RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900055 BOARD DATE: 20100218

SEPARATION DATE: 20070321

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was an active duty NCO (truck driver) medically separated from the Army in 2007 after 8 years of service. The medical basis for the separation was a bilateral foot condition. He developed bilateral heel pain in 1999 associated with his military duties. This was treated conservatively, including steroid injections and orthotic supports, and resulted in a permanent L2 profile. The condition worsened and in 2006 he underwent podiatric surgical procedures on each foot for resection of exostoses (heel spurs). Despite the surgeries, his pain (variably diagnosed as plantar fasciitis and Achilles tendonitis) progressed to the point where he could not tolerate military footwear or work for more than a few hours a day. He was placed on a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Bilateral heel pain was forwarded to the Physical Evaluation Board (PEB) on the DA Form 3947 as medically unacceptable IAW AR-40-501. Hyperlipidemia was included as a medically acceptable condition on the DA Form 3947 and adjudicated as not unfitting by the PEB. Additional conditions supported in the Disability Evaluation System (DES) packet are discussed below, but were not forwarded for PEB adjudication. Bilateral foot pain was adjudicated by the PEB as a single unfitting condition and the CI was medically separated with a disability rating of 0%.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: The CI states that ‘0% was a slap in the face’ and ‘the medical problem that deemed me unfit for duty was deemed 60% by the VA’.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB** | **VA (~1 Mo. after Separation) – All Effective 20070322** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Foot Pain… | 5099-5003 | 0% | 20070126 | R heel spur… | 5299-5284 | 10% | 20070508 |
| L heel spur… | 5299-5284 | 10% | 20070508 |
| R Foot Neuropathy | 8523-8524 | 20% | 20070508 |
| L Foot Neuropathy | 8523-8524 | 20% | 20070508 |
| Hyperlidemia | Not Unfitting | 20070126 | Not coded or rated. | 20070508 |
| No Additional DA 3947 Entries. | Non-PEB X 6 / NSC X 4 (Includes OSA 50%) | 20070508 |
| ***TOTAL Combined: 0%*** | ***TOTAL Combined (Includes Non-PEB Conditions): 90%***  |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY:

Bilateral Foot Condition. The Board’s initial consideration is regarding the PEB’s coding for the condition. The DA Form 199 states that the coding was analogous to degenerative arthritis and appears to be under the Veterans Administration Schedule for Rating Disabilities (VASRD) rather than IAW AR 635-40 (B.24 f.). Given that small osteophytes were demonstrated on x-ray for each foot, this is not in direct conflict with §4.71a. A 0% rating under 5003 cannot be justified, however, without application of the US Army Physical Disability Agency (USAPDA) pain policy. Although a 10% rating under the combined 5003 code could be supported IAW §4.71a, this would still run afoul of §4.7 (higher of 2 evaluations). There was ratable pathology in each of the feet. Decreased range-of-motion (ROM) and painful motion were both explicitly documented in the narrative summary (NARSUM). Separate coding for each foot is therefore mandated by §4.7. In that regard, the analogous 5284 (foot injuries, other) code chosen by the VA is the best fit within VASRD options. This provides a 10% rating for moderate disability, which was the VA’s determination. Although the reported limitations of activities were fairly severe, physical findings by both the MEB and VA examiners would not support a higher 5284 rating. Both the anticipated disability from the condition and ensuing surgeries and the relatively minor x-ray findings suggest that moderate is a fair characterization of the disability. All evidence considered and IAW VASRD §4.3 (reasonable doubt), the Board recommends that the foot condition be separately coded as above and each rated 10% for moderate disability.

Foot Neuropathies. The addition of rated peripheral nerve codes for each foot by the VA accounted for much of the 60% disability cited by the CI in his contention. The clinical grounding for these ratings, however, is not tenable. The codes were based on the subjective complaint of numbness and tingling of the bottom of the feet, although the VA examiner (and entries in the service record) documented normal sensation. The peripheral nerve codes applied by the VA, even if they were clinically applicable, are inaccurate. Sensation to the sole of the foot is supplied by the posterior tibial nerve (8525), not the tibial nerve as coded. This yields a 10%, not 20%, rating. In support of the peripheral nerve rating, the VA decision referenced the examiner’s notation of 3/5 strength for ankle flexion and extension. This finding was not duplicated in the MEB examination, elsewhere in the service record or by a subsequent VA examiner a month later. It is not congruent with the remainder of the neurologic exam and not explained by the known pathology. Flexion and extension at the ankle are served by separate major nerve roots unrelated to the foot. Diffuse tingling and numbness of the feet, which worsens with swelling and is not associated with sensory findings on exam, may be reasonably characterized as a neuropathy. It is not, however, consistent with the impairment subsumed under the VASRD §4.124a peripheral nerve ratings. It is more akin to diabetic and Raynaud’s neuropathies, which are not the recipients of peripheral nerve ratings. There is not reasonable doubt in the CI’s favor to support a Board recommendation of separately unfitting peripheral neuropathies under 8525 or other applicable VASRD code.

Bilateral Knee and Back Conditions. The CI suffered chronic, stable bilateral knee and lumbar conditions which were linked enough to fitness to merit focused attention by the Board. Although not forwarded for PEB adjudication or evaluated under AR 40-501, they were addressed in the NARSUM. This stated, ‘Occasionally, he has mentioned his knees and low back aching, and attending physicians have all thought that these conditions were probably related to his feet troubles.’ The VA examiner related the back condition to a strain injury in 2000 (service records document 1996), but also ascribed a relationship to the foot and knee problems. The examiner in turn related the knee problems with the foot and back conditions. These two conditions were a weighty component of the total VA disability rating, with 40% for the back and 20% for each knee. The Commander’ performance statement focused exclusively on the foot limitations, although there was a concurrent statement signed by an NCO in the chain of command which mentioned ‘feet, legs, back, knees, etc.’ The L3 physical profile was written only for the feet, although the restrictions naturally overlap those applicable to the knees and back. The CI had physical therapy for the back initially, but was under no active treatment for it during the MEB period. The knees were not the focus of directed therapy in the past or at separation. There is no convincing basis, therefore, for recommending either the back or knee conditions as independently and separately unfitting. The Board deliberated if there was a ‘guilt by association’ argument for recommending either condition as additionally unfitting, since there was such an interrelationship with the unfitting foot condition. The Board concluded that this link was too tenuous and that there was not enough reasonable doubt in the CI’s favor to justify a positive recommendation.

Other Conditions. The only relevant additional conditions documented in the DES packet were hyperlipidemia, tender surgical scars and migraine headaches. Hyperlipidemia was specifically entered on the DA Form 3947 and adjudicated as not unfitting by the PEB. It did not qualify as a coded condition by the VA. Hyperlipidemia rarely has fitness implications and this case is no exception. Tender surgical scars (noted in the NARSUM) are subject to coding and rating under the VASRD and are reasonable for Board consideration if they prohibit required gear or restrict critical function. Although the CI was unable to tolerate regulation footwear, there is nowhere an indication that his surgical scars were the culprit. The scars were not coded by the VA since the examiner, although noting them, did not describe tenderness. There is not enough link to fitness to support a Board recommendation for additional rating under a VASRD scar code. Migraine headache was covered in the MEB physical and coded by the VA. It was not associated with any incapacitating episodes per the VA examiner and received a noncompensable rating. It is not noted in the physical profile or Commander’s statement. There are no grounds for a positive Board recommendation regarding the headache condition. Sleep apnea and some minor additional conditions were rated by the VA within a year of separation, but the Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. These are any other contended conditions, except for those discussed above; remain eligible for Army Board for Correction of Military Records (ABCMR) consideration.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 foot condition was operant in this case and it was adjudicated independently of that policy by the Board. In the matter of the bilateral foot condition, the Board unanimously recommends that each foot be separately adjudicated as follows: an unfitting right foot condition coded 5299-5284 and rated 10%; and, an unfitting left foot condition coded 5299-5284 and rated 10%; both IAW VASRD §4.71a. In the matter of the bilateral foot neuropathies, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the bilateral knee conditions, low back condition, hyperlipidemia, tender surgical scars, migraine headaches or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Heel Pain with Surgical Residuals and Achilles Tendonitis | 5299-5284 | 10% |
| Left Heel Pain with Surgical Residuals and Achilles Tendonitis | 5299-5284 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090116, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

