RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD1100589 SEPARATION DATE: 20031115

BOARD DATE: 20120508

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty MS2/E-5 (Mess Management Specialist), medically separated for plantar fasciitis*.* He did not respond adequately to conservative and operative treatment and was unable to perform within his Rating or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Chronic heel spur syndrome and plantar fasciitis were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the plantar fasciitis condition as unfitting, rated 10% respectively; additionally chronic heel spur syndrome condition rated category II (contribute to the unfit); with application of the SECNAVINST 1850.4E. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Some service-connected disabilities was not evaluated or not rated as a dis-chargable disability until member was discharged.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e. (2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The remaining conditions rated by the VA at separation; plantar fasciitis/heel spur right foot, obstructive sleep apnea (OSA), migraine headaches, hypertension and atopic dermatitis, scalp and hands are not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20030828** | | | **VA (~2 Mo. Pre Separation) – All Effective Date 20031116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Plantar Fasciitis | 5399-5310 | 10% | Plantar Fasciitis/ Heel Spurs, Left Foot | 5299-5284 | 10% | 20030922 |
| Chronic Heel Spur Syndrome | CAT II | | Plantar Fasciitis/ Heel Spurs, Right Foot | 5299-5284 | 10% | 20030922 |
| ↓No Additional MEB/PEB Entries↓ | | | Obstructive Sleep Apnea | 6847 | 50% | 20030922 |
| Migraine Headaches | 8100 | 30% | 20030922 |
| Hypertension | 7101 | 10% | 20030922 |
| Atopic Dermatitis, Scalp and Hands | 7806 | 10% | 20030922 |
| 0% x 1/Not Service-Connected x 0 | | | 20030922 |
| **Combined: 10%** | | | **Combined: 80%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation and for conditions not diagnosed while in the service (but later determined to be service-connected by the Department of Veterans’ Affairs (DVA)). While the Disability Evaluation System (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. The DVA, however, is empowered to compensate all 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.

Plantar Fasciitis and Heel Spur Syndrome. The CI presented with left foot pain in June 2001 without trauma or event that caused his condition and was diagnosed with left plantar fasciitis and heel spur. This condition was not responsive to conservative treatment to include medications, orthotics, and physical therapy. Subsequently, he underwent a left plantar fascia release by podiatry for definitive care. Post-operatively, he continued to have left heel pain and had become symptomatic of his right heel but did not seek formal treatment. Due to a slow postoperative recovery and an expired LIMDU he underwent his first MEB in December 2002 who extended his LIMDU to August 2003. He continued left foot rehabilitation with physical therapy, ultrasound treatments, taping, and injections and after 8 months was unable to return to full duty and underwent his second MEB. The NARSUM examiner, 4 months prior to separation, documented the above history and did not document a symptom or a functional limitation history. The physical exam demonstrated a scar on the left foot, a left heel spur on x-ray and there was no comment on ROM, swelling or tenderness. The VA Compensation and Pension (C&P) exam completed 2 months prior to separation documented bilateral heel spur syndrome or plantar fasciitis, status post release and injections of the left foot plantar fascia with use of bilateral shoe inserts and the medication neurontin. Foot pain increased with prolong walking or standing and was relieved with more neurontin use. The physical exam, while not in evidence, was referenced in the original VA rating decision which reflected a normal gait, normal posture, no abnormal weight bearing, no spur and tenderness of the fascia of both feet.

The Board directs its attention to its rating recommendations based on the evidence just described. The first challenge before the Board was to clarify which foot was considered for fitness since neither the MEB nor the PEB specifically delineated a foot in the forwarded conditions. The Board agreed the left foot was clearly labeled in the JDETS, the working document for the PEB, for fitness consideration. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB rated the left foot 10%, moderate, coded analogous to 5310 (group x muscle injuries) with application of SECNAVINST 1850.4E policy. The VA rated each foot 10%, moderate, coded analogous to the 5284 (foot injuries, other). The Board recognized the heel spur syndrome and plantar fasciitis are used interchangeably and both are treated the same. The Board looked for higher ratings using analogous 5020 code (synovitis), 5276 code (pes planus) but there was insufficient evidence to justify a higher rating under these codes. The Board members agreed that the evidence most closely approximated moderate impairment of the left foot function. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the plantar fasciitis condition.

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 SECNAVINST 1850.4E for rating plantar fasciitis was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the plantar fasciitis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board’s scope of review for consideration.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Plantar Fasciitis | 5399-5310 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110804, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB ltr dtd 2 Jul 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR that the following individual’s records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

XXXXXXX, former USN

XXXXXXX, former USMC

XXXXXXX, former USMC

XXXXXXX, former USN

XXXXXXX, former USN

XXXXXXX, former USMC

XXXXXXX, former USN

XXXXXXXXXX

Assistant General Counsel

(Manpower & Reserve Affairs)