RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200295 SEPARATION DATE: 20080520

BOARD DATE: 20121024

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (11B, Infantry) medically separated for a right great toe condition. He fractured the toe in 2006 and underwent a surgical arthrodesis (fusion) in 2007 for persistent pain. He did not improve adequately to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The right great toe condition was forwarded to the Physical Evaluation Board (PEB) as two diagnoses (“joint pain, localized right 1st MTP [metatarsal-phalangeal] joint” and “hallux limitus of the right great toe”) characterized as separate medically unacceptable conditions IAW AR 40-501. Three additional conditions (metatarsalgia, right knee joint pain, “occupational problem”) were forwarded by the MEB and judged to meet retention standards. The PEB appropriately combined the MTP joint pain and hallux limitus diagnoses as a single unfitting condition, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The application states (redacted for brevity, with preservation of content relevant to the Board’s scope and recommendations.): “My great right toe was originally fractured & my right knee was badly bruised on the bone during an airborne operation (2006). ... [Details clinical course and his attempt to reclassify into a different MOS.] ... The physician who conducted my toe fusion explained that I would 95 percent recover within three months after surgery and that I would be able to do everything that I had been able to do prior to the accident ... After the surgery I received a new doctor who told me that I never should have received the surgery and that the doctor no longer worked in [name of military facility]. The new doctor explained that I should not run, stand for more than 10 minutes at a time, or perform any other strenuous activities ... the VA contracted physician who examined me did not take the time to properly review or examine my military records during my physical. I've been separated from the military for four years and continue to have chronic pain radiating through those aforementioned areas ... I cannot accept a myriad of jobs due to the fact that I am not able to stand for prolonged periods of time, and I'm not even entitled to any benefits (MWR, PX, Commissary, etc) from the organization that I devoted my life to.” He further elaborates that the disability from his toe condition and associated knee pain are often underestimated, emphasizing the true limitations which he experiences.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (DoDI) 6040.44 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 rating for the unfitting right great toe condition is addressed below. The specified right knee pain, which was determined to be not unfitting by the PEB, is likewise addressed below. The other two conditions identified and adjudicated not unfitting by the PEB were not alluded to in the application and therefore do not satisfy scope requirements; although, metatarsalgia is not separately ratable IAW VASRD §4.14 (avoidance of pyramiding) and “occupational problem” does not constitute a ratable condition. 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 (ABCMR).

IAW DoDI 6040.44, the Board’s authority is limited to making recommendations on correcting disability determinations. The Board’s role is thus 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 ratable severity at the time of separation; and, to review those fitness determinations within its scope (as elaborated above) based on MOS performance limitations in evidence at separation. The Board acknowledges the CI’s information regarding the significant impairment with which his service-connected condition continues to burden him; but, must emphasize that the Disability Evaluation System has neither the role nor the authority to compensate 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, operating under a different set of laws. The Board likewise acknowledges the CI’s contention for rating of his right knee condition which was determined to be not unfitting by the PEB; and, emphasizes that disability compensation may only be offered for those conditions that cut short the member’s career. Should the Board judge that the contested condition was most likely incompatible with MOS requirements; a disability rating IAW the VASRD, and based on the severity at separation, will be recommended.

The Board further acknowledges the CI’s opinion that faulty medical care in the Army contributed to his disability and that he was denied the opportunity to reclassify to a different MOS. It is noted for the record that the Board has no jurisdiction to investigate or render opinions in reference to allegations of medical error, nor the jurisdiction to offer remedy in reference to administrative decisions. Redress in excess of the Board’s scope of authority must be addressed by the ABCMR.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20080321** | **VA (10 Wks. Post-Separation) – Effective 20080521** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Hallux Rigidus s/p Arthrodesis, R Great Toe | 5003-5281 | 10% | Osteoarthritis Hallux ... R Foot | 5278-5284 | 20% | 20080807 |
| Scars, R Great Toe | 7805 | 0% | 20080807 |
| Metatarsalgia | Not Unfitting | No VA Entry | 20080807 |
| Joint Pain, Right Knee | Not Unfitting | Right Knee Pain | 5260 | NSC | 20080807 |
| Occupational Problems | Not Unfitting | No VA Entry | 20080807 |
| No Additional MEB/PEB Entries | Not Service-Connected (NSC) x 1 Additional | 20080807 |
| **Combined: 10%** | **Combined: 20%** |

ANALYSIS SUMMARY:

Right Great Toe Condition. The initial injury in May 2006 resulted from a parachute landing and was diagnosed by X-rays as an avulsion fracture at the base of the proximal phalanx. Pain persisted through conservative management, and follow-up X-rays demonstrated osteophyte formation and some flattening of the metatarsal head. The pain remained unresolved with a further podiatric management including custom orthotics and steroid injections. In May 2007 surgical arthrodesis was performed which was complicated by wound dehiscence and infection, requiring further surgical measures. Post-operative X-rays demonstrated solid union of the MTP joint and intact hardware with disuse osteoporosis of the metatarsal heads. Persistent pain restricted the CI from required infantry duties; and, in November 2007 he underwent an MOS Medical Review Board (MMRB), which recommended the MEB. The narrative summary (NARSUM) rated the pain as “4/10 on most days”; stating that he was “unable to run at all, or engage in any impact type activities.” The physical exam noted “mild valgus rotation” at the MTP joint with the right great toe not touching the ground with standing; stating that he “demonstrated incoordination, instability with right foot as he attempts to keep weight off of his great toe.” The VA Compensation and Pension (C&P) exam performed 10 weeks after separation noted pain localized to the MTP joint starting “after no more than 10 minutes of walking or standing;” stating further that, “His overall gait has changed as a result and he tends to roll onto the outside of his foot during the painful phases.” The VA physical exam noted a tender surgical scar over the MTP with no comment on deformity, and commented that “he took normal size steps and did not appear to limp.” Ankle range-of-motion (ROM) was normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB applied code 5281 (hallux rigidus), which yields a maximum rating of 10% and is a good clinical fit with the pathology. The VA applied the hyphenated code 5278 (claw foot) rated as 5284 (foot injuries, other). The latter rates ‘moderately severe’ disability at 20% and even the 10% rating under 5278 requires “some limitation of dorsiflexion” at the ankle which was not present. Although 5284 is generically applicable to the clinical pathology and ‘moderately severe’ is not an unreasonable characterization of the fairly significant disability described by both the MEB and VA examiners, the Board considered that the foot pathology was confined specifically to the great toe (hallux) and contiguous joint (MTP). This localization brings into play VASRD §4.68 (amputation rule); and, amputation of the great toe (metatarsal head intact) is rated 10% under code 5171. Members agreed, therefore, that §4.68 does not offer the latitude in this case for a rating higher than 10%. 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 of the right great toe condition.

Contended Right Knee Condition. The knee was injured in the same accident as the toe fracture, and was associated with persistent joint pain. Various ancillary studies eventually yielded a diagnosis of bone contusion. There was no ligamental or meniscal injury by imaging. The NARSUM stated that “right knee pain is negligible on most days unless exacerbated by activity.” The post-separation C&P examiner stated, “The knee tends to swell since that incident [parachute injury], but otherwise patient has no problems or functional limitations in his everyday life.” Both the MEB and VA physical exam noted a stable joint with normal ROM. The VA did note service-connect the condition because of the absence of any diagnostic findings. The Board’s main charge with respect to this condition is an assessment of the fairness of the PEB’s determination that it was not unfitting. 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. The condition was never profiled and it was judged to meet retention standards by the MEB examiner. It was mentioned in the commander’s statement (which recommended MOS reclassification), but no limitations specific to the knee were elaborated. There was no performance based evidence from the record that the condition interfered with satisfactory duty performance to the extent that it would have independently prevented continuance of service in the MOS. 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 right knee condition; thus no additional disability rating can be recommended.

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 right great toe condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right knee condition, 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:

|  |  |  |
| --- | --- | --- |
| **CONDITION** | **VASRD CODE** | **RATING** |
| Hallux Rigidus Secondary to Arthrodesis Right Great Toe | 5003-5281 | 10% |
| Chronic Pain Secondary to Bone Contusion, Right Knee | Not Unfitting |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120307, 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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120020025 (PD201200295)

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 XXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA