RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX. BRANCH OF SERVICE: Army

CASE NUMBER: PD1100733 SEPARATION DATE: 20060521

BOARD DATE: 20120203

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11B, Infantryman), medically separated for chronic right ankle pain. The CI reported an eversion type injury during a fire fight while deployed to Afghanistan from July to December 2003 and was evacuated from theater. He underwent surgical correction of his ankle in January 2004, but did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Chronic right ankle pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the chronic right ankle pain condition as unfitting, rated 10%; with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “I believe the rating to be incorrect because I was not screened upon returning from Afghanistan for mental health issues sustained in combat. Upon being evaluated by the VA I am suffering from PTSD, mechanical low back strain, tinnitus, right ankle residuals, as well as irritable bowel syndrome. My current rating with the VA is 80% and 20% unemployability.” He elaborates no specific contentions regarding rating or coding.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060320** | | | **VA (16 Mo. After Separation) – All Effective Date 20070620** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Ankle Pain, Status Post Multiple Ankle Injuries And Modified Brostrom Procedure | 5099-5003 | 10% | Right Ankle Residual, Status Post Modified Brostrum Surgery | 5271 | 0%\* | 20070929 |
| ↓No Additional MEB/PEB Entries↓ | | | Mechanical Low Back Strain | 5237 | 20% | 20070929 |
| Tinnitus | 6260 | 10% | 20070929 |
| Post-Traumatic Stress Disorder | 9411 | 70% | 20070927 |
| 0% x 1/Not Service Connected x 4 | | | 20070929 |
| **Combined: 10%** | | | **Combined: 80%** | | | |

\* VA rating based on exam most proximate to date of permanent separation

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that the rating to be incorrect due to him not being screened upon returning from Afghanistan for mental health issues sustained in combat. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected Service improprieties in the processing of his case.

The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. 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 not resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), 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. The Board utilizes VA 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.

Right Ankle Condition. 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.

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| Goniometric ROM –  R Ankle | MEB ~ 2 Mo. Pre-Sep  (20060307) | VA C&P ~ 16 Mo. After-Sep  (20070929) |
| Right Dorsiflexion (0-20) | 30⁰ | 20⁰ |
| Right Plantar Flexion (0-45) | 40⁰ | 40⁰ |
| Left Dorsiflexion (0-20) | Not measured | Not measured |
| Left Plantar Flexion (0-45) | Not measured | Not measured |
| Comment | Minimal tenderness to palpation; strength 5/5; Talar tilt symmetric with L ankle; negative anterior drawer (stable) | No loss of bone, inflammatory arthritis, ankylosis, tenderness, painful movement,or instability; no add loss on repeat |
| §4.71a Rating | 10% (PEB 10%) | 0% |

All exams proximate to separation, and the VA exam 16 months after separation documented normal, or near normal ROM. The service exam documented tenderness and the VA exam indicated pain on inversion only. The examiner indicated the CI was having recurring inversion injuries. Radiographs proximate to separation demonstrated widening of the lateral mortise, while VA radiographs were normal. There was no evidence of marked limitation of ankle motion required for a higher 20% rating, and little evidence of moderate limitation of motion for a 10% under code 5271 (Ankle, limited motion). Coding of the ankle under analogous codes 5003, 5019 through 5024 or 5271 would not reach greater than the 10% rating assigned by the PEB with consideration of §4.40 (Functional loss ) and §4.59 (painful motion). All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the right ankle condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD), mechanical low back strain, tinnitus, as well as irritable bowel syndrome (IBS). All of these conditions were reviewed by the action officer and considered by the Board. Low back pain and irritable bowel syndrome symptoms were mentioned in the DES file. However, there was no profile restriction or mention of duty limitations due to the back or abdominal conditions. Neither condition was implicated in the commander’s statement. There was no evidence for concluding that either the back or IBS conditions interfered with duty performance to a degree that could be argued as unfitting. There was no diagnosis of PTSD (or any other AXIS I mental health disorder) or tinnitus 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 determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were mild hearing loss, abdominal pain, wrist pain, and cyst removal. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period, none carried attached profiles, and none were implicated in the commander’s statement. 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 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right ankle condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right ankle condition, and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation. In the matter of the low back pain and irritable bowel syndrome conditions or any other medical conditions eligible for Board 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, Status Post Multiple Ankle Injuries And Modified Brostrom Procedure | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110901, 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

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXX (PD201100733)

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:

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA