RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1100599 SEPARATION DATE: 20050629

BOARD DATE: 20120717

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4, (92F, Petroleum Supply Specialist), medically separated for chronic left foot pain secondary to plantar fasciitis with bone scan findings of metatarsal fractures several times. He injured his foot in March 2001 during a physical training run while attending advance individual training (AIT) and developed chronic left foot pain. The condition did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Plantar fasciitis of the left foot; metatarsalgia of the left foot, secondary to stress fracture of the third metatarsal bone; and equines deformity of the left foot were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the chronic left foot pain, secondary to plantar fasciitis with bone scan findings of metatarsal fractures as unfitting, rating it 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The PEB adjudicated the equinus deformity of the left foot as not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “Foot ankle, PTSD, reactive airway, eyes, major depression, sleep disorder, rash -record attached, sleep disorder (request review under SABO PTSD 7/29/11), lumbar disc bulge, L foot/ L. ankle > RSD by bone scan, chronic depression, PTSD, sleep disorder, rash (record att.) heat casualty.” He also states: “I was grossly underrated @ MEB and numerous conditions were omitted. My military medical file shows treatment for sleep disorder, respiratory distress and other injuries. I am 60 percent disabled by VA Social Security disabled me in 2009 with diagnoses PTSD, major depression. My life has been affected since my service in Iraq. I am 43 yrs old and suffer from multiple ailments all of which are related to my duties and exposures to trauma and 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. In this case the chronic left foot condition meets the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below. The equinus deformity of the left foot and the remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and listed on the DD Form 294 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 Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20050317** | **VA (1 Mos. Pre-Separation) – All Effective Date 20050630** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Left Foot Pain Secondary to Plantar Fasciitis with Bone Scan Findings of Metatarsal Fractures | 5279 | 10% | Left Foot 3RD Metatarsal Stress Fracture and Heel Spur | 5299-5283 |  20%\*  | 20050520 |
| Equinus Deformity of Left Foot | Not Unfitting | No VA Entry |
| ↓No Additional MEB/PEB Entries↓ | Adjustment Disorder w/Mixed Affect Response to Chronic Left Foot Pain | 9440 | 10%\*\* | 20050520 |
| Left Ankle Sprain | 5271 |  20%\*  | 20050520 |
| Reactive Airway Disease | 6699-6602 |  10%  | 20050520 |
| 0% X 3 / Not Service-Connected x 1 | 20050520 |
| **Combined: 10%** | **Combined: 50%\*\*\*** |

\*5299-5283 and 5271 both decreased to 10% effective 20071126.

\*\*9440 increased to 30% effective 20071024 and changed to PTSD 9434 at 70% effective 20090709. (Code 9434 is Major Depressive Disorder; PTSD is code 9411 under §4.130).

\*\*\*Increased to 60% effective 20071024 with increase of 9440 to 30% and increased to 90% effective 20090709 with change of 9440 to 9434 and increase to 70%.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. 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 nor for conditions determined to be service-connected by the DVA but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), 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. 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. The Board utilizes DVA 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.

Chronic Left Foot Pain. CI was in apparent good health until March 2001 when he tripped and rolled his right ankle while running for physical training. Radiographs obtained at that time revealed a mild cortical (bone surface) deformity of the third metatarsal foot bone suggesting a subacute, healing stress fracture (prior fracture). An incidental calcaneal (heel bone) spur was also reported. Over the next 2 years the CI developed chronic pain in his left foot. On multiple podiatry and physical therapy clinic visits both plantar (bottom of foot) fascial pain and heel pain were documented. On the MEB examination obtained 5 months prior to separation the CI complained of constant aching in his foot but rated pain as 6/10. On examination, the CI was noted to walk with a slight limp. Tenderness to palpation of the plantar, medial and heel areas of the left foot were recorded. Mild tenderness over the ankle joint was also noted. Sensation of the foot was normal. Review of X-rays obtained 3 months prior revealed a prominent left heel spur and the previously reported cortical thickening in the second and third metatarsals described as stable and probably normal. On the VA Compensation and Pension exam (C&P), performed a month prior to separation, CI reported inability to walk for more than 10 minutes without a walking boot due to pain, but noted wearing the boot most of the time. He used no cane for support but was taking narcotic medication up to four times daily. He reported his usual occupation and daily activities were limited in that he was not able to walk more than 10 minutes. CI was receiving no treatment other than the walking boot and this medication. On examination gait was abnormal as most of weight bearing was transferred to the right leg. The CI was unable to walk on heels or toes secondary to pain. The CI was wearing no brace at the time. Point tenderness over the third metatarsal was present. No instability of the foot was recorded.

The PEB adjudicated the foot condition as chronic foot pain secondary to stress fractures and plantar fasciitis under code 5279 metatarsalgia at 10 % disability rating, the only rating under this code. The PEB noted that these conditions could not be rated separately due to pyramiding. The PEB reasoned that chronic pain without significant loss of ankle motion but with slight limp of gait was consistent with this moderate disability rating. The VA rated the painful foot condition under code 5299-5283 analogous to metatarsal bones, malunion of as moderately severe with a 20% disability rating citing limitations by pain of range-of-motion (ROM) of the ankle of dorsiflexion to 10 degrees (normal 0 to 20 degrees) and plantar flexion to 20 degrees (normal 0 to 45 degrees). VA noted a higher rating would require fixed ankylosis of the ankle under a separate code 5270 (ankle, ankylosis of), a condition not supported in the medical record.

The Board directs attention to its rating recommendation based on the above evidence. After deliberation the Board unanimously agreed that the unfitting condition was foot pain and that the separate rating of contributing etiologies such as plantar fasciitis, bone spurs, stress fractures would constitute pyramiding under §4.14 (avoidance of pyramiding). The Board farther opined that VA rating the foot based on reduced range of motion of the ankle as a moderately severe condition would achieve only a 10% disability rating using 5271 as the appropriate code (ankle, limited motion of).

This Board considered a moderate disability as significant and constant pain with functional limitations on some occupational tasks and domestic chores, but little interference with essential activities of daily living. Moderately severe disability was considered to include significant damage or deformity and pain with minimal use or manipulation of the foot and with significant limitations on mobility and interfering somewhat with routine activities. Severe disability would be considered for the presence of debilitating pain with functional limitations on most occupational tasks and domestic chores, and on at least some essential activities of daily living. The Board agrees the foot symptoms reported in the MEB examination and the apparent correction of limitations implied in the VA C&P report with use of a walking boot were both consistent with a 10% moderate disability and did not meet the threshold for any of the higher ratings under code 5284, the most clinically applicable for this case. After extensive effort, the Board was unable to find any route to achieve a rating higher than 10% for this moderate disability under coding 5276, 5278, or any other applicable VASRD code. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously concluded that there was insufficient cause to recommend a change in the PEB adjudication for the chronic left foot pain 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. 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 painful left foot 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Foot Pain Secondary to Plantar Fasciitis with Bone Scan Findings of Metatarsal Fractures | 5279 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110803, 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

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXXX, AR20120012975 (PD201100599)

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 XXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA