RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100629 SEPARATION DATE: 20080530

BOARD DATE: 20110409

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SSgt/E-5 (5J071, Paralegal Craftsman), medically separated for bilateral Achilles tendonitis*.* The CI underwent three surgeries on each ankle/foot to correct his bilateral ankle laxity and tendonopathy*.* He did not respond adequately to treatment and was unable to perform within his Air Force Specialty (AFS) or meet physical fitness standards. He was issued an L4 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded “chronic bilateral foot and ankle pain” to the Physical Evaluation Board (PEB) and recommended he be returned to duty. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated “bilateral Achilles tendonitis, walking with cane” condition as unfitting, rated 10% for each side, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “I was separated in May 2008 for plantar fascists [SP], both feet where off by 20 degrees in each foot after bilateral ankle surgery in 2004. By June 2008 the VA rated me at 10% per foot, 10% per knee, and 10% for the back, for a combined rating of 50%.January 2011 the VA increased my rating for both feet to 60% and did not rate my knees or lower back. Instead, they added Achilles’ tendonitis and tendonopathy, right ankle with degenerative joint disease of the right ankle and Achilles' tendonitis and tendonopathy, right ankle with degenerative joint disease of the left ankle. Although, I do have pain and discomforted [SP] in my knees and back, they do not affect me like my feet does. Every day I live with pain in my feet and have since 2004. January 2011 the VA released my planter’s tendon on my left foot. Until this day I have seen no improvement I continue everyday with limited abilities. Every orthopedic, podiatry, general practitioners, physical therapist, and pain management specialist, have told me they can't do any more and I will have to live with this for the rest of my life. Since 2004, I've had 4 surgeries on my feet, I casting, night splints, 3 types of orthotics, and custom shoes. I have taken every type of anti-inflammatory, arthritis medication, Cymbalta (for nerves), and various pain prescriptions. Out of all these medication, only the ones for pain stop the pain, the other medications have been unsuccessful. My life consists of 3 options. Option 1, continue my life as normal and suffer through pain. Option 2, limit my life and activities to virtually nothing and get more depressed. Option 3, take pain medication and be spaced out all the time. I have tried everything for my feet; I wished I didn't have these problems. I wished I was still in the Air Force, and I wish my kids had a father that can interact with them, without me saying "daddy don't feel good, my feet hurt." Thank you.” The CI also submitted a letter dated 20110810 outlining his medical history and the current effects of his condition on his life. He requested a thorough review of his case and stated he thought his condition warranted a rating greater than 20%.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20080401** | | | **VA (1 Mo. Pre-Separation) – All Effective Date 20080531** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Achilles Tendonitis, Walking with Cane | 5311 | 10% | Achilles’ Tendonitis and Tendonopathy, Right Ankle with Degenerative Joint Disease | 5299-5271 | 10%\* | 20080430 |
| Left Achilles Tendonitis, Walking with Cane | 5311 | 10% | Achilles’ Tendonitis and Tendonopathy, Left Ankle with Degenerative Joint Disease | 5299-5271 | 10%\* | 20080430 |
| ↓No Additional MEB/PEB Entries↓ | | | Tendonitis Right Knee | 5099-5024 | 10% | 20080430 |
| Tendonitis Left Knee | 5099-5024 | 10% | 20080430 |
| Mechanical Lumbar Spine Strain | 5237 | 10% | 20080430 |
| Bilateral Plantar Fasciitis | 5299-5276 | 10% | 20080430 |
| 0% x 1/Not Service Connected x 0 | | | |
| **Combined: 20%** | | | **Combined: 50%\*\*** | | | |

\*Both increased to 20% effective 20101104.

\*\*Increased to 60% effective 20101104

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board also 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 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 DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. 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.

Bilateral Achilles Tendonitis 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 –  Ankles | MEB ~ 5 Mo. Pre-Sep  (20071207) | | VA C&P ~ 1Mo. Pre-Sep  (20080430) | | VA C&P ~ 32 Mo. Post-Sep  (20110104) | |
| Left | Right | Left | Right | Left | Right |
| Dorsiflexion (0-20) | Full Range of Motion (No goniometrics) | | 0-5⁰ \*0⁰ | 0-5⁰ \*0⁰ | 0-10⁰ | 0-10⁰ |
| Plantar Flexion (0-45) | Full Range of Motion (No goniometrics) | | 0-45⁰ | 0-45⁰ | 0-40⁰ | 0-40⁰ |
| Eversion |  | | 0-\*10⁰ | 0-\*10⁰ |  |  |
| Inversion |  | | 0-\*15⁰ | 0-\*15⁰ |  |  |
| Comment | Antalgic gait; exquisite tenderness to palpation (TTP) bilateral Achilles tendon; insertion thru calcaneous/stretch test technique; mild laxity; mild TTP plantar fasciitis insertion point on calcaneous; bilateral hind feet in slight valgus position, mild gastrocnemius contractures/tightness with knee flexed; gastrocnemius TPP bilaterally; no muscle atrophy, normal motor strength; cane for ambulation; full ROM of ankles | | \*tenderness beginning;  pain stiffness fatigability; TTP mediolateral and anterior aspects ankles bilaterally; TTP Achilles tendons bilat; tenderness with manipulation of Achilles tendon; Re: DeLuca- increase in pain; slight antalgic gait; normal muscle strength; weekly flare-ups of severe intensity that last from hours up to 12 days in duration; no cane/assistive device | | Antalgic gait; increased tightness of tendons; no assistive device/cane; tenderness, weakness; weight-bearing line: over great toe; pain with manipulation; bilateral ankle instability, decreased speed of joint motion, and tenderness | |
| §4.71a Rating  5271 |  |  | 20% if marked;  10% if moderate | 20% if marked;  10% if moderate | 20% if marked;  10% if moderate | 20% if marked;  10% if moderate |

The CI had a long well documented history of bilateral ankle and foot problems in the service treatment record (STR) dating back to 1999. On the enlistment history and physical there was indication of a left ankle sprain at age 15, however there was no functional impairment and the CI was accepted into the service. The CI had his first right ankle sprain in March 2002 and then injured his left ankle in April 2003. Physical therapy (PT) was initiated for the left ankle then because of the history of bilateral ankle sprains; therapy was expanded to include the right ankle as well. The CI was diagnosed numerous times with ankle laxity and tendonopathy of both feet and ankles. The CI underwent three complex surgeries to correct the bilateral ankle pathology, however, he continued with pain stiffness and limited motion in both ankles and feet. In March 2006, the Orthopedist noted tightness and contractures in the gastrocnemius complex bilaterally; bilateral plantar fasciitis; and bilateral insertional Achilles tendonitis. He was also treated with casting and in a pain management clinic without any relief. The MEB examination 5 months prior to separation documented antalgic gait; exquisite tenderness to palpation; mild bilateral laxity in the ankle joints and a cane needed for ambulation. The examiner noted that the prognosis was not optimistic based on the history of failing extensive PT, orthotics use, three surgeries, and orthopedics not recommending any further surgical treatment. The VA Compensation & Pension (C&P) examination a month prior to separation noted that although the CI had used night splints, braces and custom molded orthotics, he continued with ongoing persistent pain, stiffness in the feet, heels and ankles with an overall decreased ROM involving both ankles. There was further documentation of weekly flare-ups lasting up to 12 hours in duration with precipitating factors of overall increase in weight bearing as well as changes in weather and cold weather. The CI was limited in his activities and was restricted from running or high impact activities.

The CI underwent complex surgeries to both ankles and his left gastrocnemius muscle, had extensive PT and still had recurrent chronic pain and limited motion. At the MEB exam 5 months prior to separation, there was bilateral antalgic gait; exquisite tenderness to palpation, laxity and gastrocnemius contractures/tightness. At the initial VA C&P exam, which has a higher probative value being a month prior to separation, there was documentation of bilateral dorsiflexion tenderness beginning at zero degrees with ROM limited to five degrees; pain, stiffness and fatigability; TTP, positive Deluca criteria for pain and an antalgic gait. The VA initially rated each ankle at 10% for moderate limitation of motion. However, a subsequent VA exam (performed 4 January 2011) documented 10 degrees of dorsiflexion (normal 20 degrees) and 40 degrees of plantar flexion (normal 45 degrees) and applied a rating of 20% for each ankle. This examination is not markedly different from the initial examination and may even be considered as a slight improvement. This examination was completed almost 3 years after separation but it documents a continued limitation of motion that was considered by the VA to be marked.

The Board reviewed the criteria for 5271 Ankle, limited motion of: Marked. Both ankles had ROM limited to 5 degrees out of a normal 20 degrees of dorsiflexion, only 25% of the normal range of motion. The Board discussed at length whether this should be considered a moderate or a marked limitation. While the plantar flexion was normal, the CI’s ankles were in a slight extension contracture due to the problems with his gastrocnemius and this is responsible for the full plantar flexion. The PEB rated this condition under the muscle injury code relevant for the gastrocnemius. While the CI did have tight gastrocnemius muscles bilaterally this is not the issue that rendered him unfit for military service. His bilateral gastrocnemius muscles were tender to palpation on the narrative summary (NARSUM) examination but he had no documented muscle injury, no muscle atrophy noted on this exam, and normal muscle strength noted on both the NARSUM and the VA C&P examinations. His condition is more appropriately rated analogous to the limitation of ankle motion VASRD codes as most of his signs and symptoms are related to his ankles. However, after lengthy discussion, in regards to the bilateral Achilles tendonitis joint conditions, the Board, by simple majority, determined the limitation of ROM was best characterized as moderate, not marked, and this supports a rating of 10% for each ankle. Therefore no change in the PEB adjudication was recommended.

Other PEB Conditions. The MEB forwarded the condition of “chronic bilateral foot and ankle pain” to the PEB and recommended the CI be returned to duty. The PEB determined that bilateral Achilles tendonitis was unfitting and rated each side as described above. Although the PEB did not specifically adjudicate the bilateral foot pain or plantar fasciitis condition, it was presented in the MEB evidence before the PEB. The Board must thus approach this issue as a de facto service PEB determination that bilateral plantar fasciitis was not an unfitting condition. 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. The Board discussed at length whether the bilateral plantar fasciitis should be considered an unfitting condition separate from the bilateral ankle condition. The bilateral plantar fasciitis condition was noted in the NARSUM and in the VA C&P exam. The CI’s condition was not improved by orthopedic appliances or surgery. The condition developed after the bilateral ankle pain was present and more likely than not, developed as a result of the ankle condition. The Board considered and rejected adding the bilateral plantar fasciitis as a separate unfitting condition. All evidence considered, there is not a preponderance of evidence in the CI’s favor supporting addition of bilateral plantar fasciitis as an unfitting condition for separation rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for bilateral knee and lower back conditions. However, none of these conditions were included 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 Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

Remaining Conditions. Bilateral dry eye syndrome was noted in the VA rating decision proximal to separation but was not documented in the DES file. No other conditions were noted in the NARSUM or found elsewhere 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 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 bilateral Achilles tendonitis condition, the Board, by simple majority, recommends no change in the PEB adjudication at separation or permanently. The single voter for dissent (who recommended individual ratings as follows: Right Achilles tendonitis and left Achilles tendonitis each coded 5271 and each rated 20% for marked limitation of motion) did not elect to submit a minority opinion. In the matter of the bilateral plantar fasciitis condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. No other medical conditions were eligible for Board consideration and therefore the Board 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:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Right Achilles Tendonitis, Walking with Cane | | 5311 | 10% |
| Left Achilles Tendonitis, Walking with Cane | | 5311 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110810, 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

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXX

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00629

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

XXXXXXXXXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings