RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD201200046 SEPARATION DATE: 20070330

BOARD DATE: 20120717

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (97E10/HUMINT Collector), medically separated for right ankle/foot condition and a low back condition. She did not respond adequately to operative treatment for her right ankle or conservative treatment for her low back and was unable to perform within her Military Occupational Specialty (MOS) or meet physical fitness standards. She was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Chronic right ankle and foot pain and lower back pain (LBP) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. One other condition, as identified in the rating chart below, was forwarded on the MEB submission as a medically acceptable condition. The PEB adjudicated the right ankle/foot condition to be unfitting and rated 10% with application of the US Army Physical Disability Agency (USAPDA) pain policy, and the low back condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). Additionally, the major depressive disorder (MDD) condition was determined to meet retention standards; it was found not unfitting and therefore not ratable. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “I feel my rating was unfair based on 2 surgeries on right ankle and frequent complaints of back and neck pain. I later discovered I had a herniated C7-C6 and one was bulging. I am still taking meds & I was denied any compensation for the injuries to my ankle, neck & back while deployed. I was on crutches in Baghdad twice between Sept 2004 and December 2004. I hurt my back and neck & ankle while reacting to incoming mortars. PTSD was written off as a Personality Disorder after a 45 minute session w/ Dr F---- (really unfair) w/out taking any consideration for the fact that I watched flames from a couple hundred yards away on 21 Sept 2004 when a suicide bomber tried to drive through one of Abu Graib’s walls where I was coming out of a porta potty. I feel I deserved at least 30% for my injuries.”

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 mental health condition (adjudicated by the PEB as MDD and contended by the CI as posttraumatic stress disorder (PTSD)) and the unfitting right ankle/foot and low back conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. 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 20070313** | **VA (12 Mo. After Separation) – All Effective Date 20070331** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Rt Ankle/Foot Pain | 5099-5003 | 10% | Rt Ankle Tendon Tear | 5271 | 20% | 20080314 |
| Chronic Low Back Pain | 5299-5237 | 10% | Lumbar Thoracic Spine Strain | 5237 | 10% | 20080314 |
| Major Depressive Disorder | Meets Retention Standards | PTSD | 9411 | NSC | No Exam |
|  | Cervical Spine Strain | 5237 | 10% | 20080314 |
| ↓No Additional MEB/PEB Entries↓ | Tinnitus | 6260 | 10% | 20080304 |
| Rt Upper Extremity Ulnar Neuropathy | 8516 | 10% | 20080314 |
| Lt Upper Extremity Ulnar Neuropathy | 8516 | 10% | 20080314 |
| 0% x 2/Not Service-Connected x 8 | 20080314 |
| **Combined: 20%** | **Combined: 50%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of her right ankle condition and predictable consequences which merit consideration for a higher separation rating. 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 Department of Veterans’ Affairs (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.

Low Back Condition. The CI had an onset of LBP while deployed to Abu Ghraib due to heavy lifting and multiple falls since October 2004. She was seen by chiropractic, physical therapy and pain management, had normal lumbar spine radiographs and was diagnosed with lumbago. She was intermittently treated by these services with manipulations, deep tissue massage, and electrical analgesia leading up to separation. The commander’s statement documented the following limitations; the CI could not run, march, ruck-march, jump, move with a fighting load or construct an individual fighting position, and was limited to lifting a maximum of 15 pounds.

There were three 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 - Thoracolumbar | PT for MEB ~ 4 Mo. Pre-Sep | PT ~ 1 Mo. Pre-Sep | VA C&P ~ 12 Mo. After-Sep |
| Flex (0-90) | 90⁰ | 75⁰ | 90⁰ |
| Ext (0-30) | 20⁰ | 10⁰ | 30⁰ |
| R Lat Flex (0-30) | 30⁰ | 20⁰ | 30⁰ |
| L Lat Flex 0-30) | 20⁰ | 20⁰ | 20⁰ |
| R Rotation (0-30) | 30⁰ | 30⁰ | 30⁰ |
| L Rotation (0-30) | 30⁰ | 30⁰ | 30⁰ |
| COMBINED (240) | 220⁰ | 185⁰ | 230⁰ |
| §4.71a Rating | 10% | 10% | 10% |

At the MEB exam, the CI reported extra weight gain since the onset of her ankle pain which in turn resulted in chronic LBP. The MEB physical demonstrated lumbar paraspinal tenderness and the ROMs completed by physical therapy for the MEB are reflected above. The physical therapy note a month prior to separation documented an antalgic gait due to ankle pain and 2/8 positive Waddell signs. The service treatment record (STR) reflected a pain scale of 4/10 with 10 being the worst. At the VA Compensation and Pension (C&P) exam performed 12 months after separation, the CI reported she had LBP due to physical training, two falls while reacting to incoming fire and two falls while in a shower stall while deployed. The pain was reported as daily and constant with intermittent muscle spasms and radiation to right hip and knee without incapacitation. She was able to stand for 10 minutes and could walk less than a mile before experiencing pain. The C&P physical exam demonstrated paraspinal tenderness, normal curvature of the spine, normal neuromuscular findings, and DeLuca criteria were negative. X-Rays were normal. The CI was able to stand on toes and heels. The examiner diagnosed lumbar thoracic spine strain with no degenerative changes.

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, compliant with VASRD §4.46 (accurate measurement), and similar in terms of ratable data and therefore assigns them equal probative value. The PEB and VA chose the same coding option for the condition which was appropriate to the diagnosis and consistent with §4.71a of the general formula for rating the spine. The PEB assigned a rating of 10% for pain limited motion in all planes and the VA assigned a rating of 10% for a forward and combined limitation of motion. There was no evidence or documentation of incapacitating episodes or ratable peripheral nerve impairment which would provide for additional or higher rating. 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 low back condition.

Right Ankle/Foot Condition. The CI sought care for right heel pain while in basic training and was diagnosed with a stress reaction to her calcaneus (heel) which was rehabilitated to full recovery from May 2003 to April 2004. She then had an inversion injury in November 2004, was evaluated by Orthopedics, and after a normal bone scan and based on MRI findings, the CI was diagnosed with chronic lateral instability of the right ankle with lateral ligament laxity and tendinitis. The orthopedic examiner recommended exercises, a limited profile with walking at her own pace/distance, and if the instability continued to consider a ligament reconstruction. The MRI, in evidence, revealed an anterior talofibular disruption as well as a possible peroneus brevis tendon disruption/split. She had deployed to Iraq from July 2004 to January 2005 and had one STR entry for care of a right ankle injury in December 2004. She was seen by podiatry 6 months after return for persistent right ankle pain and a repeat MRI revealed a tibialis posterior tendinopathy for which she opted for definitive care with surgery in October 2005. Post-operatively she had a recurrent ankle sprain in April 2006, hardware removal in May 2006 and continued to have persistent pain and ankle instability which led to her MEB. The CI’s limitations were noted above.

There were three goniometric 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.

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| --- | --- | --- | --- |
| ROM –Rt Ankle | MEB ~ 4 Mo. Pre-Sep | PT ~ 1 Mo. Pre-Sep | VA C&P ~ 12 Mo. After-Sep |
| Right Dorsiflexion (0-20) | 14⁰ | 15/15/14⁰ | 20⁰ |
| Right Plantar Flexion (0-45) | 39⁰ | 39/37/38⁰ | 25⁰ |
| Comment | Painful movement | Antalgic gait | Antalgic gait |
| §4.71a Rating | 10% | 10% | 20% |

At the MEB exam, the CI reported ankle pain with standing, going down stairs and sitting and was unable to run, participate in sports, or walk in the yard or beach around her home due to instability of the ankle. Multiple pain medications had been tried with nominal success and orthotics did not provide relief. The MEB physical exam demonstrated medial and lateral scars at the foot with tenderness to palpation. There was no documentation of gait or ligament exam. The physical therapy note, a month prior to separation, documented an antalgic gait but no ligament testing. The most proximal radiograph in evidence was a stress view of the right ankle which revealed questionable widening of the lateral ankle mortise “which may represent instability,” and a calcific density adjacent to the lateral talus “which could represent prior injury versus possible subacute minimal avulsion injury.” At the VA C&P exam performed 12 months after separation, the CI reported no further ankle injuries since separation and that she walked for exercise without use of an assistive device; she also reported daily constant pain, 4/10 and instability of the right ankle with increased laxity but no flares. Pain was relieved with medications, hot water therapy, and topical analgesics. The C&P physical exam demonstrated increased laxity, 5/5 motor strength and negative DeLuca criteria. Ligament testing was not documented and X-rays showed no significant abnormality.

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, and compliant with VASRD §4.46 (accurate measurement). However, there is a disparity between ROMs on these exams with implication on ratings for the Board to consider. The Board thus carefully reviewed the STR and noted the PT exam completed prior to the PEB decision. This exam was completed after all of the CI’s known injuries and surgeries, was compliant with VASRD §4.46, well documented, complete and most proximate to separation. The Board therefore assigns the PT exam the most probative value. The PEB and VA chose different coding options for the condition with implications on the ratings for the Board to consider. The PEB’s 10% rating under code 5003 (degenerative arthritis) cited slight/frequent pain-limited motion without instability. There was no evidence of incapacitating episodes to support a higher rating under the 5003 code. The VA 20% rating, the highest allowable rating under code 5271 (Ankle, limited motion of), cited marked limited motion and an antalgic gait. The Board concluded the evidence reflects moderate pain and pain limited motion as the functionally disabling residuals of the ankle. The Board considered whether the CI’s antalgic gait supported the maximum rating under the 5271 code chosen by the VA but agreed the residual pain and limitation of motion functionally contributed to the antalgic gait. Absent these residuals the CI’s gait would likely have been normal. Finally, the Board agreed the evidence did not reflect ongoing post-operative instability noting the absence of injury after separation. There was no viable approach for additional or higher rating for the right ankle which was countenanced by the VASRD. 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 right ankle condition.

Contended PEB Conditions. The condition adjudicated as not unfitting by the PEB was MDD which the CI contended as PTSD. The Board’s first charge with respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering 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. A mental health addendum prepared for the PEB documented treatment and resolution of depressive symptoms and further noted the CI had reported no significant symptoms of PTSD throughout over a year of treatment. The examiner diagnosed MDD, recurrent, in full remission and assigned a GAF of 70; PTSD was not diagnosed. The MDD condition was not profiled, not implicated in the commander’s statement, and not judged to fail retention standards. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. Furthermore, the VA rating decision did not service-connect a PTSD condition and made no reference to another mental health diagnosis. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the MDD condition and therefore recommends no additional disability 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right ankle condition was operant in this case and this condition was adjudicated independently of that policy by the Board. In the matter of the low back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right ankle condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the MDD condition, contended as PTSD, the Board unanimously recommends no change from the PEB determination as not unfitting. 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 Rt Ankle/Foot Pain | 5099-5003 | 10% |
| Chronic Low Back Pain | 5299-5237 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120110, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXX, AR20120013395 (PD201200046)

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