RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100700 SEPARATION DATE: 20080617

BOARD DATE: 20120330

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard PFC/E-3 (25B, Information Technology Specialist) medically separated for right and left foot conditions. The CI first experienced bilateral foot and ankle pain during basic training in 2007. She was diagnosed with bilateral calcaneal stress fractures; and, treated with casts, progressive weight bearing, physical therapy and analgesics. Her condition could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was thus issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The right and left foot conditions, characterized identically as “chronic posterior heel pain secondary to stress fracture” were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB; but other conditions, contended or evidenced in the Disability Evaluation System (DES) file, are addressed below. The PEB adjudicated the right and left heel conditions as unfitting, rated 10% each, citing criteria 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: “I now have additional medical documentation that the VA board does not have. I have documentation to provide evidence of injuries to my left foot and left hip.” Attached is an emergency treatment record from a military treatment facility dated November 30, 2007; which was not in the original service file, and which will be addressed.

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20080422** | **VA (9 Mo. Post-Separation) – All Effective Date 20080618** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| R Heel Pain, Calcaneal Stress Fracture | 5284 | 10% | Residuals, Stress Fracture R Foot | 5284 | 10% | 20090106 |
| L Heel Pain, Calcaneal Stress Fracture | 5284 | 10% | Residuals, Stress Fracture L Foot | 5284 | 0% | 20090106 |
| No Additional MEB/PEB Entries | Not Service Connected x 1 | 20090106 |
| **Combined: 20%** | **Combined: 10%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions incurred in service. 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 Department of Veterans’ Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to compensate 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.

Right Foot Condition. The CI began experiencing right ankle pain during basic training in June 2007. A subsequent bone scan revealed a stress fracture of the right posterior portion of the calcaneus. She was treated conservatively and managed to complete basic training. Her ankle pain resolved, but she continued to experience pain in her posterior heel. The fracture did not heal completely despite activity restriction and immobilization. At the MEB exam (3 months prior to separation), the CI reported chronic pain in the right posterior heel that was exacerbated by walking, running, prolonged standing, or any load-bearing. The physical exam noted a slightly antalgic gait, and a decreased ankle range-of-motion (ROM) which was attributed to guarding from the heel pain. The posterior heel was tender with a palpable bony prominence. At the VA Compensation and Pension (C&P) exam (7 months after separation), the CI continued to report chronic pain with standing and walking, and intermittent stiffness. The VA examiner noted swelling and tenderness of the heel with a bony protuberance, and documented mild flat feet with weight-bearing. Gait at that time was noted to be normal.

The Board directs attention to its rating recommendation based on the above evidence. All members agreed that the MEB evidence was more probative, given its closer proximity to separation; although, there was not a ratable difference between the MEB and VA evaluations. Both the VA and the MEB rated the condition under VASRD code 5284 (foot injuries, other); and, both arrived at the same 10% rating, assessing the disability as “moderate” under that code. The higher ratings under 5284 are 20% for “moderately severe” and 30% for “severe.” Severe disability would connote debilitating pain or an inability to walk without assistance, with restrictions on some essential daily activities. Moderately severe disability connotes a significant deformity or pain with minimal use or manipulation of the foot, with significant limitations on mobility and interfering somewhat with routine activities. All members agreed that the physical findings and functional limitations referable to the right foot did not meet the threshold for any of the higher ratings under 5284. This is easily the most clinically applicable code for this case; although, the Board considered alternate ratings under other foot or contiguous ankle joint codes, or as analogous to 5003 (degenerative arthritis). No applicable code yields a rating higher than 10% with the evidence before the Board. 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 right foot condition.

Left Foot/Ankle Condition. The onset of pain in basic training and the clinical course for the left foot was similar to that related above for the right foot; although the ankle component of the pain did not resolve. The 2007 bone scan referenced above suggested stress fractures of the talus (an ankle bone) and calcaneus. Treatment measures were in tandem with those for the right foot. The MEB examiner reported equivalent severity and physical limitations to those for the right foot, although the VA C&P examiner, after separation, described less severe pain on the left. The MEB physical examination noted pain with motion, but not tenderness of the foot and ankle. Ankle dorsiflexion was 10⁰ (normal 20⁰), but plantar flexion and lateral excursions were normal. At the VA C&P evaluation, the CI reported intermittent pain in the dorsum of the left foot with weight-bearing. The VA physician described the physical exam for the left foot as “no painful motion, edema, instability, weakness, or tenderness to palpation.” Ankle ROM was normal.

The Board directs attention to its rating recommendation based on the above evidence. The Board’s probative value judgments and coding conclusions were equivalent to those just elaborated for the opposite foot. Although ankle pathology was more co-mingled for the left foot, presumably because of the talar involvement; there was no rating advantage to application of one of the ankle codes; and, no support for separate foot and ankle ratings that would surmount objections of VASRD §4.14 (avoidance of pyramiding). Considering the probative MEB evaluation, with equivalent descriptions for left and right severity; and, physical limitations shared by both lower extremities; it was readily concluded that the MEB’s 10% rating was reasonable based on the same rationales previously elaborated. 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 left foot/ankle condition.

Other Contended Conditions. The CI requests consideration of additional evidence submitted for injuries to her left foot and left hip. The submitted records added no pertinent evidence for the left foot which has not been addressed and incorporated into the recommendation above. The submitted emergency treatment record (7 months prior to separation) documents a 2 week history of left hip pain without trauma, and notes that the CI presented on crutches. The physical exam was limited to (medical shorthand translated) “left hip non-tender with full range of motion;” no x-ray is in evidence and, the diagnosis was “arthralgia.” No follow-up or other documentation was submitted by the CI, but there is an outpatient treatment note soon after the emergency visit which documents “periostitis hips.” There are two treatment notes from January 2008 documenting “*right* hip pain secondary to right foot pain.” There is a note 2 weeks later stating, “hip pains resolved.” A right hip rating was denied by the VA on the basis that the VA C&P examiner, after separation, found no pathology on which to base a diagnosis. Neither hip condition was profiled or implicated in the commander’s statement. The Board thus has no basis for a recommendation for additional service rating for the contended right hip condition.

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 service 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 right and left foot (includes ankle) conditions and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudications. In the matter of the contended right hip condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional service disability rating. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for service disability rating.

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** |
| Residuals, Right Calcaneal Stress Fracture | 5284 | 10% |
| Residuals, Left Calcaneal and Talar Stress Fractures | 5284 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110825, 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)