RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200119 SEPARATION DATE: 20040922

BOARD DATE: 20121017

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-3 (92F10/Petroleum Supply Specialists), medically separated for bilateral shin splints. She did not respond adequately to treatment and was unable to perform within her Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. She was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Chronic shin splints were forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The IPEB adjudicated the bilateral shin splints as unfitting, rated 0%, with likely application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB), but withdrew her petition and was medically separated with a 0% disability rate.

CI CONTENTION: “Front line support 1 PTSD – incurred in combat 2003 Iraq 2 bilateral 2nd degree shin splints chronic 3 Left hip tendonitis 4 Right knee patella [sic] condition 5 Bilateral hands and feet dermatitis 6 TBI from tanker fall during attack in Iraq. (continued) All of these disabilities impact my life personally and professionally, and limit my abilities. I did not have them prior to service or to my deployment. I have been (ever since my Army separation undergoing treatment with VA for my disabilities. [sic] Law states any soldier involved in front-line combat separating and is diagnosed and separate from military w/PTSD should rev [sic] no less than 50% on a disability rating. The Army separated me w/0% and I have an ongoing appeal w/VA for increase since I’m at a 30% (continue) disability rating and my PTSD and TBI impairments affect my life severely see FMLA doc. QID docs. Additionally I took pictures of my hands and feet because my dermatitis flairs up during periods of stress and it is very painful when I submitted them to VA they would not accept them and my skin issues w/dermatitis began while I was in country in Iraq. My injuries were incurred in line of duty, some in combat and some while performing my military job.”

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 unfitting bilateral shin splint condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The other requested conditions (PTSD, left hip tendonitis, dermatitis hands and feet, right knee patella and TBI) 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 20040505** | **VA (1 Mos. Pre-Separation) – All Effective Date 20040923** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Shin Splints w/Chronic Pain | 5022 | 0% | Bilateral Shin Splints | 5099-5020\* | 0%\* | 20040802 |
| 20040802 |
| No Additional MEB/PEB Entries | Left Hip Tendonitis | 5024 | 10% | 20040802 |
| PTSD | 9411 | 10% | 20040802 |
| Left Knee RPPS | 5260-5014 | 10% | 20050318 |
| Right Knee RPPS | 5260-5014 | 10% | 20050318 |
| Not Service-Connected x 1 |  |
| **Combined: 0%** | **Combined: 40%\*** |

\*Subsequent VARD changed diagnostic code 5099-5020 to 5262-5313 and reduced bilateral rating from 10% to individual 0%; for both right and left legs for a combined of 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. While the Disability Evaluation System (DES) considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. However, the Department of Veterans’ Affairs (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.

Bilateral Shin Splints Condition. Over the 2 years of her military service the CI underwent evaluations and treatment for left and right lower extremity pain. Her first bone scan revealed a grade II right tibial stress fracture, left tibial shin splints, stress related changes of the left foot and normal hips. She was seen by orthopedics and diagnosed with right tibial stress fracture and left shin splints which were managed with activity modification, soft shoes and physical therapy. She deployed to Iraq while on profile and sought treatment for worsening pain and after 7 ½ months of deployment was sent back to the States. Upon her return she continued conservative treatment and was referred to a MEB. All subsequent bone scans, total of 4, revealed findings consistent with bilateral shin splints. Her limitations included soft shoe wear, no running, jumping or marching, limited standing to less than 10 minute interval, no lifting, pushing or pulling greater than 10 pounds, no wearing of a ruck, flak or load bearing equipment and no army physical fitness testing. The commander’s statement corroborated the limitations and additionally documented the CI was not working in her MOS.

The MEB physical exam demonstrated tenderness along anterior medial tibia proximally bilaterally and decrease motor strength of both lower extremities to 3/5 with no other neuromuscular findings. Bone scan performed on 10 February 2004 revealed no abnormal uptake in tibia or the fibula, stress fractures or shin splints. The examiner diagnosised chronic shin splints causing moderate intermittent pain. At the VA Compensation and Pension (C&P) exam approximately a month prior to separation, the CI reported no new additional history. The C&P exam demonstrated an abnormal gait, limping on left side, unable to walk on toes or heels and tenderness of the right greater than her left shin and bilateral knee flexion of 130 degrees (normal 140). X-ray’s of the tibia and fibula were normal.

The Board directs its attention to its rating recommendations for bilateral shin splint condition and debated several options for coding and rating. The PEB and VA chose different coding options for the condition, but this did not bear on rating and both were IAW §4.71a—Schedule of Ratings–Musculoskeletal System. The PEB chose to bundle the right and left lower extremity and assign a rating of 0% with the 5022 code (periostitis) which defaults to the 5003 code (arthritis, degenerative) based on residual pain with no limitation of motion. The VA’s original rating decision also chose to bundle however assigned a 10% rating with an analogous code to 5020 (synovitis) which also defaults to the 5003 code and based this on pain limited motion of a major joint or group of minor joints. The Board notes the MEB exam was silent for gait findings, but documented a motor deficit of 3/5 for both lower extremities which the AO opines likely is an overestimated assessment, yet does give clinical indication there is pain interfering with her ability to perform motor testing. The VA documented an abnormal gait with limping, inability to toe or heel walk and non compensable limitation of motion of the knees. The Board agreed these findings additionally corroborate the residual functional pain impairment documented in the MEB exam. Therefore, the Board deliberated three rating recommendations, which are all compliant with VASRD §4.71a: 1) A bilateral rating of 10%, coded 5022 (periostitis); 2) Separate 10% ratings, coded with preferred analogous VASRD code 5262-5022 (tibia and fibula, impairment of) for the rating of shin splints conceding §4.40 (“a part which becomes painful on use must be regarded as seriously disabled”); and 3) Separate non-compensable ratings under 5022 without the fairly tenuous application of §4.40. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that the first option (a bilateral 5022 rating of 10%) best captured the disability picture at the time of separation. Neither the PEB nor the VA had evidence which suggested functional loss due to pain or flare-ups, 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 recommends a disability rating of 10% for the bilateral shin splints 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. 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 bilateral shin splints condition, the Board unanimously recommends a disability rating of 10%, coded 5022 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 her prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bilateral Shin Splints | 5003-5022 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120202, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXX, AR20120019884 (PD201200119)

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 rating to 10% without 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 XXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA