RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200747 SEPARATION DATE: 20030131

BOARD DATE: 20121030

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Army SGT/E-5 (11B/Infantryman) medically separated for a right ankle condition. He injured the ankle in 2000, and ultimately required surgical intervention. The joint could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated the right ankle condition as unfitting, rated 20%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with that disability rating.

CI CONTENTION: The application states (redacted for brevity, with preservation of content relevant to the Board’s scope and recommendations): “Their [*sic*] is a bone sticking out of my Right Ankel [*sic*]. I was separated because the Doctor said he could not repair it. ... My right leg will buckle without warning. They [presumably referring to VA] cut my disability from 20 to 10%, but the bone did not decrease in size nor the pain. These problems are preventing me from doing a lot of things because I can’t wear boots.” The application does not specify a request for Board consideration of any additional conditions. Scanned photographs of the ankle deformity were forwarded with the application and reviewed by the Board members.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in 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 rating for the unfitting ankle condition is addressed below; and, no additional conditions are within the DoDI 6040.44 defined purview of the Board. 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.

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 (DES) 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 (DVA), operating under a different set of laws. Post-separation evidence is probative to the Board’s recommendation only to the extent that it reasonably reflects the disability at the time of separation. The Board further notes the CI’s grievance with the DVA’s lowered rating; but, clarifies that it has no jurisdiction over the DVA.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20021010** | **VA – Effective 20030201\*** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Ankle Pain S/P Surgical Repair | 5271 | 20% | DJD, Right Ankle, Post Repair  | 5003 | 10% | STR\* |
| No Additional MEB/PEB Entries | 0% X 4 / Not Service Connected x 3 | STR |
| **Combined: 20%** | **Combined: 10%** |

\* STR = Service Treatment Record. CI failed to show for scheduled VA Compensation and Pension examinations.

ANALYSIS SUMMARY:

Right Ankle Condition. The CI suffered an inversion injury of the ankle in March 2000; and, X-rays revealed a remote healed fracture of the tibia and degenerative joint disease (DJD) of the ankle, but no acute changes. He suffered persistent pain and recurrent strains which were treated by temporary profiles and conservative measures. After symptoms failed to improve, a surgical Broström repair and debridement was performed in January 2002. The surgery affected improved stability, but the pain worsened. Post-operative X-rays revealed intact hardware, slight angulation of the remote fracture, preserved mortise, joint space narrowing, and osteophyte formation. The narrative summary (NARSUM) noted persistent pain; exacerbated by walking greater than 100 meters and standing over 30 minutes, with an inability to run or jump. The physical exam noted a “slight limp favoring the right side,” lateral and anterior tenderness, ligamental stability, and normal strength. Range-of-motion (ROM) measurements noted dorsiflexion of 0 degrees (normal 20 degrees) and plantar flexion of 36 degrees (normal 45 degrees). Outpatient ROM measurements were similar.

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s 20% rating under 5271 (limitation of motion) is for ‘marked’ limitation and the maximum allowable under the code. No VASRD §4.71a ankle joint code is available which yields a rating higher than 20% in the absence of ankylosis (frozen joint), which was clearly not present. The VA’s 10% rating under 5003 (degenerative arthritis) is accurate for that code, but the PEB’s coding is compliant with VASRD §4.7 (higher of two evaluations). 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 ankle 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 right ankle 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** |
| Surgical Residuals, Right Ankle | 5271 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120614, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

 XXXXXXXXXXXXXXXXX

 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, AR20120020023 (PD201200747)

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