RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100678 SEPARATION DATE: 20040831

BOARD DATE: 20120405

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, CPL (0341/Mortarman), medically separated for left ankle moderate osteoarthritis*.* The CI did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. The CI was placed on light duty and underwent a Medical Evaluation Board (MEB). The MEB forwarded “chronic left ankle pain and left ankle moderate Osteoarthritis” on NAVMED 6100/1 to the Physical Evaluation Board (PEB). No other conditions appeared on the MEB’s submission. The PEB adjudicated “left ankle moderate osteoarthritis” condition as unfitting, rated 10% and “chronic left ankle pain” rated category II (“conditions that contribute to the unfitting condition”) with application of the SECNAVINST 1850 and Veterans’ Administration Schedule for Rating Disabilities (VASRD), respectively. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Since date of Discharge I have suffered pain at least 3-4 days a week. Have found it nearly impossible to find work in any field that my injuries do not cause pain or time off from work.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20040628** | **VA (1 Mo. After Separation) – All Effective Date 20040901** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Ankle Moderate Osteoarthritis | 5299-5003 | 10% | Degenerative Joint Disease Left Ankle | 5010-5271 | 10% | 20050624 |
| Chronic Left Ankle Pain | CAT II |
| ↓No Additional MEB/PEB Entries↓ | Degenerative Joint Disease Lumbar Spine | 5242 | 10% | 20050624 |
| Tinnitus | 6260 | 10% | 20050824 |
| 0% x 3/Not Service Connected x 2 |
| **Combined: 10%** | **Combined: 30%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current earning ability and quality of life. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40; however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Left Ankle Moderate Osteoarthritis Condition. There were four goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |
| --- | --- |
|  | Separation Date: 20040831 |
| Goniometric ROM –L Ankle | Ortho ~ 16 Mo. Pre-Sep20030415 | PT ~ 4 Mo. Pre-Sep20040402 | PT ~ 4 Mo. Pre-Sep20040405 | VA C&P ~ 10 Mo. After-Sep20050624 |
| Left Dorsiflexion (0-20) | 10⁰ | 20⁰ | 5⁰ | 15⁰ |
| Left Plantar Flexion(0-45) | 25⁰ | 40⁰ | 30⁰ | 30⁰ |
| Comment | Tenderness to palpation(TTP) lateral malleolus; positive tilt; instability; edema; ankle brace | Mild pain to the superior aspect of lateral malleolus; motor strength 5/5; sensation intact; negative talar tile and anterior drawer | Palpable nodule anterior distal fibula sensation/motor intact; mild pain with talar tilt | Difficulty walking on toes/heels due to pain in left ankle; no pain on range of motion or loss of motion on repetitive motion; mild TTP lateral ankle; mild swelling lateral aspect left ankle lateral malleolus area; no medial lateral instability; X-ray shows early degenerative changes at the talofibular area |
| §4.71a Rating | 10% | 10% | 10% | 10% |

The CI had a history of left ankle pain which was documented in the service treatment record (STR) starting in March 2001. At that time, the CI presented for follow-up on left ankle degenerative joint disease and stress fracture and was given a renewal of Naprosyn, a nonsteroidal anti-inflammatory medication (NSAID) and another light duty chit for 11 days with limitations of no running, marching, prolonged standing, weight bearing, or driving, along with a splint to the left ankle. The CI was seen by orthopedics in April 2003 for complaints of left lateral ankle pain with physical findings of lateral malleolus tenderness to palpation (TTP) and positive tilt test and was continued with an ankle brace and light duty. A left ankle x-ray in April 2003 demonstrated a widening of the tibiotalar joint with stress. The CI was seen in orthopedics in February 2004 for pain, swelling, ecchymosis, and pain with activities and was medically managed with NSAIDs, a neoprene sleeve, and light duty. The CI was also seen by physical therapy (PT) in April and was found to have limited ROM and mild pain in the superior aspect of the lateral malleolus. The MEB examination indicated a diagnosis of moderate ankle osteoarthritis, an inability to participate in any running hikes or activities relating to prolonged standing and opined a poor prognosis. No goniometric measurements were included in this examination. The VA Compensation & Pension (C&P) examination 10 months after separation noted that the CI had difficulty walking on heels and toes because of pain in the left ankle and there was limited ROM, mild swelling on the lateral aspect of the left ankle lateral malleolus and mild TTP on the lateral aspect of the ankle. The examiner also noted limitation in prolonged standing, running, and jogging.

The PEB rated the left ankle moderate osteoarthritis condition as 5099-5003 arthritis, degenerative (hypertrophic or osteoarthritis) at 10% and the VA rated the left ankle 5010-5271 arthritis, due to trauma analogous to 5271 ankle, limited motion of at 10%. The PEB and the VA chose different coding options but this did not significantly affect the rating as noted above. The Board considered the CI’s primary disability to be the limited ROM and pain of the left ankle in both dorsiflexion and plantar flexion. The MEB exam along with the ortho and PT exams noted that the CI had pain, TTP, and difficulty walking on heels and toes due to pain in the left ankle. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the left ankle moderate osteoarthritis condition.

Remaining Conditions. No other conditions were identified in the DES file. Degenerative joint disease lumbar spine, healed laceration left hand, hearing loss right ear, and tinnitus were noted in the VA rating decision proximal to separation but none of these conditions were 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 left ankle moderate osteoarthritis condition, the Board unanimously recommends no change in the PEB adjudication of 5299-5003 at 10% IAW VASRD §4.71a.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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** |
| Left Ankle Moderate Osteoarthritis | 5299-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110822, 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 23 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 individual’s 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)