RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200409 SEPARATION DATE: 20091116

BOARD DATE: 20120927

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92A10, Automated Logistical Specialist), medically separated for tenosynovitis of the right ankle (flexor hallucis longis). The CI did not respond adequately to treatment and was unable to perform within her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent P2/L3 profile and referred for a Medical Evaluation Board (MEB). Following appeal, the MEB forwarded right lateral ankle instability and right peroneal tendinitis to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The MEB forwarded the irritable bowel syndrome (IBS), back pain due to thoracolumbar dextroscoliosis, right wrist pain, headaches, bilateral knee pain, cervical intraepithelial neoplasia – hpv positive, seasonal allergies, left ear conductive hearing loss and mild gastroparesis conditions as medically acceptable -“meets Army retentions standards.” The PEB adjudicated the right ankle tenosynovitis condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting and therefore not ratable. The CI made no other appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “They unfairly assessed my right ankle, said it was tendinitis. However, I recently went to the VA and had to have ligament reattachment surgery twice. Now I cannot work and have to go through physical therapy. My back and stomach were also assessed unfairly. I have much more back pain than I thought possible and after having my gallbladder taken out in the Army I can barely eat food without diarrhea or throwing up.”

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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 back and stomach (interpreted as IBS and mild gastroparesis) conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the Service ratings for the unfitting right ankle condition. The other requested condition of gallbladder removal is not within the Board’s purview, except as it relates to the PEB stated abdominal conditions of IBS and mild gastroparesis. 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 20091007** | | | **VA (5 Mos. Post-Separation) – All Effective Date 20091117** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Tenosynovitis, Right Ankle | 5024 | 10% | Chronic Strain Rt Ankle | 5271 | 10% | 20100301 |
| Irritable Bowel Syndrome | Not Unfitting | | Status Post Lap Cholecystectomy | 7318 | 10% | 20100301 |
| Back Pain, TL Dextroscoliosis | Not Unfitting | | Lumbar Strain w/ Mild Scoliosis … | 5242 | 10% | 20100301 |
| Rt Wrist Pain | Not Unfitting | | Chronic Strain Rt Wrist | 5215 | 0% | 20100301 |
| Headaches | Not Unfitting | | NO VA ENTRY | | | |
| Bilateral Knee Pain | Not Unfitting | | Lt/Rt Knee Condition | 5260 | NSC | 20100301 |
| Cervical Intraepithelial Neoplasia – HPV | Not Unfitting | | NO VA ENTRY | | | |
| Seasonal Allergies | Not Unfitting | | NO VA ENTRY | | | |
| Lt Ear Hearing Loss | Not Unfitting | | Bilateral Hearing Loss | 6100 | NSC | 20100202 |
| Mild Gastroparesis | Not Unfitting | | See 7318 above | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Temporomandibular joint dysfunction (TMJ) | 9905 | 0% | 20100301 |
| 0% X 2 / Not Service-Connected x 3 | | | 20100301 |
| **Combined: 10%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that her right ankle and back were unfairly assessed. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected improprieties in the processing of his 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.

Right Ankle, Tenosynovitis Condition. There were three ankle exams with two 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 | Podiatry ~5 Mo. Pre-Sep | MEB ~5 Mo. Pre-Sep | VA C&P ~5 Mo. Post-Sep |
| Dorsiflexion (0-20⁰) | No ROM’s | 20⁰ | 15⁰ |
| Plantar Flexion (0-45⁰) | 45⁰ | 40⁰ |
| Comment  \*MRI – ATFL tear, deltoid ligament tear with joint effusion  Right ankle weight bearing X-ray- normal | Muscle strength w/dorsiflexion-eversion 4/5; Tenderness to palpation (TTP) AFTL ankle/foot along peroneal tendon and anterior-medial tibiotalar joint line; AFO brace | Diffuse tenderness to strong palpation along lateral malleolus and central part of foot; can’t tiptoe walk/heel walk-pain; wears AFO brace | Pain with active motion and following repetitive motion; tenderness; mild laxity on inversion; guarding |
| §4.71a Rating | 10% | 10% | 10% |

\*magnetic resonance imaging (MRI) – anterior talofibular ligament (ATFL)

The CI sustained a right ankle sprain while playing soft ball in Korea in 2007. An X-ray done at the time was normal without any fractures. The CI was treated with physical therapy (PT) and given crutches. She sought further treatment for complaints of ongoing joint swelling and instability with multiple sprains. An MRI done in February 2009 revealed an ATFL tear. The CI was referred back to PT and saw an orthopedist who ordered an AFO (ankle-foot orthotic) for ankle support. The commander’s statement indicated that the CI could only perform limited duties and she could not carry a weapon nor carry more than 20 pounds. The MEB examination 5 months prior to separation indicated ongoing complaints of daily pain with instability and with flare-ups approximately two to three times a week which could last from an hour if the CI was able to lie down or the entire day if no rest was allowed. The examiner speculated that during a flare-up, there was an additional impairment of 50%. Precipitating factors were running, standing greater than 15 minutes, walking greater than one mile and squatting. Pain relief included rest, icing, compression, elevation, narcotic (Vicodin) and non-narcotic (Tylenol Arthritis) medications as well as continued use of the AFO.

The VA Compensation & Pension (C&P) examination performed 5 months after separation noted complaints of right ankle pain and stiffness. A repeat right ankle X-ray was normal. The examiner indicated some tenderness, guarding and mild laxity and opined that there was “remote right ankle sprain with chronic residual chronic strain, mild joint laxity and loss of motion”.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the right ankle condition as 5024 (tenosynovitis) rated 10% with application of §4.59 Painful motion, §4.10 (functional impairment) and §4.40 (functional loss). The VA coded as 5271 (ankle, moderate limited motion), rated at 10%. There is ample documentation of the right ankle pain in the service treatment record. All exams in evidence support a 10% rating for the ankle condition. 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 tenosynovitis condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were back pain due to thoracolumbar dextroscoliosis, irritable bowel syndrome and mild gastroparesis. The Board’s first charge with respect to these conditions 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.

Back Condition: The PEB found the back condition to be not unfitting citing for the back and other non-contended MEB conditions: “… not listed on the physical profile as limiting any of the soldier's functional activities, the commander does not consider conditions to hinder soldier's performance and the case file contains no evidence that these diagnoses independently, or combined, render the soldier unfit for assigned duties.”

The CI had complaints of low back pain with a poor response to non-steroidal anti-inflammatory medications, tenderness on palpation and an abnormal spine curvature. She attended back classes to assist with her back pain management. The MEB examination indicated increased tone of the paravertebral muscles; tenderness to strong palpation C2-S1; heel walking/toe walking and requiring the stopping of the test midway due to pain. All narrative summary (NARSUM) limitations were referable to running, twisting or carrying. The profile for the ankle condition could have provided shelter for the limitations caused by the back condition, and the commander’s statement did not list any specific medical conditions, but noted the profile restrictions of running, twisting or carrying. The VA C&P examination noted ongoing complaints of low back pain, mild scoliosis pain on ROM testing with loss of 5 degrees out of 240 degrees ROM and repetitive motion along with mild scoliosis on examination.

The Board considered if there were sufficient evidence to decouple the duty-limiting lower extremity limitations from those similar and overlapping duty restrictions reasonably attributable to the CI’s back condition. 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 back condition; and, therefore, no additional disability rating can be recommended.

Stomach conditions (IBS and Mild Gastroparesis). Abdominal pain was profiled as P2. The PEB stated: “conditions listed as medical board diagnoses #2, 10 (IBS and mild gastroparesis), were determined to meet retention standards by the MTF (military treatment facility). Further consideration by the PEB found the conditions to be not unfitting and therefore not ratable as all meet medical retention standards, are not commented upon by the commander as hindering the soldier's performance, and the case file contains no evidence that these diagnoses independently, or combined, render the soldier unfit for assigned duties.” The MEB response to the CI’s appeal considered the IBS and mild gastroparesis as a combined abdominal condition and noted an essentially normal GI (gastrointestinal) work up without significant duty limitations or re-evaluations despite increased subjective symptoms. Both conditions were reviewed by the action officer and considered by the Board. All NARSUM limitations were referable to running/twisting. There was no indication from the record that any of these abdominal conditions significantly interfered with satisfactory duty performance. 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 any of the contended abdominal conditions; and, therefore, no additional disability ratings can be recommended.

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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 ankle tenosynovitis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended IBS, thoracolumbar dextroscoliosis and mild gastroparesis conditions, the Board unanimously recommends no change from the PEB determinations 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** |
| Right Ankle Tenosynovitis | 5024 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120503, 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 XXXXXXXXXXXXXXXXXXXXX, AR20120019888 (PD201200409)

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