RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: nAVY

CASE NUMBER: PD1100846 SEPARATION DATE: 20080422

BOARD DATE: 20120705

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty AT2/E-5 (9502 / Instructor), medically separated for a left ankle condition. He sustained a left ankle fracture in 2005 which led to several operative interventions and despite extensive rehabilitation he was unable to fulfill the physical demand within his Rating or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). “Pain in joint involving ankle and foot” was forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB adjudicated continued ankle pain despite three surgeries as unfitting rated 10% with application of SECNAVINST 1850.4E and the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “Medical Separation after 8 years of good conduct. Disability has increased and left me unable to gain employment. Left Ankle and achillies [sic] tendon injury is now worse. (RA)”.

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 Board received additional documents from the CI for consideration with his application, however, obstructive sleep apnea (OSA), inner thigh/face/hands/lymph nodes/folliculitis, cluster/migraine headaches, posttraumatic stress disorder (PTSD) and uvulopatopharygoplasty 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 20080125** | | | **VA (~1 Mo. Pre-Separation) – All Effective Date 20080423** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Continued Ankle Pain Despite Three Surgeries | 5299-5003 | 10% | Status Post Left Ankle Fracture with Achilles Tendon Rupture with Surgical Repair… | 5271 | 20% | 20080331 |
| ↓No Additional MEB/PEB Entries↓ | | | Sleep Apnea with CPAP Machine and Insomnia | 6847 | 50% | 20080331 |
|  | | | Headaches | 8199-8100 | 30% | 20080331 |
| Tinnitus | 6260 | 10% | 20080331 |
|  | | | 0% x 2/Not Service-Connected x 7 | | | 20080331 |
| **Combined: 10%** | | | **Combined: 80%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for conditions which will predictably worsen over time and the significant impact that his service-incurred condition has had on his current earning ability and quality of life. 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. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation.

Continued Ankle Pain Despite Three Surgeries Condition. The CI sustained a maisonnerve type left ankle fracture (spiral fracture of the fibula with disruption of the syndesmosis between the fibula and tibia (lower leg bones)) in 2005 which resulted in surgical repair and an uneventful postoperative course. He continued to have pain unresponsive to multiple different conservative treatment modalities and in October 2006 he opted for ankle arthroscopy which resulted in removal of hardware, peroneal tendon exploration and anterior osteophyte (arthritis) debridement. During his recovery, while running, he experienced a sharp pain of his left achilles tendon and after conservative treatment underwent definitive surgical care in March 2007 with a Haglan’s deformity excision, and left Achilles tendon lengthening and recession. There were no post-operative complications; however, the CI was not able to fully perform all of his duties. He further sought pain management care that placed him on Lidoderm patches but continued to have significant ankle pain upon removal of the patches. He had a total of three LIMDU’s with the following documented diagnoses; the first left ankle fracture, the second left ankle fracture and left Achilles tendonitis and the third left ankle pain. His final LIMDU documented the following limitations; no physical readiness training, deployment and heavy lifting. His non-medical assessment (NMA) further documented; he was working in his rating, missed 2 hours per week for clinical care and while the CI wanted to continue his military service the NMA did not recommend a permanent LIMDU despite his exceptional performance.

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 –  L Ankle | Orthopedics  MEB ~ 3 Mo. Pre-Sep | VA C&P ~ 1 Mo. Pre-Sep |
| Left Dorsiflexion (0-20) | 15⁰ | 10⁰ |
| Left Plantar Flexion (0-45) | 45⁰ | 25⁰ |
| Comment | Painful motion |  |
| §4.71a Rating | 10% | 20% |

At the MEB exam, the CI reported he was unable to stand, walk more than 50 feet, squat, crawl, kneel, climb stairs, push and pull with force, or walk over uneven terrain without pain, swelling, popping and a feeling of instability which affected his left ankle and Achilles tendon.

The MEB physical exam demonstrated well healed scars respective of his ankle surgeries, normal sensation and vascular findings, and a positive Tinel’s sign of the sural nerve. Arthroscopic pictures revealed a normal appearing tibiotalar (ankle) joint. The examiner opined the CI was 10 months out from his surgery and it was unknown whether he will be able to achieve anymore improvement, additionally, he was currently unfit for sea duty, unable to perform all functions of his Rating and was dependent on Lidoderm for daily relief of pain. The service treatment record (STR) reflected a minimum pain of 5 and a maximum of 7/10 and a normal gait. At the VA Compensation and Pension (C&P) exam prior to separation, the CI reported; use of support stockings and an ankle brace, standing was limited to approximately 15 minutes, could walk approximately a mile and jog occasionally but limited his activities for the following 2-3 days because of additional pain and swelling. He was taking Naprosyn (anti-inflammatory), Darvocet (narcotic based) and Neurontin (for neuropathic pain) for ankle pain. There was no direct affect on his occupational activities. The C&P physical exam demonstrated; moderate ankle swelling, no localized tenderness, no varus or valgus angulation of the heel was identified, and DeLuca criteria were negative. There was tenderness and edema along the Achilles tendon with use of bandages but no breakdown of skin. X-Ray’s revealed thickening of the Achilles tendon with tendinopathy. The examiner diagnosed mild osseous irregularity around the distal tibiofibular syndesmosis, chronic pain and swelling of the left ankle and Achilles tendon rupture status post surgical repair with residual swelling, tenderness and limitation of motion and did not offer an opinion.

The Board directs attention to its rating recommendation 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, with some implications regarding the Board's rating recommendation. The Board thus carefully deliberated its probative value assignment to these conflicting evaluations. The ROM values reported by the VA examiner, a month prior to separation, are worse than those reported by the MEB dated 6 months prior to separation. There is no record of recurrent injury or other development in explanation of the worsening ROM impairment thus the Board also considered that the VA values documented were derived from reported pain threshold with motion during an exam performed in the context of expressly providing a basis for disability rating; thus subject to loss of objectivity.

Finally, the Board considered the MEB exam is 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. The PEB and VA chose different coding options for the condition, but this did not bear on rating and both were IAW VASRD §4.71a—schedule of ratings–musculoskeletal system. The PEB’s chosen code 5003 (arthritis, degenerative) analogous to the ankle, 5299, specifies that, in the presence of degenerative arthritis established by X-ray findings, when “the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10 pct is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5003. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.” There was noncompensable ROM impairment of the left ankle, and the Board agreed that there is adequate documentation of painful motion of the joint in the pre-separation data to merit application of a minimal compensable rating under this code. The Board considered the VA choice of coding the left ankle analogous to code 5271 (ankle, limited motion of) for marked limitation of motion.

The Board agreed the evidence reflects a moderate pain scale and moderate limitation of motion based on the MEB exam at the time of separation and does not approach the marked impairment. The Board also considered code 5024 (tenosynovitis) which is applicable for the underlying Achilles tendon pathology, which likewise results in a 10% rating for the left ankle and code 5262 (malunion of, tibia and fibula, impairment of) and agreed there is no residual evidence of malunion of the fibula. Finally, IAW VASRD §4.14, avoidance of pyramiding, the Board agreed the different diagnoses currently affecting the left lower extremity; left ankle fracture residuals, and the Achilles tendon rupture repair, affect the same area and in the absence of compensable neurological findings they are considered one disability as did the PEB and the VA. After due deliberation, considering all of 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 left ankle 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 left ankle 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** |
| Continued Ankle Pain Despite Three Surgeries | 5299-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110831, 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)