RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100871 SEPARATION DATE: 20050222

BOARD DATE: 20120816

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (13M10, Multiple Launch Rocket System Crewmember) medically separated for a bilateral leg condition. He developed bilateral lower leg pain in 2002 associated with rigorous Special Forces training; which was subsequently diagnosed as exertional compartment syndrome. The pain was persistent and did not respond to a protracted trial of various conservative measures; and, surgery was not advised. The condition could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The condition, characterized as “bilateral leg pain secondary to exertional compartment syndrome,” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions, “bilateral knee pain without effusion” and “mild asymptomatic pes planus,” were forwarded by the MEB as meeting retention standards. The PEB adjudicated the bilateral leg condition as unfitting, rated 20% (specifying 10% for each extremity), and citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The knee and foot conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “Conditions have become worse. Physically it is becoming harder to perform my work duties, as a result of this. I need a full reevaluation, as I have requested 3 VA hospital appointments, since re-locating to California, but I have received zero appointments.” He further elaborates his current difficulties with his bilateral leg compartment syndrome; and, expresses the opinion that his knee and foot conditions are linked to it.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 conditions “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions are reviewed in all cases; and, the CI’s opinion that the bilateral knee and foot conditions (adjudicated as not unfitting) are a consequence of the unfitting condition is construed as a request for rating of those conditions as well. Thus all three of the PEB adjudicated conditions are judged by the Board to 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 (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20041028** | | | **VA (~3 Mo. Pre-Separation) – All Effective 20050223** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Leg … Exertional Compartment Syndrome | 5399-5312 | 20% | Left Leg Compartment Syndrome | 5399-5312 | 10% | 20041202 |
| Right Leg Compartment Syndrome | 5399-5312 | 10% | 20041202 |
| Bilateral Knee Pain | Not Unfitting | | Left Knee Pain | 5099-5024 | NSC | 20041202 |
| Right Knee Pain | 5099-5024 | NSC | 20041202 |
| Pes Planus | Not Unfitting | | Left Foot Pes Planus | 5299-5276 | 0% | 20041202 |
| No Additional MEB/PEB Entries | | | Tinnitus | 6260 | 10% | 20041202 |
| 0% x 4 Additional / Not Service-Connected x 6 Additional | | | 20041202 |
| **Combined: 20%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred conditions continue to burden him. 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 proximate to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of fitness decisions and rating determinations for disability at the time of separation. DoDI 6040.44 specifies a 12-month interval for special consideration to DVA findings. The Board further acknowledges the CI’s contention for ratings for his knee and foot conditions which were adjudicated as not unfitting by the PEB, 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 the member’s service career; and the Board’s assessment of fitness determinations is premised on the MOS-specific functional limitations in evidence at the time of separation. 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. The Board also acknowledges the CI’s expressed concerns regarding his accessibility issues with the DVA; but, must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to such allegations. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB disability ratings and fitness determinations as elaborated above. Redress for matters of this nature must be addressed by the DVA and/or the United States judiciary system.

Bilateral Leg Condition(s). The CI’s persistent and recurrent leg pain was initially diagnosed as shin splints. The diagnosis of compartment syndrome in both lower leg anterior muscle groups was confirmed by pressure manometry in November 2003. There was bone scan confirmation of shin splints as well; and, the VA included shin splints in its nomenclature for the conditions. Since compartment syndrome was the dominant etiology, and separate ratings would be prohibited by VASRD §4.14 (avoidance of pyramiding) irrespectively; no attempt to distinguish separate etiologies or conditions is indicated for purposes of this discussion. Surgical decompression of the compartment syndromes was not indicated per the orthopedic consultant. Physical therapy, orthotics and anti-inflammatories were helpful; but the activity limitations remained incompatible with continued military service. No hospitalization or invasive treatment modalities were required. The narrative summary (NARSUM) noted only the profile restrictions as physical limitations, but related an occasional antalgic gait secondary to leg pain. The physical exam noted lateral tenderness to both lower legs with “firm but not tight” lower muscle compartments (“minimally uncomfortable to digital pressure”); but, was otherwise normal. The VA Compensation and Pension (C&P) examiner prior to separation, documented “constant pain but he can keep it at a manageable level if he carefully controls his activities.” The pain was noted to disrupt sleep; and, the examiner further stated that it “is present 80% of the time, and worse with walking up and down stairs or climbing in and out of vehicles or carrying heavy items. Extended walking beyond one quarter mile also exacerbates the pain.” The physical exam documented “tenderness in both anterior compartments of the forelegs as well as the body of both calves. The CI could walk on toes as well as heels and did not limp.”

The Board directs attention to its rating recommendations based on the above evidence. It is first noted that the PEB consolidated the identical right and left leg conditions under a single rating of 20%, which is not in conformity with VASRD §4.71a; but, the PEB’s DA Form 199 makes it clear that this was de facto separate ratings of 10% each under the same code with application of the bilateral factor. The Board must conform to the VASRD and will treat the PEB adjudication as separate conditions (as per the VA approach). Since there are no clinical or functional distinctions; it follows that the coding and rating recommendations for each extremity should be identical. The Board first deliberated the optimal coding choice. Both the PEB and VA analogously applied the clinically applicable muscle code, 5312 (anterior lower leg group). This is the best pathologic and disability fit for compartment syndrome, despite that fact that there was no penetrating or blunt trauma in this case. It also rates any unfitting pain attributable to the co-existent shin splints. Since there is no ratable contiguous joint disability attributable to the DVT diagnosis, there is no available code more favorable to rating. The PEB’s 10% rating under 5312 for “moderate” muscle disability connotes significant and constant pain with functional limitations on some occupational tasks and domestic chores, but little interference with essential activities of daily living. The next higher 20% rating for “moderately severe” disability connotes significant muscle damage and pain with minimal use, imposing some limitations on mobility and routine activities. All members agreed that criteria for the higher rating were not reasonably supported by the evidence at separation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that the bilateral leg condition was fairly rated at 10% for each extremity under 5399-5312.

Contended Bilateral Knee and Foot Conditions. The NARSUM did not elaborate a clinical history for the knee or foot conditions, noting them only as a current complaint. Regarding the knee condition, the VA C&P examiner noted a history of patellar pain dating to 2002 (Special Forces training), which was exacerbated by climbing stairs and squatting. The service records note sporadic complaints of knee pain associated with the lower leg condition; although, there are no visits directed specifically at this complaint, no directed ancillary evaluations, no directed therapy notes, and no recorded diagnosis until the MEB evaluation. This was the basis for the VA’s determination that there was no service-connected knee condition. MEB and VA physical examinations were essentially benign, and range-of-motion (ROM) was normal for both knees. Regarding the foot condition, the CI related a history of bilateral foot pain during the MEB; and, this was treated with shoe inserts. There was no specific diagnosis rendered, and no referral to podiatry was made. Bilateral foot X-rays in June 2004 noted “slight flattening of the left plantar arch.” The NARSUM entry simply stated “mild pes planus, asymptomatic, medically acceptable.” The VA examiner recorded “a lot of pain on the bottoms of both feet,” noting tenderness at the sole and arch of the right foot on exam.

As elaborated in the introduction, the Board’s first charge with respect to the contended conditions is an assessment of the fairness of the PEB’s determination that they were not unfitting. 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. Both conditions, designated “bilateral anterior knee pain” and “flat feet” appeared on the permanent L3 profile; and, the commander’s statement was directed at “pain in knees, ankle and shin splints.” Neither the profile nor commander’s statement; however, documented any physical limitations beyond those imposed by the primary bilateral leg condition; and, the orthopedic opinion expressed in the NARSUM was explicit that neither of these conditions was disqualifying. It should also be noted that compensable criteria IAW VASRD §4.71a were not in evidence for the contended conditions, even if conceded as unfitting. Both conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that either of them 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 bilateral knee or foot conditions; 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 exertional compartment syndrome of the bilateral lower extremities, the Board unanimously recommends that it be rated for separate left and right leg conditions IAW §4.73; each coded 5399-5312 and each rated 10%. In the matter of the bilateral knee and pes planus 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 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** |
| Exertional Anterior Compartment Syndrome, Left Lower Leg | | 5399-5312 | 10% |
| Exertional Anterior Compartment Syndrome, Right Lower Leg | | 5399-5312 | 10% |
| **COMBINED (w/ BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110909, 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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120015489 (PD201100871)

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 description without modification of the rating or 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 XXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA