RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1200223 SEPARATION DATE: 20020827

BOARD DATE: 20120809

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (13P, Automated Tactical Data Systems Specialist), medically separated for a left leg pain condition*.* He did not respond adequately to conservative treatment and was unable to perform within his Military Occupational Specialty (MOS). He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Chronic left leg pain with recurrent stress fractures was 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 left leg pain condition as unfitting, rated 10% with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “The doctor that rated me was late for lunch and did the rating in 5 minutes. I have struggled with life ever since my mobility became an issue.” 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:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20020716** | | | **VA (7 Mo. After Separation) – All Effective Date 20020828** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Pain, Left Leg, with Recurrent Stress Fractures | 5099-5003 | 10% | History of Recurrent Multiple Stress Fractures in the Left Lower Limb and Degenerative Joint Disease at the First Metatarsophlangeal Joint and Talonavicular Joint | 5010 | 10% | 20030402 |
| **Combined: 10%** | | | **Combined: 10%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that the doctor “did the rating in 5 minutes.” It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted service-improprieties in the disposition of a case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board also acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (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.

Left Leg Pain Condition. The CI sought care for left lower leg pain, worsened with physical training which began in AIT. He was treated with rest, non-steroidal medications and physical therapy but continued to have pain. An bone scan revealed left tibial shin splints and 3 months later a repeat scan revealed worsening of his condition with a stress fracture mid shaft left tibia, a possible early stress fracture distal right tibia, and a stress fracture left first distal metatarsal. He was referred to Orthopedics and found to be a nonsurgical candidate and given the recommendation of a P3 profile after having 9 months of temporary profiles. The profile limitations included; no running, jumping, marching, rucksack, prolonged standing greater than 30 minutes, Army physical fitness testing, nor lifting greater 35lbs. His commander’s statement corroborated his limitations in addition documented he was able complete all of his duties within his MOS but his lifting restrictions prevented him from setting up and tearing down of the battery operations center.

At the MEB exam, performed 2 months prior to separation, the CI reported he was unable to carry antenna and equipment bags, had great difficulty climbing up and down on the track vehicles, running and playing with his children, walking to shop with his wife, moving furniture, carrying groceries, doing yard work and no longer was able to enjoy his hobbies of riding bicycles, roller blading and dancing. The MEB physical exam demonstrated a slight antalgic gait, tenderness to palpation along the medial aspect of the left tibia, and otherwise normal neuromuscular findings, pulses, range-of-motion (ROM) and no edema of the lower extremities, and no effusions of the knees. X-rays of the left leg were negative and the examiner referenced the most proximal bone scan above. At the VA Compensation and Pension (C&P) exam, performed 8 months after separation, the CI reported no new historical facts from the MEB exam. The C&P physical exam demonstrated a left sided limp, mild atrophy of the left calf muscle, no tenderness and otherwise normal heel-toe gait, tandem walk, tiptoeing, range of motion of the knee and ankle joints without any pain and normal bilateral limb length and alignment. X-rays of the left leg and foot revealed no residual evidence of any previous stress fracture.

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 similar in terms of ratable data; and, therefore assigns them equal probative value. The PEB and VA chose different coding options for the condition, but this did not bear on rating and both were IAW VASRD §4.71a—schedule of ratings–musculoskeletal system. Both examinations were adjudged with consideration of IAW VASRD §4.40 criteria for the left leg. The PEB chose to rate 10% coded analogous to the 5003 code (arthritis, degenerative) based on slight, frequent chronic pain with recurrent stress fractures with the pain policy and this is consistent with VASRD §4.71a. The VA chose to rate 10% coded 5010 (arthritis, due to trauma, substantiated by X-ray findings) which defaults to 5003 and applied this once for no limited or painful motion and this is also consistent with VASRD §4.71a. The Board considered the 5022 code (periostitis) which more accurately portrays the underlying clinical pathology; however, this would meet a 0% rating under the 5262 (tibia and fibula, impairment of) code and or a 10% under the 5003 code and would not allow for anything higher. There was no viable approach to additional or a higher rating for the left leg 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 left lower leg pain 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. As discussed above, PEB reliance on the USAPDA pain policy for rating left leg pain condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left leg pain 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 Pain, Left Leg, with Recurrent Stress Fractures | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120228, 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120015227 (PD201200223)

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 XXXXXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA