RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100826 SEPARATION DATE: 20041224

BOARD DATE: 20120912

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (98C/Signal Intelligence Analyst), medically separated for bilateral multiple ankle inversions with arthritic changes. The CI sustained multiple inversions to both ankles running at night during training. The bilateral ankle inversion injuries required surgical reconstruction of both ankles with retained hardware and recovery was complicated by pain and arthritis. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS). He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the bilateral ankles as a single unfitting condition, rated 10%, with possible application of AR 635-40, B-29 and application of 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 elaborated no specific contention in his application.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20041108** | **VA (4 Mos. Post-Separation) – All Effective Date 20041225** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Ankles | 5010 | 10% | DJD L Ankle | 5010-5271 | 20%\* | 20050427 |
| DJD R Ankle | 5010-5271 | 20%\* | 20050427 |
| ↓No Additional MEB/PEB Entries↓ | Scar, L ankle | 7804 | 10% | 20050427 |
| Scar, R ankle | 7804 | 10% | 20050427 |
| Tinnitus | 6260 | 10% | 20050427 |
| 0% X 1 / Not Service-Connected x 1 | 20050427 |
| **Combined: 10%** | **Combined: 60% w/BLF** |

\*Ankles originally rated at 10% each and increased to 20% effective DOS on the 20061127 Statement of Case

Both ankles were reduced to 0% effective 20120207 on the 20120313 VARD

R ankle scar originally rated at 0% and increased to 10% effective DOS on the Statement of Case

MDD was added at 50% effective 20110502

ANALYSIS SUMMARY:

Bilateral Ankles. 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.

|  |  |  |
| --- | --- | --- |
| Ankle ROM | MEB ~4.5 Mo. Pre-Sep | VA C&P ~4.5 Mo. Post-Sep |
| Left | Right | Left | Right |
| Dorsiflexion (0-20⁰) | 10⁰ | 10⁰ | 20⁰ | 15⁰ |
| Plantar Flexion (0-45⁰) | 55⁰ | 65⁰ | 40⁰ | 40⁰ |
| Comment | Surgical scars; no instability; tender over the anterior tibio fibular ligament; heel and toe walk “without difficulty”; no ankle ligament instability | Mild pain w/ROM; point tenderness B ant aspect medial malleolus; normal gait; strength 4/5 symmetric |
| §4.71a Rating | 10% | 10% | 10% (VA 20%) | 10% (VA 20%) |

At the MEB exam, the CI reported a constant dull pain (4-5/10), worsened with “prolonged walking, impact exercises and activities that cause weight to be placed on the ball of the foot.” He had stopped “many activities that he previously enjoyed including basketball, mountain biking, running, baseball, soccer, and football.” He was able to walk up to one mile, but had significant symptoms after an attempt at a two mile ruck march. The MEB physical exam is summarized above. Radiographs indicated internal fixation of both heels with intact hardware, old avulsion fracture on the right and spur formation on the left ankle.

At the VA Compensation and Pension (C&P), the CI reported chronic pain and stiffness worsened by walking more than one block, standing more than 15 minutes, or going up one flight of stairs. He had flare-ups four times a month and took episodic Ibuprofen (Motrin). He complained of “infrequent episodes of subluxation or the sensation of the joint giving way” and “gait will become mildly antalgic with prolonged activity” worse on the right. The exam is summarized above and included a tender and adherent surgical scar of the left ankle and X-rays confirmed bilateral degenerative joint disease and internal fixation and repairs (hardware).

VA treatment notes through 19 April 2006 (approximately 16 months post-separation), indicated ongoing bilateral ankle pain and symptoms including episodic swelling. Tenderness continued and podiatry note, approximately 10 months after separation, indicated dorsiflexion mechanically limited bilaterally to 5 degrees (normal 0-20 degrees) with full plantar flexion*.* The CI was prescribed orthotics for both ankles on 19 April 2006.

The Board directs attention to its rating recommendation based on the above evidence. The PEB combined left and right ankle conditions as the single unfitting and solely rated condition, coded 5010 (arthritis due to trauma) which uses the criteria of VA code 5003. Although this approach complies with AR 635.40; the Board must apply separate codes and ratings in its recommendations, if compensable ratings for each ankle condition are achieved IAW VASRD §4.71a. The Board considered that each ankle was unfitting and compensable. The VA initially rated the C&P exam at 10% for each ankle using 5010-5271 (specifying ankle limitation of motion), with increase on appeal to 20% each side based on the same exam and VA treatment records through 26 May 2006 (approximately 17 months post-separation). All exams documented bilateral limitation of ankle ROM.

IAW VASRD 5010 (5003 criteria), the 10% for two or more joints is used only in the absence of limitation of motion, with a 10% for application of each joint with objective limitation of motion.

Additionally, the VA exams consistently documented pain-limited motion IAW VASRD §4.59, while the MEB exam was silent on painful motion, it described worsened pain with walking. Conceding painful motion would also warrant a different route to a 10% rating for each ankle. The Board adjudged that there was insufficient evidence proximate to separation that either ankle limitation of motion approached the “marked” level of limitation for a 20% rating.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends the bilateral ankle condition be rated for two separate unfitting conditions as follows: left ankle coded 5010-5271 and rated 10% and right ankle coded 5010-5271 and rated 10%; both IAW VASRD §4.71a.

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 bilateral ankle condition the Board unanimously recommends that it be rated for two separate unfitting conditions as follows: left ankle coded 5010-5271 and rated 10% and right ankle coded 5010-5271 and rated 10%; both IAW VASRD §4.71a. 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 his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Ankle Arthritic Changes After Surgery | 5010-5271 | 10% |
| Right Ankle Arthritic Changes After Surgery | 5010-5271 | 10% |
| **COMBINED (w/ BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110928, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXX

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXXXX, AR20120017726 (PD201100826)

1. 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 to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA