RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200038 SEPARATION DATE: 20050104

BOARD DATE: 20121004

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PV2/E-2 (Recruit), medically separated for chronic right ankle pain status post talar fracture. The CI turned his right ankle when he stepped off a curb improperly during his training while at Reception Station. An X-ray of the right ankle revealed a fracture. Despite medications and an ace wrap, the CI did not improve adequately to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. The CI was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic right ankle pain status post talar fracture condition on the DA Form 3947 to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the chronic right ankle pain status post talar fracture condition as unfitting, rated 10%, with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “10% R/ankle has created new conditions/secondary to the R/ankle.”

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. The chronic right ankle pain s/p talar fracture condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The remaining implied conditions (“created new conditions/secondary”) considered by the VA for vocational rehabilitation and/or pension (right hip, PTSD, dental condition and Anxiety disorder) 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 Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20041129** | | | **VA (16 days Post Separation) – All Effective Date 20050105** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Ankle Pain S/P Talar Fracture | 5099-5003 | 10% | Chronic Right Ankle Pain and Limited Motion S/P Talus Fracture | 5273-5271 | 10% | \*STR |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 0/Not Service Connected x 0 | | |  |
| **Combined: 10%** | | | **Combined: 10%** | | | |

\*Failed to report to VA Exam 20041214. In 20060829, CI presented evidence and testimony to the VA at a personal hearing; a De Novo Review 20070713 upheld the 10% rating. VARD of 20060131 added not service connected (NSC) conditions of right hip, PTSD and dental condition and Anxiety disorder for voc rehab and/or pension purposes, but not disability rating. No VA disability rating change as of 20080717 VARD in evidence (did add NSC conditions).

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application that his initial injury has created new related conditions and there should be additional disability assigned for conditions which will predictably worsen over time. It is a fact, however, that the Disability Evaluation System (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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic R/Ankle Pain S/P Talar Fracture Condition. There were two goniometric range-of-motion (ROM) evaluations in evidence and one evaluation without ROM’s, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Right Ankle ROM | MEB ~4 Mos. Pre-Sep | VA PT ~3 Mos. Post-Sep | VA C&P ~18 Mos. Post-Sep |
| Dorsiflexion (0-20⁰) | 15⁰ | 20⁰ | “slight limited ROM” |
| Plantar Flexion (0-45⁰) | 35⁰ | 40⁰ |
| Comment | Tender along joint lines medial/lateral ankle; limited gait, discomfort walking, standing; can’t stand on toes or squat | Antalgic gait; tending to hop over the right leg; limited in final range of inversion/eversion | Cane; pain; slight tenderness/swelling; tingling/numbness in right leg; antalgic gait if tries to walk on heels/toes/cannot squat; needs to push up on an object to rise; muscle strength 4/5; reflex slightly diminished; sensation intact |
| §4.71a Rating | 10% | 10% | 10% |

The CI had persistent right ankle pain following trauma, with X-ray confirmed fracture of the posterior process of the talus with posterior and inferior calcaneal spurs. The CI was initially treated with an ace wrap and non steroidal anti inflammatory drugs (NSAIDS). The MEB examination, 4 months prior to separation, indicated right ankle pain, and an inability to run, perform light jogging, squat, stoop or stand more than twenty minutes. Magnetic resonance imaging (MRI) was normal. The MEB exam is summarized above and indicated pain-limited motion.

The CI failed to report for a VA Compensation & Pension (C&P) in December 2004. The CI was followed at the VA in physical therapy (PT) and Orthopedics for the right ankle pain throughout 2005. The VA PT treatment exam, 3 months post-separation, is summarized above. A VA orthopedics duty limitation memo noted that the CI could not perform any work that required him to stand for more than 20 minutes at a time, no running or squatting, and that he would need to wear “flip-flops” for shoes. At the time of the orthopedic appointment in November 2005, 10 months post-separation, a right ankle MRI and X-ray were normal; however, the CI continued with complaints of severe right ankle pain and required a cane for ambulation. The CI had two subsequent VA C&P exams, one performed in July 2006 (summarized above), and a second C&P exam performed in May 2007 showed pain limiting ROM and the continued use of a cane.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the chronic right ankle pain s/p talar fracture VASRD code 5099 analogous to 5003 Arthritis, degenerative (hypertrophic or osteoarthritis) and rated at 10% for “slight/constant” (pain). The VA coded 5273 (Os calcis or astragalus (talus), malunion of: moderate deformity) with 5271 (Ankle, limited motion of: moderate) and rated 10%. The VA based their initial rating on the service treatment record (STR). Although more than one year remote from separation; the CI had two VA C&P exams which showed chronic right ankle pain and the continued requirement of a cane. It is noted for the record that the Board recognizes the significant interval between the date of separation and the VA evaluation. DoDI 6040.44, under which the Board operates, specifies a 12-month interval for special consideration to VA findings. This does not mean that the VA information was disregarded, as it was a valuable source for clinical information and opinions relevant to the Board’s evaluation. In matters germane to the severity and disability at the time of separation, however, the information in the service record was assigned proportionately more probative value as a basis for the Board’s rating recommendations.

All exams in evidence supported a 10% rating level IAW either §4.59 (painful motion) or VASRD code 5003, for pain-limited motion. The evidence did not support marked limitation of motion or deformity. 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 chronic right ankle pain s/p talar fracture 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right ankle condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic right ankle pain s/p talar fracture 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic R/Ankle Pain S/P Talar Fracture | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120103, 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

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXX, AR20120019094 (PD201200038)

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 and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA