RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1200393 SEPARATION DATE: 20080219

BOARD DATE: 20121024

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (42A, Human Resource NCO), medically separated for chronic right ankle pain following ankle strain. The CI injured his right ankle and required surgical repair in 2004. Rehabilitation was not successful and he underwent a second surgery and reconstruction in 2006. His right ankle (osteochondral lesion talus and ankle pain), condition could not be adequately rehabilitated 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). Back pain, obstructive sleep apnea and left shoulder pain conditions, identified in the rating chart below, were also identified and forwarded by the MEB as meeting retention standards. The Physical Evaluation Board (PEB) adjudicated the osteochondral lesion talus right, persistent and ankle pain conditions as unfitting and designated them as chronic right ankle pain following ankle strain, rated collectively as 0%, with likely application of AR 635-40, B-29 “no mechanical loss of motion”. The remaining conditions were determined to be not unfitting. A revised PEB changed the rating to 20% IAW the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application and the second page of the application is not present in the file.

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 (i.e., chronic right ankle pain following ankle strain); or, when requested by the CI, those conditions “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 Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service Admin PEB – Dated 20090220** | | | **VA (2 Mos. Pre-Separation) – All Effective Date 20080219** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Ankle Pain following Ankle Strain | 5099-5003-5271 | 20% | Right Ankle Osteochondral Lesion and Osteochondritis involving the Talus and Tear of the Talofibular and Calcaneal Ligament, Postoperative | 5299-5271 | 10%\* | 20071213 |
| Ankle Pain, Right, Chronic | Not Unfitting | | No VA Entry | | | 20071213 |
| Back Pain | Not Unfitting | | No VA Entry | | | 20071213 |
| Obstructive Sleep Apnea | Not Unfitting | | Obstructive Sleep Apnea | 6847 | 50% | 20071213 |
| Left Shoulder Pain | Not Unfitting | | Supraspinatus Tendinopathy without Tear, Left Shoulder | 5299-5203 | 10% | 20071213 |
| No Additional MEB/PEB Entries | | | 0% X 0 / Not Service-Connected x 0 | | | 20071213 |
| **Combined: 20%** | | | **Combined: 60%\*** | | | |

\*VARD 20110322 temporarily raised the award for the right ankle condition to 100% from 20110223 – 20110430 for the purpose of convalescing from an ankle surgery on 20110223. On 20110501, the rating returns to the original 10%.

ANALYSIS SUMMARY:

Chronic Right Ankle Pain following Ankle Strain Condition. This condition encompasses right ankle talus osteochondral lesion, and chronic ankle pain following surgical reconstruction. 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.

|  |  |  |  |
| --- | --- | --- | --- |
| Right Ankle ROM | MEB ~4 Mo. Pre-Sep | PT ~4 Mo. Pre-Sep | VA C&P ~2 Mo. Pre-Sep |
| Dorsiflexion (0-20⁰) | (0⁰) “to neutral” | 4⁰ | 0⁰-20⁰\* |
| Plantar Flexion (0-45⁰) | 30⁰ | 29⁰ | (20⁰ see text) 0⁰-45⁰\* |
| Comment:  Surgery October 2006 | Motor 5/5; “ROM and strength were somewhat limited by pain”; Stable to anterior & posterior drawer testing | All R Ankle ROM limited by pain except for AROM DF limited by mechanical end feel | \*with pain; no evidence of laxity; 5/5 motor; reflex and sensory normal; normal gait |
| §4.71a Rating | 20% | 20% | 10% |

At the MEB exam, the CI reported right ankle pain that never resolved on non-narcotic medications and was exacerbated by walking or weight bearing. The MEB physical exam noted limited ROMs without any joint laxity. Physical therapy exam documented mechanical limitation of dorsiflexion as summarized above. At the VA Compensation and Pension (C&P) exam prior to separation, the CI reported similar history and symptoms. Measured ROM was full with stiffness and pain. The examiner opined that the CI would have a functional loss equated to plantar flexion limited to 20⁰ on repetition and with flares. Subsequent VA records indicate repeat right ankle surgery in February 2011, 3 years remote from separation.

The Board directs attention to its rating recommendation based on the above evidence. The record showed significant improvement of the right ankle between the service exams and VA exam. Both the PEB and VA used the criteria from code 5271 (ankle; limited motion). The PEB coded 20% equated to “marked” and the VA 10% equated to “moderate”, specifying evidence of functional loss due to pain in their determination. The VA record documented a temporary increased rating remote from separation for another ankle surgery, but that was not indicative of the CI’s disability picture at the time of separation. There was no rating schema that would have provided greater than a 20% rating for the right ankle condition, and the Board cannot lower a service separation 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 chronic right ankle 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. In the matter of the chronic right ankle pain following ankle strain 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Right Ankle Pain following Ankle Strain | 5099-5003-5271 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120424, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120020031 (PD201200393)

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 XXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA