RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1100189 SEPARATION DATE: 20091001

BOARD DATE: 20120110

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (68K10, Medical Laboratory Specialist) medically separated for pes planus (flat feet) and bilateral knee chondromalacia. The pes planus condition began in 2007 and the knee condition began in 2006; neither was caused by injury or associated with a surgical indication. She did not respond adequately to treatment and was unable to perform within her Military Occupational Specialty (MOS) or meet physical fitness standards. She was issued a permanent U2/L3 profile and underwent a Medical Evaluation Board (MEB). Chronic bilateral plantar fasciitis with pes planus and chronic bilateral knee pain with chondromalacia were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Five other conditions, as identified in the rating chart below, were also identified and forwarded on the DA Form 3947 as medically acceptable conditions. No other conditions appeared on the MEB’s DA Form 3947 submission, and no other conditions with fitness implications were identified in the Disability Evaluation System (DES) file. The Informal PEB (IPEB) adjudicated the pes planus, right knee chondromalacia and left knee chondromalacia conditions as unfitting, and assigned a rating of 0% each adjudicated by the VA IAW the VA-DoD Pilot Disability Evaluation System under Policy and Procedural Directive Type-Memorandum of 21 November 2007. It was determined that the remaining conditions were not unfitting. The CI made no appeals and was medically separated with a 0% combined disability rating.

CI CONTENTION: The CI states: “The rating for the conditions which rendered me unfit for duty should be changed because Army/VA physicians that evaluated me during my Med Board process failed to completely fully examine the effect of these conditions had/have [*sic*] on my life as a whole. I feel as though the conditions were appropriately found unacceptable, however the 0% rating was incorrect given my health prior to military service and my age.” No additionally contended conditions are in evidence.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20090714** | | | **VA (8 Mo. Pre Separation) – All Effective 20091002** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Pes Planus | 5276 | 0% | Pes Planus | 5276 | 0% | 20090120 |
| Chondromalacia Right Knee | 5099-5014 | 0% | Chondromalacia Right Knee | 5099-5014 | 0% | 20090120 |
| Chondromalacia Left Knee | 5099-5014 | 0% | Chondromalacia Left Knee | 5099-5014 | 0% | 20090120 |
| Bilateral Hip Pain | Not Unfitting | | Chronic Right Hip Strain | 5255 | 0% | 20090120 |
| Chronic Left Hip Strain | 5255 | 0% | 20090120 |
| Bilateral Ankle Pain | Not Unfitting | | Chronic Left Ankle Sprain | 5271 | 0% | 20090120 |
| Chronic Right Ankle Sprain | 5271 | 0% | 20090120 |
| Low Back Strain | Not Unfitting | | Chronic Lumbosacral Strain | 5237 | 0% | 20090120 |
| Tension Headaches | Not Unfitting | | Headaches | 8100 | 0% | 20090126 |
| Right Shoulder Pain | Not Unfitting | | Right Shoulder Deg. Jt. Dis. | 5010 | 10% | 20090617 |
| ↓No Additional MEB Entries↓ | | | Tinnitus | 6260 | 10% | 20090203 |
| Right Wrist Ganglion Cyst | \* | 10% | 20091102 |
| Left Tarsal Tunnel Syndrome | \* | 10% | 20091028 |
| 0% x 5 / Not Service Connected x 1 | | | 20090120 |
| **Combined: 0%** | | | **Combined: 30%** | | | |

\*By Rating Decision 20101016; VA code sheet not in evidence

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate service 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 (Title 38, United States Code). The Board evaluates VA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation.

This case was adjudicated as part of the pilot disability evaluation system under the policy and procedure directive type memorandum (DTM) of 21 November 2007 (DoD VA DES Pilot Program). Under this pilot program, the PEB makes fitness determinations only, and assigns a disability rating for each unfitting condition based on the proposed VA disability rating. The specific VASRD codes applied to the PEB conditions and their respective ratings are determined solely by the VA and those applicable to this case are documented in the VA rating decision dated 9 October 2009. A condition established as not unfitting by the PEB, although coded and rated by the VA, is not subject to Service disability rating. Members were able to appeal fitness determinations to their respective Service, and appeal rating determinations to the VA. The Board’s role in these cases, as confirmed by consultation with DoD, is two-fold. Firstly, it must assess the fairness of the PEB’s fitness adjudications; and, may offer recommendations for Service rating of any condition which it determines would have (independently or in combination) rendered the CI incapable of adequately performing required duties. 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. Secondly, the Board must review the fairness and accuracy of the VA assigned rating; and, may recommend a higher rating if warranted. As with all such recommendations (IAW DoDI 6040.44) the Board may not recommend a rating lower than that received prior to application.

Pes Planus Condition. An orthopedic consult (2 June 2008, 16 months prior to separation) obtained in preparation for the MEB reported pain for the first few steps in the morning and after prolonged standing. Wearing military boots and high heeled shoes hurt her feet. Orthotics helped “a little.” Both feet were equally symptomatic. Exam showed normally aligned feet and sore plantar fascia bilaterally. X-rays were normal, but bilateral weight-bearing X-rays performed four months later showed pes planus. The consultant could not state that the CI would be permanently unable to wear military boots due to the foot condition and assessed the plantar fasciitis condition as medically acceptable. A VA Compensation and Pension (C&P) examiner (20 January 2009, eight months prior to separation) reported a two year history of intermittent pain in both feet, primarily on standing and running. Use of inserts and pain medication reportedly eased the pain, but she was not wearing the inserts at this exam. Examination showed mild pes planus but no deformity, non-tender Achilles tendons and no breakdown or calluses. Gait, heel and toe walking were normal. The CI hopped normally on either foot and squatted normally. A foot X-ray, ordered for “a two year history of pain without objective findings” was normal. A consolidated narrative summary (NARSUM) exam performed 5 May 2009 (five months prior to separation) stated that her foot pain was not alleviated by orthotic inserts. She claimed that her feet hurt severely in the heels and arches when standing or walking a long period of time. Heel and toe gait were normal. Hop and squat were normal. Mild bilateral pes planus without swelling, heat or erythema was documented. Tenderness along the plantar fascia bilaterally was present. Under the 5276 code (“flatfoot, acquired”), the VA adjudicated a 0% rating based on an assessment of the condition, and the associated plantar fasciitis, as “mild” (“symptoms relieved by built-up shoe or arch support”) concluding there was no objective evidence of pain on motion and no evidence that the foot problem significantly altered general functional ability. The PEB adopted the rating adjudicated by the VA in accordance with the integrated DES pilot program rules. The next higher 10% rating requires a severity of “moderate” (“weight bearing line over or medial to great toe, inward bowing of the tendo achillis, pain on manipulation and use of the feet, bilateral or unilateral”). In the setting of conflicting statements by the CI regarding the helpfulness of orthotics, the Board noted that, with the exception of inconsistent plantar fascia tenderness, multiple examinations were unremarkable, including normal gait and absence of deformity. The Board debated whether her reported history of intermittent symptoms warranted a higher rating. All members agreed that the clinical picture did not support this approach. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the rating decision for the pes planus condition.

In a later decision the VA rated left tarsal tunnel syndrome at 10% and right tarsal tunnel syndrome at 0% effective the day after separation, based on an exam not in evidence (four weeks after separation). The stated rationale for this rating was the presence of tingling during the exam and an electrodiagnostic study (EMG) performed 6 May 2009 (also not in evidence). A pre-separation outpatient note (7 May 2009) confirmed that the EMG showed evidence of bilateral tarsal tunnel syndrome. The NARSUM examiner (two weeks later) recorded a history of mild bilateral ankle pain, which was considered not unfitting by the PEB and rated 0% by the VA. The Board considered that the presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. While the CI may have suffered tingling in her feet or ankles due to tarsal tunnel syndrome at the time of separation, there is no evidence this impacted fitness. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of tarsal tunnel syndrome as an unfitting condition for separation rating.

Bilateral Knee Chondromalacia Condition. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM - Knees | C&P ~ 8 Mo. Pre-Sep | | MEB ~ 5 Mo. Pre-Sep | |
| Left | Right | Left | Right |
| Flexion 0-140⁰ normal | 140⁰ | 140⁰ | 140⁰ | 140⁰ |
| Extension 0⁰ normal | 0⁰ | 0⁰ | 0⁰ | 0⁰ |
| Comments |  |  |  |  |
| §4.71a Rating | 0% | 0% | 0% | 0% |

The orthopedic consultant reported the presence of anterior knee pain since 2006. Climbing one flight of stairs or running caused pain. If CI sat or drove for more than two hours her knees would “swell and get stiff.” She had pain for a total of one hour per day. Examination revealed no effusion, synovitis or instability of the knees. Crepitus in the patellofemoral joint was present, worse on the right than the left. There was mildly increased lateral mobility of her patellae with a mildly positive apprehension sign. Compression of the patellae caused pain. Magnetic resonance imaging (MRI) of the left knee was normal and of the right knee showed mild chondromalacia. The C&P examiner reported a three year history of intermittent pain and swelling in both knees especially on strenuous activity, eased by pain medicine. CI did not require use of assistive devices and was able to perform her activities of daily living. Gait was normal, as well as heel and toe walking. The CI hopped normally on either foot and squatted normally. Examination revealed no swelling, redness or tenderness. There was mild to moderate crepitus bilaterally on extension. There was no sign of instability. X-rays were normal. The NARSUM examiner stated the condition began in late 2005 due to required running. There was no specific history of injury. Over the following year, pain increased in frequency to include activities other than running. Medications were minimally helpful. Examination showed normal gait, stance and balance. Hop and squat were normal. There was no knee swelling, redness or tenderness. Mild to moderate crepitus was present bilaterally, but there were no signs of laxity or instability. Under the analogous code 5014 code (“osteomalacia”), the VA adjudicated a 0% rating. Under this code rating is based on limitation of motion. In this case ROM was completely normal, and the VA also concluded there was no objective evidence of pain on motion to warrant a 10% rating. The PEB adopted the rating adjudicated by the VA in accordance with the integrated DES pilot program rules. The Board considered a 10% rating for painful motion (§4.59) or pain with use (§4.40), but neither were evident on examinations. The Board debated if §4.40 should be conceded based on CI’s reported history of intermittent pain. All members agreed that the history of one hour of pain per day did not support this approach. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the rating decision for the bilateral chondromalacia condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were bilateral hip pain, bilateral ankle pain, low back strain, tension headaches and right shoulder pain. Shoulder pain was mentioned in 2005, but the record was silent regarding shoulder complaints until outpatient notes referred to it after the MEB process began. The condition was not mentioned in the original C&P exam or the NARSUM exam, but a follow-up C&P exam on 17 June 2009 (four months prior to separation) specifically addressed this issue. This examiner noted that CI functioned well at her job overall without limitation due to a shoulder condition. Although it was profiled (U2), it was not mentioned in the commander’s statement. None of the other conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. In addition, the following conditions were noted on the VA/DoD Joint Disability Evaluation Board Claim form: hemorrhoids, sinusitis, acne, tinnitus and multiple joint pains. None of these conditions were clinically or occupationally significant during the MEB period; none carried attached profiles; and, 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 right wrist ganglion cyst and left eye lattice degeneration were noted in the VA rating decision proximal to separation, but were not documented in the DES file. 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.

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 pes planus condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the rating. In the matter of the bilateral knee chondromalacia condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the rating. In the matter of the bilateral tarsal tunnel syndrome condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the bilateral hip pain, bilateral ankle pain, low back strain, tension headaches and right shoulder pain conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the hemorrhoids, sinusitis, acne, tinnitus and multiple joint pain conditions 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. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Pes Planus | 5276 | 0% |
| Bilateral Chondromalacia | 5099-5014 | 0% |
| **COMBINED** | **0%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110328, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for (PD201100189)

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

CF:

( ) DoD PDBR

( ) DVA