RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100565 SEPARATION DATE: 20021011

BOARD DATE: 20120322

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E5 (91X, Mental Health Specialist) medically separated for multiple bilateral foot disorders with associated back pain. She had a history of bilateral foot pain dating to basic training. She was managed with temporary profiles and multiple podiatric treatment modalities over the ensuing 10 years, with a surgical intervention for right ankle stabilization in January 2001. The CI was also evaluated in 2001 for a 6-year history of back pain, which was ultimately attributed primarily to gait disturbance from the foot issues. Despite this protracted attempt at rehabilitation, there was no lasting response which rendered the CI capable of meeting the physical requirements of her Military Occupational Specialty (MOS) or satisfying physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Four separate bilateral podiatric diagnoses (“plantar fasciitis secondary to pes valgo planus deformity,” “Morton’s neuritis,” “hallux abductovalgus deformities,” “hammertoe deformities”), and “low back pain/degenerative disc disease” were forwarded to the Physical Evaluation Board (PEB); each designated as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB; but, other conditions evidenced in the Disability Evaluation System (DES) file are addressed below. The PEB adjudicated the four bilateral podiatric submissions and the back pain (as a sequela) as a single unfitting condition, rated 20% (specifying combined 10% right and left ratings), with presumptive application of AR 635.40. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “It is my belief that my disability rating did not justifiably and accurately rates the level of disabilities that I had at the time of my Medical Evaluation Board. I was rated at a combined rating of 20% for such things as chronic lower and upper back pain, several podatric [sic] problems that were all bilateral at the time of evaluation (Hammer Toes, Morton's Neuroma, Plantar Fasciitis, and flat Feet (pronation)) [sic]. At the time of the Medical Evaluation Board I also had a Right Lateral Ankle Stabilization surgery performed in 2001, I suffered and continuously suffer from Chronic Sinus Infections, Dermatologic issues (an allergy test was conducted while on active duty at [name of base]), and Bilateral Knee Pain (which has been recently diagnosed as Osteoarthritis). I do not feel as though the entirety of my medical issues, which occurred while on active duty and as a result of military service, were correctly and accurately rated at the time of the Medical Evaluation Board. I also had to have a Cholecystectomy surgery shortly after my separation from active duty due to Gall Stones which were discovered at the Emergency Room at [name of military treatment facility]. It is also my belief that my Chronic Sinusitis/Chronic Sinus Infections and Callouses [sic] on both feet were not factored in to my rating at the time of my Medical Evaluation Board. I was subsequently diagnosed with Asthma which I was informed ([name of city] VA Medical Center) was related to my Chronic Sinus issues. I also received a diagnosis of "Degenerative Disc Disease" in my back from the [same] VA Medical Center shortly after my discharge from the Army via MEB (I do not think this was evaluated during my MEB). Please re-evaluate my Medical Evaluation Board from the Army and my medical records from my extensive period of active duty service (11 years, 5 months total) as well as VA medical records.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20020614** | **VA (3 Mo. Post-Separation) – All Effective 20021012** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Plantar Fasciitis …(Incorporates multiple podiatric diagnoses and 2⁰ back pain.) | 5399-5310 | 20%(R + L) | Foot Problems, to include: (Lists multiple podiatric diagnoses.)  | 7299-5276 | 10% | 20030113 |
| Low Back Pain | Combined w/ Above | DJD, Lumbar Spine | 5299-5292 | 10% | 20030113 |
| ↓No Additional MEB/PEB Entries↓ | Residuals, R Ankle | 5299-5271 | 10% | 20030113  |
| 0% x 2 / Not Service Connected x 2 | 20030113 |
| **Combined: 20%** | **Combined: 30%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. 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. While the DES 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 Veterans’ 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 the degree of impairment vary over time. The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40; however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

PEB’s Combined Code and Rating. The PEB combined left foot conditions, right foot conditions, and low back pain as the single unfitting and solely rated condition, coded analogously to 5310. Although this approach complies with AR 635.40 (B.24 f.) the Board must apply separate codes and ratings in its recommendations, if compensable ratings for each condition are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting, and that there was no need for separate fitness adjudications; not a judgment that each condition was independently unfitting. Thus the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. In this case, the PEB’s DA Form 199 documents that separate right and left foot ratings were combined to achieve the service rating as noted above; which was a *de facto* VASRD compliant adjudication for the bilateral foot condition(s); although, the Board must still determine if there were applicable and more advantageous coding and rating options for the feet. The back condition, however, must be separately evaluated by the Board for its fitness and rating implications.

Bilateral Foot Pain Condition. The narrative summary (NARSUM) documents the onset of the CI’s foot pain during basic training and a refractory course with multiple therapeutic interventions over a 10 year period. Treatment included oral steroids, injectable steroids, orthotics, profiles, and multiple braces. The commander’s statement indicated that the CI had been assigned to the medical hold company for the past four years; that she was working in her primary MOS within profile restrictions; and, that her duty performance was satisfactory. Her profile restricted her from running, jumping or marching. On physical exam there were mild to moderate pes valgo-planus deformities of both feet (slightly bowed and flattened feet). The range-of-motion (ROM) of both ankles was normal. At the first metatarsophalangeal joints (base of the great toes), there were mild to moderate bilateral hallux abductovalgus (great toes pointing outwards) deformities, without crepitus or pain, and reduced ROM. Bilaterally, there was a hammertoe deformity secondary to abducted hallux (big toes bent down due to above) and significant dorsal tenderness. The MEB podiatrist diagnosed bilateral plantar fasciitis secondary to pes valgo planus deformity, bilateral Morton’s neuritis, bilateral hallux abductovalgus deformities, and bilateral hammertoe deformities; and, opined that the structural deformities (pes planus, hallux abductovalgus and hammertoes) were all congenital; further opining that the plantar fasciitis and Morton’s neuroma (metatarsalgia) were secondary to the congenital deformities, but service-aggravated. It should be noted in passing that all of the unfitting foot conditions were designated as existing prior to service (EPTS) by the PEB, but compensable under Title 10 (length of active duty service ≥ 8 years). The VA Compensation and Pension (C&P) examiner (3 months after separation) recorded a normal gait and posture with no signs of abnormal weight bearing. There was no appreciable pes planus, pes cavus, hallux valgus, or other global foot deformity noted by the VA examiner. There was a mild hammertoe deformity bilaterally of the 2nd, 3rd and 4th toes that was judged to be not clinically significant; and, there was bilateral plantar and dorsal tenderness consistent with metatarsalgia. There was plantar wart formation in the digital interspaces on the right, and evidence of a Morton neuroma of the 5th metatarsal head on the left. Weight bearing x-rays by the VA showed bilateral pes planus, but were otherwise normal.

The Board directs attention to its rating recommendation based on the above evidence. The foot conditions are conceded as unfitting, bilaterally or separately, based on the PEB’s adjudication and reinforced by the profile. The PEB and VA chose different coding options for the condition. The PEB’s rating approach, relative to the podiatric impairment alone, was *de facto* separate ratings of 10% under the analogous code 5310 (muscle group X, plantar aponeurosis). The VA rating decision indicated that the CI’s foot conditions, taken individually, would yield non-compensable ratings. The VA therefore combined all diagnosed conditions of both feet in support of a single rating under the analogous 5276 code (pes planus) at 10%. The Board noted that the 5279 code (metatarsalgia) would also have been appropriate to the VA findings and would have yielded the same 10% rating for the bilateral foot condition. The Board next considered the PEB’s analogous coding under 5310, as this muscle code is in common use for rating plantar fasciitis. It can be convincingly argued, in fact, that the service-aggravated sequela of plantar fasciitis best captures the unfitting pain which is eligible for service rating; since the anatomic pathology *per se* was EPTS. No additional rating under a separate code would comply with VASRD §4.14 (avoidance of pyramiding); and, application of separate ratings under 5310 would meet the requirements of VASRD §4.7 (higher of two evaluations). The 5310 code confers a 0% rating for “slight,” 10% for “moderate,” 20% for “moderately severe,” and 30% for “severe” muscle disabilities. Since the specific criteria of VASRD §4.56 for muscle injuries are not very practical for rating under this analogous use of the code, the Board relied on its judgment for more subjective assignment of the rated severity. The evidence clearly establishes that the left and right feet were equal in severity; and, the separate ratings should therefore be equivalent. All members agreed that the neither the “severe” or “slight” characterizations could be supported; and, deliberated between the “moderately severe” and “moderate” ratings. At the conclusion of deliberations, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), members agreed that a characterization of “moderate” best reflected the service disability for each foot at the time of separation. The Board thus recommends separate 10% ratings for each foot under the code 5399-5310.

Lumbar Spine Condition. The CI’s back pain began with pregnancy in 1995. Over the ensuing years the condition appears infrequently in the service treatment record (STR), until several months prior to separation when a series of clinical visits for low back/right hip pain are recorded. Radiographs were normal, but magnetic resonance imaging (MRI) revealed mild degenerative changes. Mechanical low back pain was diagnosed, and conservative measures prescribed. A specialty addendum to the NARSUM recorded an essentially normal (albeit fairly cursory) back exam. A leg length discrepancy was noted and a heel lift shoe insert was prescribed. The clinical impression was that the back pain condition was secondary to the CI’s podiatric conditions. The VA C&P exam after separation showed only a slight decrease in combined ROM with no other significant findings. The lumbar condition was not listed on the L3 profile, and was not mentioned in the commander’s assessment. As previously elaborated, the Board must first consider whether the back pain remains separately unfitting, having de-coupled it from a combined PEB adjudication. It is noted in that regard that the etiology of the condition, whether a “residual” of the unfitting foot condition or a separate intrinsic condition (per the MRI as contended by the CI), is moot to that determination. After due deliberation, the Board agreed that evidence does not support a conclusion that low back pain, as an isolated condition, would have rendered the CI incapable of continued service within her MOS; and, accordingly cannot recommend a separate service rating for it.

Other Contended Conditions. In addition to the lumbar spine condition just addressed, the CI’s application asserts that compensable ratings should be considered for atopic dermatitis, bilateral knee pain, upper back pain, gallstones with cholecystectomy, chronic sinusitis, and callouses. The gall bladder condition was noted by the VA proximal to separation, but was 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. The condition of callouses is a component of the podiatric recommendations already addressed. The remaining four conditions were not clinically active during the MEB period, not profiled, and not implicated by the commander. 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 service disability rating. The Board determined therefore that none of the additionally contended conditions were subject to service disability 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. As discussed above, presumptive PEB reliance on AR 635-40 for rating the combined foot and back conditions was operant in this case and those conditions were adjudicated independently of that regulation by the Board. In the matter of the bilateral foot condition, the Board unanimously recommends that it be rated for two separate unfitting conditions; each coded 5399-5310, and each rated 10% IAW VASRD §4.73. In the matter of the lumbar spine condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the contended dermatitis, bilateral knee, upper back, gall bladder, sinus, and callous conditions; 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 unfitting for additional service disability rating.

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

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Plantar Fasciitis/Metatarsalgia, Right Foot | 5399-5310 | 10% |
| Plantar Fasciitis/Metatarsalgia, Left Foot | 5399-5310 | 10% |
| Chronic Low Back Pain | Not Unfitting |
| **COMBINED (Incorporating BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110727, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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

 Deputy Assistant Secretary

 (Army Review Boards)