continuously, causing difficulty with maintaining a basic way of life to provide for myself and my minor child. Hypertension, migraines, manic depression also present.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Army PEB – dated 20071017** | | | **VA (4 mo. After Separation) – All Effective 20080121** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Left Ankle Pain | 5099-5003 | 10% | Pain, Left Ankle and Foot | 5271 | 10% | 20080521 |
| Scars, Left Ankle and Foot | 7804 | 10% | 20080521 |
| Migraine Headaches | Not Unfitting | | Migraines were Not Service Connected (NSC) | | | 20080521 |
| Depression | Not Unfitting | | Depressive Disorder | 9434 | 10% | 20080521 |
| ↓No Additional MEB/PEB Entries↓ | | | Pain, Left Shoulder | 5201 | 20% | 20080521 |
| Not Service-Connected (NSC) x 10 | | | 20080521 |
| **Combined: 10%** | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the significant impairment with which her condition continues to burden her. The Board is subject to the same laws for service disability entitlements as those under which the DoD Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate service members for 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 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.

Chronic Left Ankle Pain. In August 2000, the CI injured her left ankle. Her injury was treated conservatively, with rest and anti-inflammatory medication. In January 2001, she was running and her left ankle “gave out.” Magnetic resonance imaging (MRI) showed a torn posterior tibial tendon. She was placed in a walking cast for 6 weeks. After cast removal, she underwent a period of physical therapy (PT). In spite of treatment, the CI continued to have problems with her left ankle. In December 2005, she had surgery on the left foot and ankle. After surgery, her ankle problems persisted. Eventually an MEB was initiated. At her May 2007 MEB exam, the left foot and ankle showed some tenderness to palpation (TTP), but no gross swelling. Left ankle range-of-motion (ROM) is shown below. In May 2008, 4 months after separation, the CI had a VA Compensation and Pension (C&P) exam. At that time, she reported pain, stiffness, and swelling of the left ankle. She was in no acute distress, and posture was normal. Exam of left ankle showed some TTP, but no crepitus or instability. Left ankle ROM is shown below.

|  |  |  |
| --- | --- | --- |
| Range of Motion (ROM)  Left Ankle | MEB PT – 8 mos. Pre-Sep  (20070522) | VA C&P – 4 mos. Post-Sep  (20080521) |
| Dorsiflexion (20⁰ is normal) | 5⁰ | 10⁰ |
| Plantar Flexion (45⁰ is normal) | 34⁰ | 25⁰ |
| Comment | Pain with plantar flexion | Painful motion |
| §4.71a Rating | 10% | 10% |

The Board carefully reviewed all evidentiary information available. The Army PEB and VA chose different coding options for the left ankle condition, but both assigned a rating of 10%. The Board determined that IAW the VA Schedule for Rating Disabilities (VASRD) §4.71a, the diagnostic code that most closely aligns with limited ankle motion is 5271 (Ankle, limited motion of). Under code 5271, the rating levels are: 10% for moderate, and 20% for marked. As noted above, both the PEB and the VA assigned a disability rating of 10%. Following a thorough review of the record, the Board found no objective evidence that would justify a rating greater than 10%. After due deliberation, and mindful of VASRD §4.3 (resolution of reasonable doubt), the Board unanimously agrees that the most appropriate disability rating for the CI’s left ankle condition was 10% (moderate limitation of motion).

Other PEB Conditions. Migraine headaches and depression were adjudicated by the PEB as not unfitting. Neither of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. They were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for either of the stated conditions. 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. As noted above, PEB reliance on the USAPDA pain policy for rating the left ankle condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left ankle condition, the Board unanimously recommends no change in the PEB adjudication. In the matter of the migraine headaches and depression, the Board unanimously recommends no change in the PEB adjudication.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Ankle Pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110714, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXX

President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXX, AR20120009215 (PD201100577)

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 XXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA