RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100792 SEPARATION DATE: 20080224

BOARD DATE: 20120327

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92Y, Unit Supply Specialist), medically separated for a bilateral foot condition. She did not respond adequately to treatment and was unable to fulfill the physical demands within her Military Occupational Specialty (MOS) or meet physical fitness standards. She was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Bilateral plantar fasciitis was 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 bilateral plantar fasciitis condition as unfitting, rated right 10%, left 10%, bilateral factor was applied; with a combined 20% with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “I should have medically retired and placed on the TDRL with at least 30% for bilateral Plantar Fasciitis from the PEB and I also believe I should have been evaluated for my headaches and back strain with at least 0% rating then on the re-evaluation my headaches and back strain would have been shown to be worse and a grant of 10% for each and then placed on the PDRL see DVA rating decision dated 12-6-2011. PTSD 30%. I contend that the PEB failed me in rating all my disabilities of unfitness to do my job as a 92Y Supply Specialist. Please place me on the PDRL list with at least 60% if not 80% with PTSD.” She additionally lists all of her VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20071115** | **VA (2 Mo. Pre Separation) – All Effective Date 20080225** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Plantar Fasciitis | 5399-5310 | 20% | Bilateral Plantar Fasciitis | 5020-5276 | 30% | 20071227 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 4/Not Service Connected x 3 | 20071227 |
| **Combined: 20%** | **Combined: 30%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that bilateral plantar fasciitis was only rated 20% by the PEB when the Department of Veterans’ Affairs (DVA) rated the condition at 30%. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected service improprieties in the processing of her case. 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 acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation and for conditions not diagnosed while in the service (but later determined to be service-connected by the DVA). 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 DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board finally makes note that the rating decision for PTSD, which was not in the DES file, nor was considered in the original VA rating decision, was derived from VA evaluations performed more than 12 months after separation, and was rated effective 29 months after separation. The Board’s operative instruction, DoDI 6040.44, specifies a 12-month interval for special consideration to VA findings. This does not mean that the later VA evidence was disregarded, but the Board’s recommendations are directed to the severity and fitness implications of conditions at the time of separation. In this circumstance, therefore, the evidence from the service record is assigned significantly more probative value as a basis for the Board’s recommendations.

Bilateral Foot Condition. The CI presented with bilateral foot pain in March 2004 without trauma or event that caused her condition and was diagnosed with bilateral plantar fasciitis. This condition was not responsive to medications, orthotics, physical therapy, pool therapy, night splints, casting or injections. In June 2007 she was referred to Podiatry who did not recommend surgery. The narrative summary (NARSUM) examiner reported constant 5/10 mild pain that worsened to 7 /10 with activity and was not associated with swelling and had not improved with time. The NARSUM physical exam demonstrated no edema, effusion or erythema with 4/5 weakness noted with ankle eversion, bilaterally. There was limitation of ankle dorsiflexion secondary to pain. Gait was not mentioned. Bilateral weight bearing radiographs were normal in 2005 and revealed bilateral pes planus in 2007 with a normal EMG. The permanent profile limitations included no running, marching, or jumping and to perform push-ups only for the APFT. The functional limitations included not being able to move a fighting load, to do 3 to 5 second rushes, construct an individual fighting position and to wear soft shoes. The commander’s statement corroborated these limitations and, in addition, noted she was able to perform all necessary duties during a normal 8 hour duty day and was pulled from her place of duty for medical appointments twice a week. The VA Compensation and Pension (C&P) exam completed 2 months prior to separation documented bilateral arch and heel pain worse with walking and standing and relieved by rest with the use of orthotic inserts. Examination revealed a normal gait with no use of assistive devices. Both the right and left foot demonstrated pes planus with no weight bearing over or medial to the great toes, no malalignment of the achilles tendon, forefoot or midfoot, and no pain at rest or with manipulation. Weight bearing radiographs demonstrated bilateral pes planus otherwise unremarkable.

The PEB and VA chose different coding options for the condition, but this did not bear on rating.

The MEB and VA exam were very similar. The PEB rated each foot separately under an analogous 5310 code with application of the US Army Physical Disability Agency (USAPDA) pain policy. The VA rated used the acquired flatfoot code 5276 analogous to the 5020 code (synovitis) and rated the bilateral condition 30% based solely on evidence of pronation. The Board agreed the C&P exam evidence did not reflect the 30% rating criteria for code 5276 (marked deformity, pain on manipulation, swelling on use nor characteristic callosities) and agreed some pronation is expected with pes planus. The Board looked for higher ratings using analogous 5020 code (synovitis), 5278 code (claw foot) but there was insufficient evidence to justify a higher rating under these codes. The Board members agreed that the evidence most closely approximated moderate impairment of the left and right foot function. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the bilateral plantar fasciitis condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for back strain, headaches and posttraumatic stress disorder (PTSD). All of these conditions were reviewed by the action officer and considered by the Board. With regard to the back strain and the headaches, there was no evidence for concluding that either of these 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. The Board acknowledges the presence of PTSD as a currently rated condition by the VA, and also noted this condition was not on the original VA rating decision, in fact rated 29 months later. The scope of the Board’s recommendations does not extend to conditions which were not diagnosed or in evidence at the time of medical separation. This includes conditions which may have had early manifestations during active service, since such sub-clinical conditions cannot be correlated with a fitness determination requisite for a service rating. The condition, especially since it is contended was not properly addressed by the service, remains eligible for appeal to the Army Board of Military Corrections (ABMCR).

Remaining Conditions. Other conditions identified in the DES file were right salpingectomy, and bilateral knee 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 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, dysplastic nevus and 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. As discussed above, the PEB reliance on the USAPDA pain policy for rating plantar fasciitis was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of bilateral foot condition and IAW VASRD §4.73 the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the headaches, and back strain condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of right salpingectomy and bilateral knee pain conditions 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. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for 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** |
| Bilateral Plantar Fasciitis | 5399-5310 | 20% |
| **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)