RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200940 SEPARATION DATE: 20030119

BOARD DATE: 20121019

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty 1LT/O-2 (88A, Transportation Platoon Leader), medically separated for a right ankle condition. He was initially injured as a cadet at an ROTC event and the ankle condition was further aggravated a year later while changing track on an M-1 tank. Despite physical therapy the CI could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The ankle condition, characterized as “Chronic right ankle pain…,” 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 “Chronic right ankle pain…” as unfitting and rated 10% citing the US Army Physical Disability Agency (USAPDA) Pain Policy. The CI made no appeals and was medically separated with that 10% disability rating.

CI CONTENTION: The application states “1) PTSD was not rated 2) Constant dry eye not described or examined properly 3) right wrist rated @0% not examined or rated properly & continues to worsen.” *[sic].*

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 requested conditions of PTSD, dry eye, and right wrist pain were not identified by the PEB and thus are not within the 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 Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20021023** | **VA (~3 Mo. Post-Separation) – Effective 20030120** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic right ankle pain | 5099-5003 | 10% | Right ankle pain | 5271 | 10% | 20030417 |
| No Additional MEB/PEB Entries | Gastroesophageal reflux disease | 7399-7346 | 10% | 20030417 |
| 0% X 1 / Not Service Connected x 3 | 20030417 |
| **Combined: 10%** | **Combined: 20%** |

ANALYSIS SUMMARY:

Chronic right ankle pain condition. The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Right Ankle ROM (measurements in degrees) | PT ~18 Mo Pre-Sep | MEB ~5 Mo. Pre-Sep | VA C&P ~3 Mo. Post-Sep |
| Dorsiflexion (0-20) | 0 | Lacks 5 | 15 |
| Plantar Flexion (0-45) | 45 | 50 | 35 |
| Inversion | 30 | 15 | 20 |
| Eversion | 15 | 10 | 10 |
| Comment:  | Gait normal; diffuse tender;  | Pain with dorsiflexion | Gait normal; tender anterior ankle; tender well healed scar; can stand on toes and heels |
| §4.71a Rating | 20% | 10% | 10% |

The narrative summary (NARSUM) indicated the initial right ankle fracture in May 2000 required surgery of open reduction and internal fixation (ORIF). Subsequent re-injury the following year did not require additional surgery. Radiographs showed retained endplate and multiple screws in the distal fibula and medial malleolus. Post-surgical arthrogram was negative. Exam demonstrated painful and limited ankle ROM as charted above.

VA Compensation and Pension (C&P) exam (3 months post-separation) indicated tenderness and limited ROMs as summarized above. Radiographs indicated retained hardware and no significant osseous abnormality.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the ankle analogously to 5003 (Arthritis, degenerative [hypertrophic or osteoarthritis]) with application of the USAPDA pain policy and the VA rated the ankle at 10% coded 5271 (Ankle, limited motion) at 10% (moderate). The exam specified pain-limited motion which would warrant a 10% rating IAW VASRD §4.59 (painful motion). All exams in evidence justified a 10% rating IAW VASRD criteria and neither coding choice was considered predominate.

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 PEB’s 10% permanent 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right ankle condition was operant in this case and it was adjudicated independently of that policy by the Board. 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** |
| Chronic right ankle pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120605, 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, AR20120019882 (PD201200940)

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