RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200042 SEPARATION DATE: 20020421

BOARD DATE: 20120719

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11C10 / Infantryman), medically separated for a traumatic bilateral ankle condition. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile duty and underwent a Medical Evaluation Board (MEB). Degenerative arthritis bilateral ankles and lateral ankle instability, left ankle were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the bilateral ankle condition as unfitting, rated 20% 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: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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. 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 the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20020208** | **VA (1 Mo. After Separation) – All Effective Date 20020422** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Painful Bilateral Ankles | 5003 | 20% | Lt Ankle Condition | 5271 | 10% | 20020522 |
| Rt Ankle Condition | 5010-5271 | 10% | 20020522 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 2/Not Service-Connected x 0 | 20020522 |
| **Combined: 20%** | **Combined: 20%** |

Bilateral Ankle Condition. The CI sought treatment for bilateral ankle pain and instability with frequent sprains in June 2000. After a thorough evaluation and conservative treatment he elected to have a stabilizing surgical procedure of the right ankle. This was successful and he had significant increase in the stability without further sprains. He had wanted to have a left ankle surgery but changed his mind and was thus referred to an MEB.

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.

|  |  |  |
| --- | --- | --- |
| ROM –Bilat Ankles | PT ~ 11 Mo. Pre-Sep | MEB ~ 8 Mo. Pre-Sep |
| Left | Right | Left | Right |
| Dorsiflexion (0-20) | 10⁰ | 10⁰ | 10⁰ | 10⁰ |
| Plantar Flexion (0-45) | 20⁰ | 20⁰ | 20⁰ | 20⁰ |
| Comment |  |  |  |  |
| §4.71a Rating | 10% | 10% | 10% | 10% |

At the MEB exam, the CI reported bilateral ankle pain with running, jumping or walking downstairs. The MEB physical exam bilaterally demonstrated no edema, erythema, ecchymosis or crepitus and stable ligament testing. X-rays revealed bilateral anterior arthritic changes of the ankle joints, left greater than right, and avulsion fragments in the lateral right ankle. The examiner diagnosed bilateral degenerative arthritis and lateral ankle instability, left ankle and offered no opinion. At the Department of Veterans’ Affairs (DVA) Compensation and Pension (C&P) exam, performed a month after separation, the CI reported no new additional historical facts. The C&P physical exam bilaterally demonstrated intact posterior tibial tendon, sensation and "Evaluation of the right ankle reveals ROM from 0 degrees of dorsiflexion to 40 degrees of plantar flexion with 15 degrees of eversion, and 30 degrees of inversion.” The right ankle also demonstrated increased laxity to anterior stress with mild crepitation, effusion, 5/5 plantar flexion and 4/5 dorsiflexion strength and tenderness to palpation over the anterior joint. The left ankle demonstrated; “Evaluation of the left ankle reveals range of motion from 0-40 degrees,” 5/5 dorsiflexion and plantar flexion strength, increased laxity to anterior stress with crepitation, mild talar tilt and tenderness to palpation over his anterior joint as well as over his anterior talofibular ligament. The examiner diagnosed right chronic anterior talofibular ligament and likely calcaneofibular ligament sprain, status post arthroscopy and attempted reconstruction, with likely tibiotalar degenerative joint disease and left ankle anterior talofibular ligament and calcaneofibular ligament sprain. X-rays revealed a normal left ankle and degenerative changes or joint space narrowing with retained fibular hardware of the right ankle.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were complete, well documented, however the MEB exam was compliant with VASRD §4.46 (accurate measurement), unlike the VA exam which the Board agreed could not discern if the examiner was measuring a range of motions for the ankle or if dorsiflexion (DF) was in fact 0 degrees. The Board speculated it was likely reflective of a ROM as the VA rating decision cited moderate limitation of motion and a DF of 0 was more consistent with marked limitation of motion. Additionally, the MEB measurements are consistent with corroborating evidence; the MEB measurements are consistent with the diagnostic and clinical pathology in evidence; there is not a reasonable accounting for progressively impaired ROM in the fairly short interval between the MEB and VA examinations; 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. The PEB’s chosen code 5003 (arthritis, degenerative) 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.” The PEB further clarified their decision and stated “rated on arthritis as two major joints have positive x-ray findings and to rate on decreased range of motion of the left ankle separately would be pyramiding.” The Board agreed there is adequate documentation of degenerative arthritis in the pre-separation data to merit application of a minimal compensable rating under this code of 10%, and a maximum of 20% if the evidence reflects occasional incapacitationing episodes. The Board agreed the PEBs 20% rating was likely an erroneous misapplication of this code as the evidence does not reflect incapacitations to allow 20% episodes and the evidence does reflect compensable ROM impairment of the right and left ankle. In accordance with VASRD code 5003 “degenerative arthritis established by X-ray findings will be rated on the basis of limitation of motion under the appropriate diagnostic codes for the specific joint or joints involved.” Therefore, the Board considered the VA choice of coding the left ankle to code 5271 (Ankle, limited motion of) and the right ankle analogous code 5010 (Arthritis, due to trauma) to code 5271. This code allows for a 10% rating for moderate limitation of motion and a maximum of 20% with marked limitation of motion.

The VA cited moderate limitation of motion and degenerative arthritis for both ankles and in addition cited continued instability following attempted surgical repair of the right ankle. The Board agreed the evidence reflects a moderate pain scale, moderate limitation of motion for both ankles and degenerative arthritis with regards to the MEB exam and does not approach the marked impairment for the maximal rating. There was no viable approach to a higher rating for the right or left ankle which was countenanced by the VASRD. After due deliberation in consideration of the totality of the evidence, the Board concluded that there is no VASRD basis for recommending a higher rating than the 20% conferred by the PEB in this case. In regards to the bilateral ankle condition combined under a single code 5003 rating by the PEB, the Board recommends individual ratings to maintain compliance with the DoDI 6040.44 requirement for strict adherence to the VASRD, as there was a VASRD code misapplication error by the PEB.

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 and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB 20% rating adjudication, however the Board recommends the right ankle be coded 5010-5271 and the left ankle be coded 5271 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:

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

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.

 XXXXXXXXXXXXXXXX

 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXXXXX, AR20120013626 (PD201200042)

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 description without modification of the combined rating or 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 XXXXXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA