RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxx BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1100119 SEPARATION DATE: 20070824

BOARD DATE: 20110916

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard member, SGT/E-5 (13B/Cannon Crewmember), medically separated for chronic right heel pain from Achilles tendonitis*.* The CI states that he remembers injuring his right Achilles tendon in August 2006 while deployed to Iraq during a firefight. He did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Achilles tendonitis to the right foot, and plantar fasciitis with heel spur to the left foot was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated the chronic right heel pain from Achilles tendonitis rated 0%, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI appealed to FPEB, and was then medically separated with a 10% disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20070807** | | | **VA (6 Mo. After Separation) – All Effective Date 20070825** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Heel Pain | 5024 | 10% | Chronic Right Heel Tendonitis | 5099-5020 | 10% | 20080216 |
| Plantar fasciitis left foot | Not Unfitting | | Mild Plantar Fasciitis left Foot | 5099-5020 | 10% | 20080216 |
| ↓No Additional MEB/PEB Entries↓ | | | Posttraumatic Stress Disorder | 9411 | 70% | 20080216 |
| Not Service Connected x 2 | | | 20080216 |
| **Combined: 10%** | | | **Combined: 80%** | | | |

ANALYSIS SUMMARY: The Military Disability Evaluation System (MDES) is responsible for maintaining a fit and vital fighting force. While the MDES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veteran Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time. 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. The Board’s threshold for countering DES 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. Furthermore, a ‘crystal ball’ requirement is not imposed on the service PEB’s by the Board; and, the 12 month window specified in DoDI 6040.44 is appropriate for rating comparisons but not for new developments after separation. The Board makes note that some of the CI’s contended conditions that were granted VA service connected ratings after separation, were not addressed by the PEB and were not in the DES file. By policy and precedent the Board has limited its jurisdiction for recommending non-adjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core DES file. The core DES file consists of the MEB referral document (DA Form 3947 for Army cases), the PEB adjudication document (DA Form 199 for Army cases), the narrative summary (NARSUM) (including any addendums or referenced examinations), the MEB physical exam, the commander’s statement, the physical profile(s), and any written appeals or internal DES correspondence. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Army Board for Corrections of Military Records (ABCMR).

Tenosynovitis, Chronic Right Heel Pain from Achilles Tendonitis. The CI developed right Achilles tendon pain while deployed in Iraq. Statement of Medical Examination and Duty Status, DA Form 2173, dated 24 January 2007, states the CI was seen twice while deployed for right heel pain, 17 April 2006 and 11 October 2006. The 17 April 2006 clinic record documents complaint of right heel pain with no clear inciting injury. The 11 October 2006 physical therapy (PT) encounter documents right Achilles tendon pain after running after a child a few days before the appointment (and a supporting peer statement indicates the CI injured his right foot chasing a juvenile with what appeared to be a weapon). He continued to experience right Achilles tendon pain despite treatment with numerous non-operative methods to include medication, casting, shoe inserts, ankle braces, physical therapy, and duty profiles. Operative treatment was not felt to be indicated. At the time of the MEB NARSUM examination, 5 April 2007, there was mild edema of the right heel with tenderness at the attachment of the Achilles tendon to the heel (calcaneus). There was Achilles tendon pain reported with dorsiflexion. There was otherwise no ankle joint injury or disease present. There was an x-ray finding of a calcaneal spur at the Achilles tendon attachment to the heel. A civilian podiatry medical statement, 18 June 2007, submitted to the FPEB, noted a limping gait favoring the right foot, pain with dorsiflexion, and x-ray findings of swelling and inflammation on the right foot. A podiatry MEB NARSUM addendum, 13 July 2007 notes right ankle swelling with pain localized to the right Achilles tendon. Right ankle range of motion was essentially normal (dorsiflexion 20⁰ and plantar flexion 40⁰; normal 20⁰ and 45⁰ respectively). The VA compensation and pension (C&P) examination for this condition, six months after separation, showed mild tightness associated with dorsiflexion of the right ankle but range of motion of the right ankle was without painful limitation and nearly normal, with a total range of motion equivalent to the NARSUM examination (dorsiflexion 15⁰ and plantar flexion 50⁰). There was tenderness of plantar surface of the heel but no mention of Achilles tendon tenderness was made. The examiner noted normal alignment of the Achilles tendons but recorded no abnormal observations of the Achilles tendon area that were noted in the NARSUM. The PEB initially rated the condition 0%, but, after an appeal, the CI was separated with 10% for this condition coded 5024 for tenosynovitis. The VA rated the condition 10% using code 5020 for synovitis. Both the code used by the PEB and that used by the VA rate based on 5003 criteria (diseases under diagnostic codes 5013 through 5024 will be rated on limitation of motion of affected parts, as arthritis, degenerative). Ankle range of motion results from both the NARSUM and C&P examination did not attain the threshold for a minimum rating under the code for loss of ankle range of motion (5271). All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s coding or rating decision for the right Achilles tendonitis condition.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the FPEB was left plantar fasciitis with heel spur. This condition appears in the CI’s record nearly 3 years prior to separation and was treated with non-operative symptomatic management. The 11 October 2006 PT appointment for treatment of the right Achilles tendon pain notes a history of left plantar fasciitis for the prior one to two years on a permanent profile for no running (L2). The CI reported his history of chronic left plantar fasciitis at the time of the MEB history and physical examination, February 2008, but the service treatment record is otherwise silent with regard to complaints or treatment for left plantar fasciitis during the MEB period. The next mention of the left foot condition is the 13 July 2007 podiatry addendum which notes a two year history of left plantar fasciitis, but otherwise addresses the right Achilles tendon condition. Abnormal examination findings were limited to the right Achilles tendon and heel. The civilian podiatry medical statement, 18 June 2007 addresses only the right Achilles condition, but also specifically mentions signs of inflammation on x-ray were “not noted on the left.” The VA C&P examination, six months after separation, recorded tenderness on the plantar aspect of both heels. The Board must consider whether or not the left plantar fasciitis and heel spur should be adjudicated as an unfitting condition for rating at separation. The condition was profiled L2 in 2004 (permanent L2 in 2005), and did not prevent his deployment. There was no indication from the record that the left plantar fasciitis and resultant heel spur significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the FPEB fitness adjudication for the stated condition.

Remaining Condition. Other conditions identified in the DES file included pseudofolliculitis barbae, trouble sleeping (MEB history and physical examination; attributed to foot pain), flat feet (also documented on entrance examination in 1990), history of right hand injury, and treatment with Zyban for smoking cessation. None of these conditions were clinically or occupationally significant during the MEB period, none carried attached profiles none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally PTSD was noted in the VA rating decision following separation, but was not documented in the DES file, including available FPEB documentation. The MEB history and physical examination reflects that the CI checked “no” in response to questions on form 2807-1 regarding nervous trouble of any sort (anxiety or panic attacks), loss of memory or amnesia or neurological symptoms, depression or excessive worry, attempted suicide, evaluation for a mental condition, or receiving counseling of any type. 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. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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. In the matter of the right Achilles tendon condition, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of left plantar fasciitis and heel spur, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of 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, 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** |
| Chronic Right Heel Pain | 5024 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110321, 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

**DEPARTMENT OF THE ARMY**

ARMY REVIEW BOARDS AGENCY

1901 SOUTH BELL STREET 2ND FLOOR

ARLINGTON, VA 22202-4508

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB *I* 2530 Crystal Drive, Arlington, VA 22202

5 OCT 2011

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for AR20110019726 (PD201100119)

I have reviewed the enclosed Department of Defense Physical Disability Board of

Review (000 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

CF:

( ) 000 PDBR

( ) OVA