RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100720 SEPARATION DATE: 20080701

BOARD DATE: 20120730

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (68S10/Preventive Medicine Specialist), medically separated for bilateral foot pain. The CI developed non-traumatic bilateral foot and heel pain in 2003. The CI did not improve adequately with treatment of anti-inflammatory medication, injections and shoe inserts (orthotics) to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Chronic left shoulder pain and chronic left knee pain, identified in the rating chart below, were also identified and forwarded by the MEB as medically acceptable. The PEB adjudicated the bilateral foot pain condition as unfitting, rated 20% (combined 10% left and 10% right) with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “At the time that I got out of the military I could not stand for more than 10 minutes. My feet where [sic] in so much pain then and even worse now. I wanted to stay in the military until I retired but the injury that I received to my feet didn't allow it. With little concern I feel that I was abandoned my [sic] the Army, gave a severance pay and sent me on my way. I am hurting even more to and can't get proper can for my feet. There were also other medical conditions that were noted (knee and shoulder) that a rating wasn't provided for. When I went to my physical at Walter Reed Medical Center all these thing were noted but only a 20% disability rating was given for my left foot and right foot.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The chronic left shoulder pain and chronic left knee pain conditions, as requested for consideration and the unfitting bilatreral foot pain conditions meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20080314** | | | | **VA (3 Mos. Pre-Separation) – All Effective Date 20080702** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Foot Pain | 5399-5310 | L | 10% | Left Foot Plantar Fasciitis and Pes Planus | 5276-5020 | 10% | 20080409 |
| R | 10% | Right Foot Plantar Fasciitis and Pes Planus | 5276-5020 | 10% | 20080409 |
| Left Knee Pain | Not Unfitting | | | Left Knee Chondromalacia | 5099-5014 | 10% | 20080409 |
| Left Shoulder Pain | Not Unfitting | | | Chronic Left Shoulder Strain | 5299-5203 | 10% | 20080409 |
| ↓No Additional MEB/PEB Entries↓ | | | | Chronic Headaches | 8199-8100 | NSC\* | 20080409 |
| 0% X 1 / Not Service-Connected x 3 | | | 20080409 |
| **Combined: 20%** | | | | **Combined: 30%\*** | | | |

\*Headache changed to 30% effective 20091026 (combined 60%)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of MDES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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. The DVA, however, 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.

Bilateral Foot Pain Condition. At the MEB exam, 9 months prior to separation, the CI reported that her feet pain started in 2003 and she did not know why. She was treated in her local MTF and she was referred to Podiatry later on. She was treated with Naprosyn, stretching exercises and even orthotics. None of these measures helped and she was profiled accordingly in July 2007. The MEB physical exam noted that the arches of her feet were normal; her gait was somewhat antalgic, stands with some inversion of her feet with supple forefoot supination.

At the VA Compensation and Pension (C&P) exam, 3 months, prior to separation, the CI reported discomfort in her feet aggravated by prolonged standing and running. She was treated with injections in her heels and the prescribed orthotics which helped in ambulation. The VA examiner indicated that the feet were flexible but flat in standing position and the arches were slightly reestablished when in sitting position. There were no valgus deformity and no callosities formation in either foot. In addition, there was no Achilles tightness and no evidence of malalignment in either foot. The examiner mentioned the presence of only mild tenderness in the heels and plantar arch area. The VA examiner indicated that CI had limitation in prolonged standing, running and jogging due to her feet discomfort. There was no evidence of adverse impact on her activities of daily living and there was no evidence of uneven shoe wears. The feet X-rays showed no evidence of significant degenerative changes and mild bilateral pes planus.

The Board directs attention to its rating recommendation based on the above evidence. The VA exam was more detailed and closer to the CI’s date of separation, but did not significantly differ in ratable criteria from the PEB exam. The PEB rated the CI’s unfitting feet condition on the basis of muscle groups in the feet (5399-5310), rated at 10% for each foot (moderate). The CI’s history, signs and symptoms did not justify any rating above moderate IAW VASRD §4.55 and §4.56 for muscle injuries/disabilities. The VA coded the feet condition as flat feet and synovitis (5276-5020) rating each foot at 10%. Although the VA coding is closer to ideal, the PEB coding is acceptable. Rating the bilateral foot pain and flat feet above 10% is not justifiable as neither exam showed severe deformity, objective swelling or callosities formation. Both exams and both coding choices justified a 10% rating for each foot for painful motion (§4.59) and/or functional loss (§4.40).

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 pain condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were chronic left shoulder pain and chronic left knee pain. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering 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. None of these conditions were profiled; none were implicated in the commander’s statement; and, none were judged to fail retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended conditions [or specify]; and, therefore, no additional disability ratings can be recommended.

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 pain condition and IAW VASRD §4.73, the Board unanimously recommends no change in the PEB adjudication (10% for each foot, combined 20%). In the matter of the contended chronic left shoulder pain and chronic left knee pain conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Bilateral Foot Pain | Left | 5399-5310 | 10% |
| Right | 5399-5310 | 10% |
| **COMBINED (w/ BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110823, 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 XXXXXXXXXXXXXXXXXXXX, AR20120014300 (PD201100720)

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