RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1100636 SEPARATION DATE: 20061128

BOARD DATE: 20120229

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (25B, Information Systems) medically separated for a bilateral foot condition. The CI’s symptoms began shortly after beginning initial entry training (IET). She was prescribed anti-inflammatory medications, physical therapy (PT), and temporary profiles with modest but temporary relief. She was diagnosed with congenital pes planus (flat foot) complicated by recurrent plantar fasciitis and tendonitis. Despite a prolonged rehabilitation period and serial profiles she continued to experience bilateral foot pain. Although she was able to perform within her Military Occupational Specialty (MOS), she could not fully meet physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Plantar fasciitis was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the plantar fasciitis condition as fit for duty IAW AR 635-40. That decision, however, was changed via an Informal Reconsideration 15 months later after an appeal by the CI. The condition was then judged to be unfitting, rated 0% as “chronic bilateral foot pain with plantar fasciitis and associated pes planus;” with presumptive application of AR 635-40 for coding/rating. The CI made no further appeal and was medically separated with that rating.

CI CONTENTION: She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- |
| **Service Recon PEB – Dated 20060824** | **VA (3 Mo. After Separation) – All Effective 20061130** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Bilateral Foot Pain | 5399-5310 | 0% | Bilateral Pes Planus | 5276 | 30% | 20070308 |
| No Additional MEB/PEB Entries | 0% x 1 / Not Service Connected x 1 | 20070308 |
| **Combined: 0%** | **Combined: 30%** |

ANALYSIS SUMMARY: The PEB rated left and right plantar fasciitis under the single analogous 5310 (muscle group X, plantar aponeurosis) code. This coding approach is countenanced by AR 635-40 (B.24 f.); but, VASRD §4.55 requires separate ratings for each affected muscle group. IAW DoDI 6040.44 the Board must apply only VASRD guidance to its recommendation. The Board must therefore apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a, or apply an alternative VASRD code that allows for rating of a bilateral foot condition under a single code. 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.

Bilateral Foot Condition. At the time of her entry physical the CI was noted to have mild asymptomatic pes planus and decreased range-of-motion (ROM) of the ankles. Soon after entry onto active duty she developed bilateral foot pain with activity, with the right foot more symptomatic than the left. Over her remaining three years of active duty she was treated with a variety of interventions including anti-inflammatory medications, ice, rest, PT, and orthotics; and, she underwent consultations with orthopedics, rheumatology and podiatry. She was variously diagnosed with symptomatic pes planus and plantar fasciitis. A series of temporary profiles gave way to a permanent L2 profile in March 2004, followed by a permanent L3 profile in December 2004 with restrictions on running, jumping and marching, and a modified physical fitness test. The CI’s commander stated:

Recommend retention in current MOS. The Soldier’s medical condition does not preclude satisfactory performance of MOS requirements. Recommendation is based on reported observation of performance. Soldier scored a 172 on latest AFPT conducted on 24 November 2004. She performed the push-ups, sit-ups and the 2.5 mile walk. Soldier is qualified with her weapon.

The MEB examiner noted that the CI had pes planus with tender arches bilaterally, and pain at the anterior and posterior distal tibia with flexion and extension. There was a fluid full ROM for all joints, except the ankles. Radiographs of the right foot were reported as normal, and a bone scan of both feet was normal. The MEB examiner diagnosed plantar fasciitis with associated tibialis tendonitis and congenital pes planus. As noted above, the PEB returned the CI to duty in May 2005. There are few clinical entries in the service treatment record (STR) for foot pain over the subsequent year; although, in May 2006 the CI was evaluated by rheumatology without a change in the working diagnosis or treatment plan. At this point the CI appealed the PEB’s fitness decision; and, by reconsideration of the initial PEB decision, the foot condition was determined to be unfitting. Three months after separation a VA Compensation and Pension (C&P) examiner documented no significant interval history for the CI’s foot pain. She reported daily foot pain that was worse at the end of the day; and, which prevented her from wearing heels, running, walking more than half a mile, or standing for more than an hour without a break. The examiner noted “severe tenderness, spasm, and painful motion;” localizing these findings to the arches, ball of the feet, and inferior to the medial malleolus. There was no erythema, edema, warmth, palpable mass, instability, fatigability, effusion, crepitus, weakness, or incoordination. The Achilles tendons were well aligned bilaterally; the neurovascular exam was normal; and the gait was normal. The recorded assessment was bilateral pes planus. Neither the MEB nor VA examiner documented the presence of callous, deformity or swelling of either foot. There is a single entry by PT on the MEB ROM evaluation of “posture with pronated feet.” This finding was not characterized for degree, ascribed an etiology, corroborated elsewhere in the service or VA file, or confirmed by a physician; and, did not detract from a normal gait or correlate with the relatively mild degree of anatomic pes planus which was confirmed by physician examiners.

The Board directs its attention to its recommendation(s) based on the above evidence. The Board first considered if a VASRD compliant bilateral code was applicable to the case, as was applied by the VA. The VA code, 5276 (flat foot, acquired), allows a bilateral rating of 30% for the “severe” criteria as judged to apply by the rater. Firstly, the characterization of the condition as acquired (vs. congenital) in this case does not meet the quite specific criteria cited in VASRD §4.57 (static foot deformities). Secondly, the congenital pes planus condition itself was not service-aggravated; rather, the painful complications of plantar fasciitis and/or tendinitis were the service-acquired and unfitting conditions (e.g., subject to disability rating). Finally, the 30% rating under 5276 specifies “objective evidence of marked deformity (pronation, abduction, etc.), pain on manipulation and use accentuated indication of swelling on use, characteristic callosities.” Other than pain on manipulation, easily associated with plantar fasciitis or any other inflammatory condition, and a quite speculative link with the pronation described by PT; none of the objective criteria were met. In fact, the 5276 objective criteria for a 10% (unilateral or bilateral) “moderate” rating were not met, i.e., “weight-bearing line over or medial to great toe, inward bowing of the tendo achillis, pain on manipulation and use of the feet.” The Board therefore rejected the 5276 code as appropriate for rating in this case; and, further concluded that pes planus per se was not a ratable condition. Two other VASRD compliant routes to bilateral rating in this case are: 1) analogous 5299-5279 (metatarsalgia, unilateral or bilateral), yielding a 10% rating; and, 2) analogous 5099-5024 (tenosynovitis, rated per 5003 criteria), yielding a 10% rating for two major joints. It was agreed; however, that the clinical analogies were too tenuous; and, that painful motion for each foot was well supported and would achieve separately compensable ratings. All members agreed, therefore, that VASRD §4.7 (higher of two evaluations) should attach; and, that separate ratings were reasonable and fair.

Having agreed that separate ratings were in order (and thus decoupled from the “bundled” PEB adjudication as elaborated in the introduction), the members deliberated if each foot condition remained separately unfitting and subject to rating. Although the right foot was noted to be the more symptomatic, the foot conditions were linked by common pathology and diagnosis. All of the medical assessments addressed a bilateral condition; the profile designated a bilateral condition; and, the MEB submitted the bilateral condition as failing retention standards. The members agreed, therefore, that attempting to separate out the left foot as not unfitting was overly speculative and arbitrary. The Board further agreed that equivalent coding was in order for the separate service ratings, and deliberated appropriate coding options. The PEB’s 5310 plantar muscle code is in common use for plantar fasciitis, and is quite acceptable when applied unilaterally. Other separate analogous coding options were considered. These included 5299-5284 (foot injuries, other) which would achieve separate 10% ratings; and, 5099-5024 (as elaborated for bilateral rating) which would achieve separate 10% ratings if VASRD §4.59 (painful motion) was applied for separate 10% ratings). The members concluded that the 5310 analogous muscle code was the best fit with the pathology, and the more conventional choice. This 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. All members agreed that “moderately severe” or “severe” characterizations were not supported by the evidence. Deliberations ensued as to rating the feet at 10% each for “moderate” disability; or, rating the right foot 10% and the left foot 0% for “slight” disability. At the conclusion of deliberations, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a 10% rating for the right foot and 0% for the left foot under the code 5399-5310.

Remaining Conditions. No other conditions were noted in the narrative summary, identified by the CI on the MEB physical 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. As discussed above, PEB reliance on AR 635-40 for rating bilateral plantar fasciitis was likely operant in this case and the condition was adjudicated independently of that regulation by the Board. In the matter of the bilateral plantar fasciitis condition, the Board unanimously recommends that each foot be separately adjudicated as follows: an unfitting right plantar fasciitis condition coded 5399-5310 and rated 10%; and, an unfitting left plantar fasciitis condition coded 5399-5310 and rated 0%; both IAW VASRD §4.73. 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Plantar Fasciitis, Right Foot  | 5399-5310 | 10% |
| Plantar Fasciitis, Left Foot  | 5399-5310 | 0% |
| **COMBINED (Incorporating BLF)** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110720, 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 XXXXXXXXXXXXX, AR20120009512 (PD201100636)

1. 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 to modify the individual’s disability rating to 10% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA