RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxxxxxx BRANCH OF SERVICE: navy

CASE NUMBER: PD1100755 SEPARATION DATE: 20050203

BOARD DATE: 20120626

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO1/E-6 (HM1, Hospital Corpsman), medically separated for a right foot condition. She injured her right foot during a road march which did not respond adequately to conservative or operative treatment and she was unable to fulfill the physical demands within her Rating or meet physical fitness standards. She was placed on three consecutive limited dutys (LIMDU) and underwent a Medical Evaluation Board (MEB). Multiple right tibial sesamoid fractures and nine other conditions were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. The PEB adjudicated the multiple right tibial sesamoid fractures (sesamoids of the first toe) as unfitting, rated 10%, and rated three Category II conditions and six Category III conditions shown in the chart below, with application of SECNAVINST 1850.4E and the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI stated: “I believe that my right foot condition contributed to my left foot condition which both are service connected with the VA. The unfitting conditions listed on my PEB showed complication from right tibial sesamoidectomy, right fight fibular sesamoiditis, and status post right tibial sesamoidectomy. I was only listed as 10% combined disability rating on the PEB. I also was rated 10% by the VA for the scar from the surgery. I was service connected with a 0% disability rating for many of my other foot conditions as well as a few other issues. While I disagree with the VA rating of 0% for the plantar fasciitis, pes planus and hallux valgus conditions as I have continued and daily pain, that is a separate issue to be taken up with the VA. I did file an appeal shortly after my rating decision, but it was denied. The medical board I received listed several conditions that stated were separately not unfitting and did not contribute to the unfitting conditions. Specifically listed were gastrosoleal equinus bilaterally, right lateral ankle instability, pes planovalgus bilaterally, plantar fasciitis bilaterally, mechanical low back pain, chronic low back pain. Service treatment records show physical therapy notes and addresses all of these issues except for the back condition. I believe all of my foot conditions should be considered in the re-evaluation.”

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. The remaining PEB conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting conditions. The other requested conditions are not within the Board’s purview. 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 PEB – Dated 20041213** | | | **VA (1 Mo. Pre Separation) – All Effective Date 20050204** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Multiple Right Tibial Sesamoid Fractures | 5003-5279 | 10% | Right Foot Tibial Sesamoidectomy With Fibular Sesamoiditis | 5299-5284 | 10% | 20050113 |
| Complication From Right Tibial Sesamoidectomy | CAT II | |
| Right Fibular Sesamoiditis | CAT II | |
| Status Post Right Tibial Sesamoidectomy | CAT II | |
| Residual Scar, Right Foot | 7804 | 10% | 20050113 |
| Gastrosoleal Equinus Bilaterally | CAT III | | Right Lower Leg Gastroc Soleal Equinus | 5311 | NSC | 20050113 |
| Left Lower Leg Gastroc Soleal Equinus | 5311 | NSC | 20050113 |
| Right Lateral Ankle Instability | CAT III | | Status Post Right Ankle Strain | 5271 | NSC | 20050113 |
| Pes Planovalgus Bilaterally | CAT III | | Bilateral Pes Planus | 5276 | 0% | 20050113 |
| Plantar Fasciitis Bilaterally | CAT III | | Left Foot Plantar Fasciitis With Hallux Valgus | 5280-5020 | 0% | 20050113 |
| Right Foot Plantar Fasciitis With Hallux Valgus | 5280-5020 | 0% | 20050113 |
| Mechanical Low Back Pain | CAT III | | Lower Back Condition | 5237 | NSC | 20050113 |
| Chronic Low Back Pain | CAT III | |
| ↓No Additional MEB/PEB Entries↓ | | | Carpal Tunnel Syndrome, Left Wrist | 8599-8515 | 10% | 20050113 |
| 0% x 3/Not Service-Connected x 4 | | | 20050113  20050114 |
| **Combined: 10%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Right Foot Condition. The Board deliberated the unfitting multiple right tibial sesamoid fractures and the three Category II conditions (complication from right tibial sesamoidectomy, right fibular sesamoiditis, and status post right tibial sesamoidectomy) and two of the three Category III conditions specifically gastrosoleal equinus and pes planovalgus bilaterally conditions under the right foot condition. The CI underwent an enlistment entrance exam in 1994 whereupon the examiner documented asymptomatic bilateral hallux valgus and she was granted enlistment without a waiver. In August 2003 the CI injured her right ankle and foot during a 4 mile road march and she sought treatment for foot and ankle pain. X-rays revealed either a bipartite versus sesamoid fracture in her tibial sesamoid of the right first toe and a bone scan, which was not in evidence for review, revealed stress changes of the right tibia (lower leg bone). She was diagnosed and treated for tibial sesamoiditis versus a fracture with multiple conservative modalities yet the pain persisted in her toe. Subsequently, a magnetic resonance imaging (MRI) revealed a tibial sesamoid fracture and in March 2004 she opted for surgery for definitive care. In the postoperative course, with gradual physical training, her pain persisted and a repeat bone scan revealed an increased uptake signifying fibular sesamoiditis as well as stress changes of both ankles. She was diagnosed with fibular sesamoiditis, pes planovalgus, plantar fasciitis, and ankle pain with the recommendation to treat conservatively and referred to a MEB. The 2003 LIMDU in evidence documented the following limitations; no run, hike, physical training, prolong standing and no participation in field duties. Her non-medical assessment (NMA) further documented a non-deployable status, working in her Rating but missed 8 hours per week, capable of fulfilling her administrative duties, and the NMA would recommend a permanent limited duty status if the member was found unfit.

The MEB physical exam demonstrated; an antalgic gait, tenderness of the right tibial and fibular sesamoid area of the first toe, decreased ROM first metacarpophalangeal joint (MCPJ) of the first toe, increased pain on the impact over the first MCPJ during gait stance, the right ankle was held at a plantar flexed inverted position in an effort to decrease the pressure on her first MCPJ, tenderness of the anterior and lateral ligaments, tenderness of the medial calcaneal (heel bone) tubercles bilaterally, tenderness of plantar fascia bilaterally, and pes planovalgus and gastrosoleal equinus bilaterally. Review of the service treatment record (STR) consistently reflected a pain scale of 2-3 of 5 with 5 being the worse, use of an anti-inflammatory, an antalgic gait and use of custom orthotics. At the VA Compensation and Pension (C&P) exam, performed a month prior to separation, the CI reported she was able to climb stairs, walk, perform gardening activities and push a lawn mower. The C&P physical exam demonstrated; no tenderness, weakness, edema, atrophy or disturbed circulation of the right or left foot, mild bilateral pes planus, no limitation with standing or walking, able to hop on her left foot without difficulty and refusal to hop on her right because of incipient pain, able to walk on her toes but with some difficulty due to pain on the left with none on the right, able to walk on her heels without much difficulty and able to perform repetitive squatting without difficulty.

The Board directs attention to its rating recommendation based on the above evidence. The Board’s first charge with respect to these right foot conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. The entrance service exam documents evidence of bilateral hallux valgus yet these were asymptomatic and furthermore there is no documentation of pes planovalgus or gastrosoleal equinus bilaterally. The evidence reflects no treatment for lower extremity or any foot conditions for over 10 years of consecutive active service until her traumatic road march in 2003 for which she sought treatment for solely the right ankle and foot. Therefore the Board agreed with the PEB’s fitness adjudications of the multiple right tibial sesamoid fractures as the unfitting condition and that the Category II conditions were related. The Board further agreed the unfitting condition was unilateral and the abnormal lower extremity and feet anatomy were bilateral and thus the Category III ratings for these conditions; bilateral gastrosoleal equinus and pes planovalgus were appropriate. The Board further notes that the VA ratings for these conditions were not service-connected and 0% respectively.

The Board notes that both the MEB and VA exams were complete, well documented, however were not similar in terms of ratable data. The gait description and the description of the tenderness and anatomy of the right foot were more specific in the MEB exam. The Board looked for corroborating evidence regarding gait, tenderness and anatomy of the right foot and agreed the MEB descriptors were consistently reflected in the STR in addition the MEB was completed by the CI’s treating podiatrist and therefore assigns more probative value to the MEB exam. The PEB and VA chose different coding options for the condition, but this did not bear on rating and both were ruled appropriately IAW VASRD §4.71a. The PEB’s 10% rating is the highest available under the 5279 code (metatarsalgia, anterior). The VA’s 10% rating is for moderate tenderness of the right first toe under the 5284 code (foot injuries, other) based on their exam of a normal gait with moderate symptoms and additionally noted a 20% was not warranted unless foot injury results in moderately severe symptoms. The Board debated alternative pathways to a rating higher under codes 5280 (hallux valgus, unilateral) 5283 (Tarsal, or metatarsal bones, malunion of, or nonunion of) and 5284. The maximal rating for the 5280 code is also 10%. While neither the MEB exam nor the VA exam documented pain scales, the STR consistently reflects a pain scale of 2-3 of 5 with 5 being the worse and both the MEB and STR consistently reflects an antalgic gait. The Board considered the pain reported of 2-3 of 5 coupled with the antalgic gait and duty limitations and agreed the disability is best characterized by the moderate severe criteria for either the 5283 or 5284 code at the time of separation. The Board also considered additional rating on the basis of the surgical scars as conferred by the VA, however, agreed the evidence of neither the C&P exam nor the STR documents painful or unstable scars per the VASRD code 7804. By precedent, the Board does not recommend separation rating for scars unless their presence imposes a direct limitation on fitness. The Board agreed that the preponderance of the evidence does not suggest the scar was separately unfitting. There was no evidence of ratable peripheral nerve impairment in this case. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the multiple right tibial sesamoid fractures condition and insufficient cause to recommend a change in the PEB fitness determination for the three Category II conditions or a change in the Category III rating for the bilateral gastrosoleal equinus and pes planovalgus conditions.

Contended PEB Conditions. The remaining contended conditions adjudicated as not unfitting by the PEB were right lateral ankle instability, plantar fasciitis bilaterally, mechanical low back pain, and chronic LBP. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. None of these conditions were on the LIMDU’s; none were implicated in the commander’s statement; and, none were judged to fail retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended PEB category III conditions and, therefore, no additional disability ratings can be recommended.

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. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the multiple right tibial sesamoid fractures condition condition. In the matter of the contended Category II and Category III conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Multiple Right Tibial Sesamoid Fractures | 5299-5284 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110915, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

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President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd

(c) PDBR ltr dtd

(d) PDBR ltr dtd

(d) PDBR ltr dtd

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. former USN: Placement on the Permanent Disability Retired List with a 30% disability rating effective 19 May 2004.

b. former USMC: Placement on the Permanent Disability Retired List with a 30% disability rating effective 15 April 2006.

c. former USN: Disability separation with entitlement to disability severance pay with a rating of 20% (increased from 10%) effective 3 February 2005.

d. former USMC: Placement on the Permanent Disability Retired List with a 60% disability rating effective 30 January 2008.

3. Please ensure all necessary actions are taken, included the recoupment of disability severance pay if warranted, to implement these decisions and that subject members are notified once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)