RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100745 SEPARATION DATE: 20020515

BOARD DATE: 20120405

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active SGT/E-5 (11B20 / Infantryman), medically separated for left foot pain with history of a first cuneiform bone fracture and first metatarsal cuneiform arthrodesis. The CI injured his left foot in May 1996. He underwent three left foot surgeries and pain management therapies, with chronic pain in his left foot. He did not improve adequately for performance within his Military Occupational Specialty (MOS) and could not meet physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). “Chronic left foot and left lower leg pain, secondary to dorsal cutaneous nerve entrapment of the left foot” were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the left foot pain condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed and waived a formal hearing. The U.S. Army Physical Disability Agency (USAPDA) reviewed the appeal and found no evidence to warrant changes to the IPEB’s findings. The CI was then medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “The Army doctors did surgery on my foot and cut the main nerve that runs down it. Since than [sic] I have been living in constant pain or Ghost Pain as some call it. I have been on all kinds of medication while in the army and since my discharge. I have trouble sleeping because of the pain and have been on medication for that for the last 8 years.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20011101** | | | **VA (2 Mos. Pre-Separation) – All Effective 20020516** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Pain Left Foot… | 5299-5279 | 10% | Residuals of Foot Injury and Surgery with Nerve Entrapment | 5284-8622 | 20% | 20020307 |
| Residuals of Left Ankle Surgery | 5271 | 20%\* | 20020307 |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20020307 |
| 0% x 2/Not Service-Connected x 1 | | | 20020307 |
| **Combined: 10%** | | | **Combined: 40%\*** | | | |

\* Left ankle decreased to 10% and added left foot scar 7804 @10% effective 20050923 (combined 40%)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, that the gravity of his condition and predictable consequences merit consideration for a higher separation rating. It is a fact, however, that 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 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. The Board’s authority as defined in DoDI 6040.44; however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation

Pain Left Foot Condition. This analysis addresses all left lower extremity conditions as there is significant overlap in the symptoms and disability picture (includes pain left lower leg secondary to dorsal cutaneous entrapment, arthritis left foot, distal tibial scar and ankle). The CI’s left foot symptoms began with a first cuneiform bone abnormality that led to fusion of the left foot first metatarsal (1st MT) and cuneiform bones (mid-foot aligned with big toe behind the ball of the foot). Surgery included bone graft donor site from the distal tibia. The CI had two additional surgeries on the 1st MT area including neurectomy/excision of neuroma of the medial dorsal cutaneous nerve and developed chronic lower leg and foot pain (on the top of the foot) that prevented wear of military foot gear and interfered with running, walking and sleep. Oral medications and repeated scar-area injections provided only temporary pain relief.

The primary evaluations which the Board weighed in arriving at its rating recommendation were the narrative summary (NARSUM) exam 8 months prior to separation, the VA Compensation and Pension (C&P) exam performed 2 months prior to separation, and the treatment records after the NARSUM and prior to separation.

The NARSUM exam indicated the CI’s pain history and trouble sleeping. The CI had a mild antalgic gait. There was decreased sensation in the first web space and a positive Valleix sign (percussing the point of entrapment with a neurological hammer, causing migration of electrical activity [lightning bolt] sensation up the leg and into the foot.) and negative Tinel sign (pressing versus striking/percussion). There was tenderness of the foot and lower leg surgical areas. Strength and range-of-motion (ROM) of the ankle/foot were noted as “within normal limits and non-tender” without goniometric measurements provided.

The VA C&P exam prior to separation indicated the CI had a limp and “favored his right foot because of left foot pain.” There was “slight thinning and atrophy of the interosseous muscles of the left foot. He had exquisite tenderness to minimal palpation of that area. ROM of the ankle revealed that he had dorsiflexion of 5 degrees (normal 20 degrees) and plantar flexion of 5 degrees (normal 45 degrees). Scars were well healed. He had obvious exquisite pain at this area. It did cause him a great amount of physical impairment. This was significant physical impairment.”

The treatment records indicated the CI was on an anesthetic patch, and a medication for nerve pain (Gabapentin/Neurontin). There were four pain management visits following the NARSUM with three injections providing temporary pain relief, including one following the VA C&P exam and some indication of a lessening of pain and spasm. Prior multiple injections for pain relief had included foot and sciatic nerve blocks for a diagnosed reflex regional dystrophy of the left foot.

Records indicated the CI had been dispensed orthotics (shoe inserts), radiographs of the left foot demonstrated complete fusion of the first multiangular with the first metatarsal, and the left ankle radiograph although 19 months prior to separation was normal. Review of the operation report of the original bone fusion and graph harvest (in November 1996) indicated the tibial bone harvest site was 3 cm proximal to the ankle joint and accomplished with a core bone trephine—there was no indication of penetration of the ankle joint or complication involving the ankle joint, muscles or tendons.

The Board carefully examined all evidentiary information available. The Army PEB rated the CI for 5299-5279, analogous to metatarsalgia, anterior (Morton’s disease) and disability description indicated “Pain left foot with a history of a first cuneiform bone fracture and first metatarsal cuneiform arthrodesis. Soldier has had several surgical procedures on left foot (three). Clinical assessment for pain was dorsal cutaneous nerve entrapment of the left foot.” This description led the Board to conclude that only the foot pain was considered unfitting and the MEB/NARSUM-described left lower leg pain was not considered unfitting or rated. The VASRD code chosen by the PEB has 10% as the only rating level. The VA rated the CI’s foot pain as 5284-8622; foot injury other with VARD narrative indicating criteria used for their 20% rating was for “moderately severe foot injury” rather than criteria for neuritis of the superficial peroneal nerve as “severe” at the 20% level. The VA additionally rated the CI’s left ankle as 5271 for marked limitation of motion as residuals of left ankle surgery.

There were marked differences between the NARSUM exam indicating normal muscle exam and ankle and foot ROMs and the VA exam indicating intrinsic foot muscle atrophy and significantly limited ankle ROMs was discussed in depth. In assigning probative value to these somewhat conflicting examinations, the Board notes that: the MEB measurements are consistent with corroborating evidence; the MEB measurements are consistent with the other collateral physical findings; the MEB measurements are consistent with the diagnostic and clinical pathology in evidence; there is not a reasonable accounting for progressively impaired ROM in the fairly short interval between the MEB and VA examinations; and VA rating evaluations based on ROM rely on subjective pain thresholds which are plainly associated with financial incentive, thus intrinsically subject to some loss of objectivity. The pain-limited ankle ROM is attributable to the pain syndrome rather than intrinsic ankle pathology. Therefore, based on all evidence and associated conclusions just elaborated, the Board is assigning preponderant probative value to the MEB evaluation. There was not a preponderance of the evidence for adding the left ankle condition as a new unfitting condition for independent rating at separation.

There was no evidence to indicate the level of disability was to the level equivalent to loss of use of the foot. Review of all available evidence indicated the CI’s foot and lower leg disability was neurologic in etiology. It would be unduly speculative and not in accordance with medical rationale to suppose the CI’s ankle ROMs were due to the bone graft harvesting and the preponderance of the evidence indicated no separate ankle pathology. The Board considered the level of nerve involvement for coding should include the lower leg pain and allow for reasonable doubt concerning the positive Valliex sign, a regional pain disorder (reflex regional dystrophy) above the level of the mid-foot, the history of multiple surgeries, and the organic changes noted at the VA exam. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the left foot condition IAW VASRD §4.71a and §4.123.

Remaining Conditions. Other conditions identified in the DES file were; tendonitis left wrist; hearing loss and tinnitus; and insomnia secondary to left foot pain. 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 was 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. 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, the Board unanimously recommends a permanent service disability rating of 20%, coded 8622-5284 IAW VASRD §4.71a and §4.123. All evidence considered, there is not a preponderance of the evidence in the CI’s favor supporting addition of the left ankle condition as an unfitting condition for separation rating. In the matter of the tinnitus condition, or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Foot Pain and Nerve Entrapment | 8622-5284 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110908, 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

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 20% 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

Deputy Assistant Secretary

(Army Review Boards)