RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900125 COMPONENT: REGULAR

BOARD DATE: 20090806 SEPARATION DATE: 20020803

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SUMMARY OF CASE: This covered individual (CI) was an active duty NCO medically separated from the Army in 2002 after 17 years of service. The medical basis was a bilateral foot condition. He developed worsening plantar fasciitis and heel spurs requiring repeated surgical correction for both feet. Surgical intervention for his left foot included insertion of permanent hardware. He also incurred a permanent peripheral nerve sensory deficit of his left foot. The severity of his impairment reached the point where the CI could no longer tolerate regulation footwear, prolonged standing and other essential military duties. He was referred to the PEB, found unfit and separated at 10% disability.

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CI CONTENTION: The CI contends that higher ratings were warranted and that additional conditions were not rated, citing depression (for which no entry was in his service record).

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA** | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** |
| Bilateral Foot Pain | 5099-5003 | 10% | 20020415 | Fasciitis L Foot | 5099-5003 | 10% | 20020924 |
|  |  |  |  | Fasciitis R Foot | 5099-5003 | 10% | 20020924 |
|  |  |  |  | Mechanical Back Pain | 5295 | 20% | 20020924 |
|  |  |  |  | Surg. Scars L Foot | 7804 | 10% | 20020924 |
|  |  |  |  | Surg. Scars R Foot | 7804 | 10% | 20020924 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (incl. non-PEB Dxs): 50 %** | | | |

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ANALYSIS SUMMARY:

Foot Coding and Rating. The PEB included both feet under a single analogous code (5003). The component of the VA combined rating applicable to the feet was 40%. This was based on separate ratings for each foot and additional ratings for the surgical scars. The 5003 analogous code applied by the PEB and in the VA initial rating is not optimal. The most appropriate code is 5284 which was adopted in subsequent VA coding and is (at least currently) recommended in the Army adjudicator manual. Rating is unaffected as long as VASRD §4.59 (painful motion) supersedes the USAPDA pain policy. That is the case in this instance since both feet are adjudicated unfitting and both were clinically active at separation.

Scars and Peripheral Nerve Involvement. Scars were significant, as described by the VA rating examiner. Since fitness was specifically linked to the wearing of regulation footwear, the scars had to interplay with the fitness picture. A counter argument can be made that this element of unfitness is subsumed in the primary code. However, since the scars were not specifically forwarded for PEB consideration (not noted in MEB P.E., NARSUM or DES packet), the jurisdiction of the PDBR for recommending them as unfitting is questionable. A left sensory superficial peroneal nerve neuropathy is well established in the record, and would support consideration for a unilateral 8622 code. However, this condition did not merit coding and rating by the VA and does not have a significant link to fitness.

Additional Conditions: An back condition is noted in the NARSUM, but no record entries tie it to fitness. The CI contends for depression associated with his pain and the circumstance of military separation. No indication of diagnosis or treatment for depression, however, is apparent in the record. Furthermore, the VA did not service connect the depression. The CI’s other medical conditions were not contended, and also were not service connected by the VA.

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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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Army rationale for combining a bilateral symptomatic condition under a single rating for 5003 is predicated on application of the USAPDA pain policy. This Board, therefore, is obligated to separate ratings for each foot. A 10% rating for each foot under the original PEB code was unanimously recommended. The scar code issue was deliberated, arguing that they were inherently implied for PEB consideration. These were prominent tender surgical scars at pressure points on both feet, and a significant component of the fitness determination was inability to wear regulation footwear. It was agreed, however, that adding the scars as separately unfitting inflated their contribution to the total disability picture, and that the Board’s prerogative for doing so was too much of a stretch to established policy regarding our jurisdiction. The Board is unanimous in its decision not to make this recommendation. Addition of the peripheral nerve code to the separation rating was unanimously rejected on the basis of its mild nature and lack of fitness implications. There was also unanimous agreement that neither back pain, depression nor any other of the CI’s conditions merited recommendation as additionally unfitting.

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** |
| CHRONIC PAIN LEFT FOOT | 5099-5003 | 10% |
| CHRONIC PAIN RIGHT FOOT | 5099-5003 | 10% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090128, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

