RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxx BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1100705 SEPARATION DATE: 20030131

BOARD DATE: 20120703

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPL/E-4 (0311 / Rifleman), medically separated for a bilateral ankle condition. He underwent surgery of each ankle and did not respond to post-operative rehabilitation treatment to fulfill the physical demands within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). “Bilateral and lateral ankle instability status post staged Brostrom” was forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB adjudicated the bilateral ankle condition as unfitting, rated 10% and 0% (pre-existing condition) respectively; IAW SECNAVINST 1850.4E and the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed, but later withdrew his appeal, and was then medically separated with a 10% combined disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e. (2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20021002** | | | **VA (3 Mos. Pre-Separation) – All Effective 20030201** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral/Lateral Ankle Instability | 5299-5003 | 10% | Residuals, Post Operative Right Ankle… | 5299-5271 | 10% | 20021121 |
| 5299-5003 | 0% | Residuals, Post Operative Left Ankle… | 5299-5271 | 10% | 20021121 |
| ↓No Additional MEB/PEB Entries↓ | | | Residuals, Left Hip Strain | 5299-5255 | 10% | 20021121 |
|  | | | Residuals, Right Hip Strain | 5299-5255 | 10% | 20021121 |
| Residuals, Left Knee Patellofemoral Syndrome | 5099-5019 | 10% | 20021121 |
| Residuals, Right Knee Patellofemoral Syndrome | 5099-5019 | 10% | 20021121 |
| Tinnitus | 6260 | 10% | 20021121 |
| 0% x 3/Not Service Connected x 1 | | |  |
| **Combined: 10%** | | | **Combined: 60%** | | | |

Bilateral/Lateral Ankle Instability. The CI sustained a right ankle injury in 1999 and a left ankle injury thereafter, both resulting in pain, swelling, ligament laxity, and recurrent injuries. The CI opted for definitive surgical care; the left ankle performed in December 2001 and the right ankle in February 2002 with a scar revision in May 2002. Both resulted in an improvement of the bilateral ankle symptoms except for persistent mild residual pain with prolong standing or walking greater than 15 minutes, squatting, kneeling, and prolonged running and jumping. The non-medical assessment (NMA) corroborated the limitations, documented that the CI was not working in his Rating, was not able to participate in unit training events critical to ensuring combat effectiveness, and missed 15 hours a week for rehabilitation appointments. There were two goniometric range of motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM –  Bilateral Ankles | MEB ~ 6 Mos. Pre-Sep  (Orthopedics) | | VA C&P ~ 2 Mos. Pre-Sep  (Internal Medicine) | |
| Left | Right | Left | Right |
| Dorsiflexion (0-20) | 20⁰ | 15⁰ | 15⁰ | 15⁰ |
| Plantar Flexion (0-45) | 45⁰ | 45⁰ | 40⁰ | 40⁰ |
| Comments |  | Slight TTP healing incision | Nl gait and stance | Swelling, Nl gait and stance |
| §4.71a Rating | 0% | 10% | 10% | 10% |

At the MEB exam, the CI reported doing well, yet continued to have mild bilateral ankle pain with some limitation in activity primarily secondary to deconditioning as a result of his two surgeries. The MEB physical exam, completed by his orthopedic surgeon, demonstrated no pain to palpation of the left lateral ankle, a healing surgical incision with slight tenderness to palpation of the right ankle and bilateral normal provocative ligament testing. X-Rays demonstrated no bony abnormality. The examiner opined it is expected that he will have function to allow for normal activities of daily living and further opined it is undetermined whether this (surgery/recovery) will allow for full functioning as a Marine. At the VA pre-separation Compensation and Pension (C&P), the CI reported he had multiple sprains which resulted in bilateral pain and ankle instability that responded to surgery, left better than right. In addition, the CI reported in his free time, he normally plays basketball or football. The C&P physical exam demonstrated normal posture and gait, no erythema, effusion or increased warmth bilaterally, generalized swelling about the right ankle, especially in the lateral aspect, ROM bilaterally was not additionally limited by pain, fatigue, weakness, lack of endurance or incoordination. The bilateral scar exam was non-tender and the right scar was slightly raised and pink. X-Rays were bilaterally normal.

The Board directs its attention to its rating recommendations based on the above evidence. The first challenge before the Board is the disparity between the ROM examinations of the MEB and the VA exam. The Board carefully deliberated its probative value assignment to these differing evaluations. The ROM values reported by the VA examiner one month prior to separation are worse than those reported by the MEB dated six months prior to separation. However, there is no record of recurrent injury or other development in explanation of the worsening ROM impairment. The Board also considered that the VA values documented were derived from reported subjective pain threshold with motion during an exam. Finally, the Board considered the MEB exam was performed by the CI’s treating orthopedic surgeon. Therefore, based on all evidence and associated conclusions just elaborated, the Board is assigning preponderant probative value to the MEB evaluation which demonstrated no loss of ROM on the left, limitation of dorsiflexion on the right, persistent subjective mild pain on the right, but no objective documented painful motion. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB chose to rate the bilateral/lateral ankle instability analogous to the 5003 (arthritis, degenerative) with 5299 (specifying arthritis analogous to ankle) IAW VASRD §4.71a and rated one ankle 10% and the other ankle 0%, likely right and left respectively, based on the clinical scenario. The separate 10% ratings conferred by the VA coded analogous to 5271 (ankle, limited motion of) for limitation of dorsiflexion and plantar flexion is also IAW VASRD §4.71a based on their exam. To support a recommendation for addition of a scar rating, Board precedent is that a functional impairment tied to fitness is required at separation which is not evident in this case nor is there evidence of ratable peripheral nerve impairment. After due deliberation, considering all the evidence, and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the bilateral/lateral ankle instability condition.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the bilateral/lateral ankle instability condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Bilateral/Lateral Ankle Instability | 5299-5003 | 10% |
| **COMBINED (w/ BLF)** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110827, 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 13 Jul 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 that 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:

- former USN

- former USN

- former USMC

- former USMC

- former USN

- former USMC

Assistant General Counsel

(Manpower & Reserve Affairs)