RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100654 SEPARATION DATE: 20060706

BOARD DATE: 20120307

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (15S, Helicopter Repair) medically separated for bilateral foot conditions. The CI first experienced pain in his right foot shortly after entering active duty in 1999. This was eventually diagnosed as a keratoma from callous formation, as a consequence of congenital elongation of the 5th metacarpal; and, was treated with orthotics and analgesics. In 2005 the CI experienced a 5th metacarpal styloid fracture of the left foot, attributable to abnormal weight bearing secondary to the right foot condition. Non-surgical management of the fracture and continued treatment measures for both feet did not result in adequate improvement 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). Both foot diagnoses were forwarded to the Physical Evaluation Board (PEB) as a combined medically unacceptable condition IAW AR 40-501. A pilonidal cyst condition was also identified by the MEB, and was forwarded as a medically acceptable condition. Other conditions included in the Disability Evaluation System (DES) file are addressed below. The PEB adjudicated the right 5th metatarsal keratoma and left 5th metatarsal styloid fracture as a single unfitting condition, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with that disability rating.

CI CONTENTION: “Belief that the original rating was taken lightly and under rated.” The CI further includes a letter from his spouse detailing his difficulties in Service, and worsening disability currently. He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20060424** | **VA (8 Mo. Post-Separation) – All Effective Date 20060707** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| R 5th Metatarsal Keratoma … L 5th Metatarsal Styloid Fracture | 5279 | 10% | Callous, R Foot | 7819 | 0%\* | 20070129 |
| L 5th Metatarsal Styloid Fracture | 5284 | 0%\* | 20070129  |
| Pilonidal Cyst | Not Unfitting | Not VA Rated |
| ↓No Additional MEB/PEB Entries↓ | 0% x 2 / Not Service Connected x 0 |
| **Combined: 10%** | **Combined: 10%\*** |

\*Entitlement to a 10 percent evaluation based upon multiple, non-compensable, service connected disabilities.

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that the service was not diligent in the processing, or fair in the rating, of his case; as well as his spouse’s description of the significant impairment and worsening severity with which his service-incurred condition continues to burden him. It is noted for the record that the Board does not have the jurisdiction to scrutinize or render opinions in reference to asserted service improprieties in the disposition of a case. The Board’s authority, as defined in DoDI 6044.40, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. 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 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 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. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the severity of disability at the time of separation.

Bilateral Foot Condition. The right foot pain was initially attributed to a plantar wart, but did not respond to multiple treatments with shaving and cryotherapy of the lesion. It was subsequently diagnosed as a plantar keratoma as noted above, and the CI was fitted for orthotics in 2004. The left foot metatarsal fracture was incurred during a 2005 deployment to Iraq, and was treated in a cast followed by a hard brace. Both feet remained painful despite additional paring of the calluses, injections, shoe inserts and anti-inflammatories. At the MEB exam (four months prior to separation) the CI reported slight continuous pain (0-1 of 10), with increased pain (6-8 of 10) caused by walking or pressure on his feet. He was unable to walk any distance, carry tools, or climb onto aircraft. The MEB physical examination noted callous formation; but, no positive bony or other soft-tissue findings. Radiographs revealed posterior calcaneal spurs bilaterally; but, no evidence of active fracture, arthritic change, deformity or misalignment. The examiner documented that “the soldier has no or limited pain when he is able to sit or limit his walking or physical activities.” At the VA Compensation & Pension (C&P) exam (eight months after separation) the CI reported pain with walking and activity, and required no medication. The physical exam noted a normal gait and posture, but tenderness to the soles of both feet. The condition did not affect coordination, strength, or activities of daily living; and, the VA examiner noted “he has not lost any work as a helicopter repair person since his discharge.”

The Board directs its attention to its rating recommendation based on the above evidence. The Board first considered the VA’s separate ratings of 0% for the right foot under 7819 (benign skin neoplasms) and 0% for the left foot under 5284 (foot injuries, other). Separate 0% ratings could be warranted based on the VA findings and symptoms for each individual foot; but, separate codes and separately compensable ratings were considered by the Board. The 5294 code could be appropriately applied for the left foot since the etiology was trauma, and a 10% rating considered if severity is assessed as “moderate;” but, no compensable rating for the right foot is adequately supported under any available code. Thus this approach would confer no rating advantage over the PEB’s approach. The most reasonable and appropriate coding for this case, furthermore, is the PEB’s choice of 5279 for metatarsalgia (although an analogous prefix is indicated); which confers a 10% rating for bilateral impairment. None of the other foot codes available in VASRD §4.71a are applicable to the diagnoses or disability. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the bilateral foot condition.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was a pilonidal cyst. This condition was not profiled, 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 recharacterization of the PEB fitness adjudication for this condition.

Remaining Conditions. Other conditions identified in the DES file were borderline hyperlipidemia and heartburn. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period; none carried attached profiles; and, none were implicated in the commander’s statement. Hearing loss was also noted in the DES file and did carry a profile of H2, but was not implicated in the commander’s statement or reasonably linked to fitness for the MOS. 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. 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. 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 bilateral foot condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the pilonidal cyst condition, the Board unanimously recommends no change from the PEB adjudication as not unfitting. In the matter of the hearing loss, hyperlipidemia, heartburn, or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any finding 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Metatarsal Keratosis with Left Metatarsal Fracture  | 5299-5279 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110802, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120004765 (PD201100654)

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