RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100647 SEPARATION DATE: 20040304

BOARD DATE: 20120319

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (74B30 / Information Systems Operations Analyst), medically separated for left foot pain with clinical assessment of plantar fasciitis*.* She did not respond adequately to treatment and was unable to meet physical fitness standards. She was issued a permanent P3 U3 L3 profile and underwent a Medical Evaluation Board (MEB). Plantar fasciitis, unresponsive to therapy, was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Mild impingement of the right shoulder was forwarded by the MEB as a medically acceptable condition. The PEB adjudicated the left foot pain with clinical assessment of plantar fasciitis condition as unfitting, rated 10%, with application of DoDI 1332.39 and the Veterans Administration Schedule for Rating Disabilities (VASRD). Additionally, the mild-impingement, right shoulder, condition was adjudicated as being medically acceptable and not ratable. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: I received 80% rating from the Veterans Administration. The Army only rated one area which was Plantar Fasciitis. They should have included my asthma, depression which I currently receive treatment for (sic). I was also issued a handicap (sic) sticker for parking and have started receiving steroid shots for my foot.” She additionally submits her VA Rating Decision and Award Letter in support of her application, thus implying all of her VA-rated conditions as per the rating chart below should be included. A contention for their inclusion in the separation rating is implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20031229** | **VA (4 Mo. After Separation) – All Effective 20040305** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lt Foot Plantar Fasciitis | 5399-5310 | 10% | Lt Foot Plantar Fasciitis | 5299-5277 | 10% | 20040630 |
| Mild Rt Shoulder Impingement | Not Unfitting | No Corresponding VA Entry |
| ↓No Additional MEB/PEB Entries↓ | S/P TAH BSO | 7617 | 50% | 20040630 |
| Exercise Induced Asthma | 6602 | 30% | 20040630 |
| Bilateral Knee Strain | 5099-5010 | 10% | 20040630 |
| MDD | 9432 | 10% | 20040630 |
| 0% x 2/Not Service Connected x 12 | 20040630 |
| **Combined: 10%** | **Combined: 80%** |

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, and not based on possible future worsening. However the Department of Veterans' Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions without regard to fitness for military duties 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. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation.

Left foot plantar fasciitis. Left foot pain began after a physical fitness test (PFT) one year prior to separation and was determined to be secondary to plantar fasciitis. Symptoms included constant pain and swelling. Conservative management, including orthotics and physical therapy, did not improve her condition and she underwent surgery to release the plantar fascia in January 2003. She developed a wound infection post-operatively which was treated with antibiotics and her foot was placed in a cast. Although the infection resolved, pain and swelling persisted. Steroid and anesthesia injections into the plantar fascia provided only temporary relief. Scar desensitization was also unsuccessful. Even though her work performance was satisfactory, her condition left her unable to take the US Army PFT or deploy and she was referred to a MEB. The MEB exam was 24 June 2003, approximately 8 months prior to separation. Examination showed a somewhat thickened heel plantar transverse two cm scar on the medial aspect of the foot over the site of the plantar fascia insertion. The scar was somewhat hypersensitive. Sensation was intact but hypersensitive distal to the scar. She had a normal arch. There was no infection. Her heel cords were not tight. There was no bone tenderness and minimal local swelling. The VA Compensation and Pension (C&P) exam was on 30 June 2004, almost 4 months after separation. The CI noted pain, weakness, swelling and fatigue at rest. Examination of the right foot revealed no tenderness, weakness, edema, atrophy, disturbed circulation or signs of abnormal weight bearing. Pes planus was not present. Hallux valgus was present bilaterally, left greater than right. Orthotics were not used and she did not require the use of an assistive device. Examination of the left foot revealed painful motion. The scar was noted to be well healed without tenderness, disfiguration or limitation of motion. The PEB coded the left foot 5399-5310, analogous to movements of forefoot and toes, and the VA coded 5299-5277, analogous to bilateral weak foot. However, both rated the condition at 10% disability. The Board considered both of these codes as well as 5284, foot injuries, in its deliberations. No rating higher than 10% could be supported under any of these codes. The Board also considered the addition of painful scars at 10%, but notes that the disability before and after the surgery was unchanged and that the examiners noted no specific limitation from the scar separate from the underlying plantar fasciitis. VASRD §4.14, avoidance of pyramiding, precludes the use of the same symptoms for two separate diagnoses. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the left foot condition.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was mild impingement of the right shoulder. This condition was profiled, but not implicated in the commander’s statement or noted as failing retention standards. It was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting re-characterization of the PEB fitness adjudication the right shoulder condition.

Other Contended Conditions. The CI asserts that compensable ratings should be considered for asthma, knee strain, trans-abdominal hysterectomy (TAH) with bilateral salpingo-oopherectomy (BSO), and depression. She was determined not to have an unfitting asthma condition by pulmonology. A methacholine broncho-provocation test was negative, exercise testing did not induce asthma, and spirometry was normal. A psychiatrist noted that she had a medically acceptable adjustment disorder with depression. There are no records of treatment for either the TAH/BSO or knee conditions during the last 5 years on active duty and no evidence of duty impairment after recovery from the acute problem. Moreover, neither is in the DES packet. 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. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were sinusitis, history of a fractured right wrist with full recovery, heart murmur, and low blood pressure. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant during the MEB period, none carried attached profiles, and none were implicated in the commander’s statement. 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 separation rating. Additionally, several other non-acute conditions were noted in the VA proximal to separation, but were 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 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 left foot condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right shoulder impingement, the Board unanimously recommends no change from the PEB adjudications as medically acceptable. In the matter of the asthma, knee strain, TAH/BSO, depression, sinusitis, history of a fractured right wrist, heart murmur, and low blood pressure or any other condition eligible for Board consideration, the Board unanimously agrees that it 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, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Foot Pain, Plantar Fasciitis | 5399-5310 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110618, 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)