RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1200004 SEPARATION DATE: 20060804

BOARD DATE: 20120410

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SrA/E-4 (6F051/Financial Management & Comptroller Journeyman), medically separated for a right ankle condition. She did not respond adequately to conservative treatment and was unable to perform within her Air Force Specialty (AFS) or meet physical fitness standards. She was issued a temporary L4 profile and underwent a Medical Evaluation Board (MEB). Chronic right ankle pain and swelling was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. 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 right ankle condition as unfitting, rated 0% IAW Department of Defense and Veterans Administration Schedule for Rating Disabilities guidelines. Additionally, bilateral patello femoral syndrome condition, was determined to have existed prior to service (EPTS) (Category II) and an overweight condition was determined not to be separately unfitting (Category III). The CI made no appeals, and was medically separated with a 0% combined disability rating.

CI CONTENTION: “The chronic tendonitis in my knees and ankles, and my foot pain limit my everyday life. I'm not able to stand or kneel for a prolong period of time. Running is very painful and causes swelling. It is a struggle to exercise because I'm limited to the types of things I can do and the pain. I have to exercise because the weight I've gained exacerbates my conditions. After walking on the treadmill even pushing the pedal to drive is very painful. The pain medication that is prescribed is harsh on the stomach and/or is habit forming. The pain is even present when lying in the bed at night. I'm not able to play softball with my six year old daughter. I had a dream of being a beautician but I'm unable to pursue that career because of my disability. My migraines cause light and sound sensitivity, numbness on the right side of my face and right hand and arm. I also see spots in my vision that make it almost impossible for me to function. My hemorrhoids are painful when they flare up. The way I try to handle them is to watch what I eat. I don't have medical insurance and am pursing a bachelor’s degree in business administration. Due to my VA disability rating I am eligible for medical care through the VA Hospital.” She additionally lists all of her VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20060606** | **VA (2 Mo. After Separation) – All Effective Date 20060805** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Rt Ankle Pain | 5399-5310 | 0% | Chronic Rt Ankle Tendonitis | 5271-5024 | 10% | 20061002 |
| Bilateral Patello Femoral Syndrome | Cat II (EPTS) | Chronic Patellofemoral Syndrome, Rt Knee | 5260-5024 | 10% | 20061002 |
| Chronic Patellofemoral Syndrome, Lt Knee | 5260-5024 | 10% | 20061002 |
| Overweight | Cat III | Not rated by the VA |
| ↓No Additional MEB/PEB Entries↓ | Chronic Lt Ankle Tendonitis | 5271-5024 | 10% | 20061002 |
| Migraine Headaches w/ Hx of Facial & Rt Hand Numbness | 8100 | 10% | 20061002 |
| 0% x 3/Not Service-Connected x 3 | 20061002 |
| **Combined: 0%** | **Combined: 40%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the 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. The Board also acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation and for conditions not diagnosed while in the service but later determined to be service-connected by the DVA. 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 DVA, however, 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.

Right Ankle Condition. The CI presented for treatment of right ankle pain and swelling while in basic training. In addition, she had a twisting injury at her first duty station resulting in an exhaustive evaluation, intermittent physical therapy and daily medication use for over 3 years. Her commander requested an MEB documenting, despite her ability to perform her daily duties in the office, his concern that she would not be able to complete the field and convoy training that his squadron had to go through for deployment at Fort Dix and her continued inability to participate in fitness testing. There were two range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –R Ankle | Ortho exam ~ 4 Mo. Pre-Sep (20060320) | VA C&P ~ 2 Mo. After-Sep(20061002) |
| Right Dorsiflexion (0-20) | 20⁰ | 20⁰ |
| Right Plantar Flexion (0-45) | 45⁰ | 45⁰ |
| Comment | Pain with active resistance | Pain with toe walk and resisted inversion |
| §4.71a Rating | 10%\* | 10%\* |

\*IAW **§**4.59

The narrative summary (NARSUM) exam completed by a general physician 3 months prior to separation documented a normal right ankle exam with full active ROM and relied on the goniometric exam of the orthopedic exam notated in the chart above. The orthopedic exam completed 4 months prior to the separation historically documented pain and swelling with prolong standing and running, 3/10 pain (with 10 being the worst), and demonstrated a normal musculoskeletal and neurovascular exam of the right lower extremity, mild pain with active resistance in the posterior tibial tendon region as well as the peroneal tendon region, mild pain with single leg raise, and negative MRI and plain x-rays. The orthopedic examiner diagnosed tendonitis of the posterior tibial and peroneal tendons which would likely take 3 to 6 months to resolve. The VA Compensation and Pension (C&P) exam documented right ankle symptoms of weakness, stiffness, swelling by end of day, giving way, inability to drive, lack of endurance, no prolong standing, 7-9/10 aching constant pain increased with activity, no incapacitation, and able to function without pain medication but was taking two anti-inflammatories chronically. The exam demonstrated a normal gait without the use of assistive devices for ambulation, pain with toe walking and resisted inversion, tenderness of the posterior tibial tendons, use arch supports and normal x-rays.

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB and VA chose different coding options for the condition, which did bear on rating. The PEB rated the condition IAW §4.73—Schedule of Ratings–Muscle Injuries Analogous using code 5399-5310 at 0%, the minimal compensable rating for this code. The VA rated the condition IAW §4.71a—Schedule of Ratings-Musculoskeletal System with code 5024 (tenosynovitis) analogous to 5271 (ankle, limitation motion of) at 10% allowing the minimum compensable rating for the joint per the VASRD definition of §4.59 (painful motion). The Board looked for higher ratings analogous to the 5003 (arthritis code) yet did not find x-ray evidence of degenerative arthritis, and code 5262 (tibia and fibula, impairment of) which would allow a 10% minimal compensable rating at the ankle joint, but there was insufficient evidence to justify a higher rating under these codes. The Board agreed the evidence did reflect painful active motion and therefore, after due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), and VASRD §4.7 (higher of two evaluations) the Board recommends a separation rating of 10% for the right ankle condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were bilateral patellofemoral syndrome and overweight condition. While bilateral patellofemoral syndrome was temporarily profiled, none of these conditions were permanently profiled, implicated in the commander’s statement or noted as failing 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 performance of AFS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Other Contended and Remaining Conditions. The CI’s application asserts that compensable ratings should be considered for hemorrhoids and migraines. All of these conditions were reviewed by the action officer and considered by the Board. Neither of these conditions was in the core DES file. Additionally chronic left ankle tendonitis and several other non-acute conditions were noted in the VA rating decision proximal to separation were not documented in the DES file. While service treatment records and the commander’s statement documented intermittent bilateral ankle pain and swelling, the left ankle did not appear as a diagnosed condition in the core DES nor was it clinically or occupationally active during the MEB period. 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, 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. 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 right ankle condition, the Board unanimously recommends a rating of 10% coded 5271-5024 IAW VASRD §4.71a. In the matter of the bilateral patellafemoral syndrome and overweight conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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** |
| Chronic Rt Ankle Pain | 5271-5024 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111101, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 XXXXXXXXXXXXXXX

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXXXXX

 Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. § 1554a), PDBR Case Number PD-2012-00004.

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended modification of your assigned disability rating without re-characterization of your separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

 Sincerely,

XXXXXXXXXXXX

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD2012-0004

MEMORANDUM FOR THE CHIEF OF STAFF

 Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Title 10, United States Code, Section 1554a (122 Stat. 466) and Title 10, United States Code, Section 1552 (70A Stat. 116) it is directed that:

 The pertinent military records of the Department of the Air Force relating XXXXXXXX, be corrected to show that the diagnosis in her finding of unfitness for Chronic Right Ankle Pain, was rated under VASRD Code 5271-5024 rather than 5399-5310; and was rated at 10% rather than 0%.

 XXXXXXXXXXXXX

 Director

 Air Force Review Boards Agency