RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1100893 SEPARATION DATE: 20031015

BOARD DATE: 20120409

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt/E-5 (2847/Telephone Systems/Personal Computer Intermediate Repairman), medically separated for bilateral chronic ankle instability. He did not respond adequately to treatment and was unable to deploy or meet physical fitness standards. He did perform within his Military Occupational Specialty (MOS). He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Bilateral chronic ankle instability and recurrent fracture of clavicle” were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. 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 bilateral ankle condition as unfitting, rated each ankle 10%, and rated the right shoulder condition category III, (not separately unfitting and does not contribute to the unfitting condition) with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “The Marine Corps separated me a 20%, while the VA rated me at 50%. My VA disability exam was conducted while I was still on active duty. The Marine Corps should of have incorporated my other present medical conditions into their rating.” He further elaborates under item 14: “Marine Corps rated me for: bilateral Chronic Ankle instability (left and right) 10% each. Department of VA also rated me for: Right shoulder limited range of motion 20%, Lumbosacral strail 10%, Tennitus 10%, Painful movement of right knee 0%, Left ear hearing loss 0% and Gastroesophageal reflux disease 0%.”

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20030803** | **VA (1 Mo. Pre-Separation) – All Effective 20031016** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Chronic Ankle Instability | 5299-5003 | 10% | Chronic Instability R Ankle | 5299-5271 | 10% | MEB |
| 5299-5003 | 10% | Chronic Instability L Ankle  | 5299-5271 | 10% | MEB |
| R Shoulder Limited ROM | Cat III | Limited ROM Right Shoulder  | 5201 | 20% | MEB |
| ↓No Additional MEB/PEB Entries↓ | Lumbosacral Strain | 5237 | 10% | 20030909 |
|  |  | Tinnitus | 6260 | 10% | 20030903 |
|  | 0% x 3/Not Service-Connected x 4 | 20030909 |
| **Combined: 20%** | **Combined: 50%** |

ANALYSIS SUMMARY: The DES is responsible for maintaining a fit and vital fighting force. 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. 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 nor for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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’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. The Board’s threshold for countering DES 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.

Bilateral Chronic Ankle Instability Condition. The CI had an 8 year history of ankle pain and instability associated with multiple, repeated bilateral ankle sprain injuries. The CI was placed on LIMDU in April 2002 when it was noted that he had a history of multiple ankle sprains bilaterally and was thought to have chronic ankle instability. He was restricted to physical activity as tolerated and after a period of conservative treatment was returned to full duty 4 months later in August 2002. Symptoms persisted and he presented to orthopedics in May 2003 requesting a PEB for chronic bilateral ankle pain and instability. On examination, there was evidence of bilateral ankle instability with anterior drawers testing, and ankle tenderness along the medial aspect of both ankles. Neurovascular exam was normal as was the overlying skin. Primary care clinic examinations just prior to the orthopedic examination documented normal range-of-motion (ROM). X-ray imaging showed bilateral talar tilt on stress views of the ankles. It was opined that he would benefit from bilateral surgical reconstructive stabilization procedures; however, he declined the surgery as there was no guarantee that he would not re-injure either ankle in the future and he thought it unlikely that he would be able to continue training at the level necessary to remain in the Marine Corps.

The Board also noted that the commander stated that the CI could not meet his full duty requirements as he could not participate in PT or deploy. However, he met his in-garrison job requirements and the commander stated he observed the CI participate in numerous recreational sports including basketball, football and softball. The VA Compensation and Pension (C&P) exam was on 9 September 2003, but did not evaluate the ankles and referred to the MEB exam. However the gait was documented as normal and strength of the lower extremities was normal. There are no later VA evaluations in evidence. The PEB adjudicated the ankles at 10% each and coded both at 5299-5003, analogous to degenerative arthritis. The VA also rated each ankle at 10%, but coded them 5299-5271, analogous to limited motion, noting moderate instability. The Board considered the different coding options, but noted none offered an advantage to the CI over the PEB or VA coding. The Board concluded the preponderance of evidence does not support a rating higher than that adjudicated by the PEB. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the bilateral ankle condition.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as category III, not unfitting, by the PEB was right shoulder limited ROM. This condition was profiled, but not implicated in the non-medical assessment (NMA) or noted as failing retention standards. The Board notes that the right dominant CI had incurred a mid-shaft fracture of his clavicle less than 6 months before the MEB orthopedic examination. A 13 February 2003 clinic note documented that there was no complaint of pain in the region of the fracture. On examinations there was full ROM of the right shoulder with equivocal tests for shoulder impingement. There was no significant tenderness of the right clavicle. X-rays showed good healing of the fracture. The subsequent orthopedic examination documented ROM due to bursitis. It was again noted that the commander specifically commented that the CI was able to play basketball, football, and softball in the assessment dated 6 months after the re-injury. This was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the stated condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for lumbosacral strain, tinnitus, painful movement of right knee, left ear hearing loss and gastroesophageal reflux disease (GERD). All of these conditions were reviewed by the action officer and considered by the Board. None of these conditions were clinically or occupationally significant during the MEB period, none carried attached duty limitations, and none was implicated in the non-medical assessment. The commander specifically commented that the CI was able to play sports in the assessment dated 21 May 2003. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. 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 positive PPD converter treated with INH, hypertension, left eye amblyopia, and a history of head trauma. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant during the MEB period, none carried attached duty limitations, and none was implicated in the NMA. 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 or non-acute conditions were service-connected in the VA decision proximal to separation.

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 no change from the PEB adjudication. In the matter of the right shoulder condition, the Board unanimously recommends no change from the PEB adjudications as category III, not separately unfitting nor contributing to the unfitting condition. In the matter of the for lumbosacral strain, tinnitus, painful movement of right knee, left ear hearing loss, GERD, positive PPD converter treated with INH, hypertension, left eye amblyopia, and a history of head trauma or any other condition 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** |
| Bilateral chronic ankle instability | 5299-5003 | 10% |
| 5299-5003 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111010, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

 XXXXXXXXXX

 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 2 May 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 the following individual’s 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:

- XXXXXXXXXXXXXX former USMC

- XXXXXXXXXXXXXX former USMC

- XXXXXXXXXXXXXX, former USN,

- XXXXXXXXXXXXXX, former USN,

- XXXXXXXXXXXXXX former USMC

- XXXXXXXXXXXXXX former USN,

 XXXXXXXXXXXXXXX

 Assistant General Counsel

 (Manpower & Reserve Affairs)