RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD11-00961 SEPARATION DATE: 20090727

BOARD DATE: 20120620

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (35G, Imagery Analyst), medically separated for bilateral plantar fasciitis. The bilateral foot pain started in basic training and worsened over time. He was given multiple foot injections, Prednisone therapy, orthotics and splints without lasting relief. He was not an operative candidate and the bilateral plantar fasciitis did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS). He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Chronic bilateral plantar fasciitis and chronic low back pain (LBP) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Right (toe) first metatarsophalangeal joint arthritis, bilateral hip pain, refractive error-myopia, migraines, and motion sickness, identified in the rating chart below, were also identified and forwarded by the MEB. The second ReconsiderationPEB adjudicated the bilateral plantar fasciitis as unfitting, rating it 20%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The PEB adjudicated the other five conditions forwarded by the MEB as outlined in the chart below, and the CI was separated with a 20% disability rating. The CI appealed to the Formal PEB (FPEB), but withdrew his request, accepting the results of the second Reconsideration PEB. He then filed with the Army Board for the Correction of Military Records (BCMR) for consideration of the chronic low back pain, right first metatarsophalangeal joint arthritis, bilateral hip pain, and migraines, with the BCMR affirming the findings of the second Reconsideration PEB.

CI CONTENTION: The CI states: “l was given a 20% disability rating for my feet. My feet pain made it impossible to perform my duties as a soldier without strong medication, and the pain persists today. I read in the DoD Instructions for PDBR that the PDBR "may, at the request of an eligible member as provided for in Reference (b), review conditions identified but not determined to be unfitting by the PEB of the" Army (p. 8, under Enclosures 3, Procedures). If this is the case, please review, in addition to the 20% rating given for my feet, the conditions the Army PEB determined to be fitting for military service, namely by [*sic*] migraine headaches, back pain, and hip pain. I was given a combined 60% disability rating by the VA for my feet, back, hips, and migraines. Most of the medical information you will need can be aecessed [*sic*] through my VA records. For example, I was taken to the Georgetown University Hospital ER in Washington DC on 12 January 2010 because of a complex migraine; this should be in my VA medical records.” The CI also handwrites: “I want to add in my own manuscript that the Army MEB/PEB was an unjust, accusatory, and heartless system. Please review all of my medical records and render a fair, objective decision. I don’t want anything more or less than I am entitled. Please contact me if there are any questions whatsoever. Thank you.” [*sic*]

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.” There is also an exclusion from PDBR consideration for any condition filed BCMRs after the implementation of DoDI 6040.44 (June 27, 2008). The BCMR Record of Proceeding dated 2 September 2010, from the BCMR application dated 7 July 2009, indicated the BCMR adjudicated the possible disability ratings for back pain, arthritis in a toe, hips, and migraine headaches. These conditions are therefore outside the scope of PDBR adjudication. Although the BCMR mentioned the unfitting bilateral plantar fasciitis condition, the specific 20% rating for the condition was not addressed in detail, nor was it specifically contended by the CI to the BCMR. The ratings for the unfitting bilateral plantar fasciitis condition will be reviewed by the Board. Although the refractive error-Myopia and motion sickness conditions were not specifically addressed by the BCMR, both are conditions not constituting a physical disability IAW DoDI 1332.39 and are not eligible for compensation. 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 BCMR (if not already considered by the BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service 2nd Recon PEB – Dated 20090417** | **VA (Same Mo. As Separation) – All Effective Date 20090728** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Plantar Fasciitis | 5299-5284 | 20% | Bilateral Planar Fasciitis w/R Foot 1st Metatarophalangeal Joint Degenerative Joint Disease and Distorted Great Toe Nail | 5299-5276 | 0% | 20090729 |
| Chronic Low Back Pain\* | Not Unfitting\* | Lumbar Spine Strain | 5237 | 40% | 20090729 |
| Cervical Spine Strain | 5237 | 20% | 20090729 |
| R 1st Metatarsophalangeal Arthritis\* | Not Unfitting\* | See Bilateral Plantar Fasciitis |  |  |  |
| Bilateral Hip Pain\* | Not Unfitting\* | R Hip Strain | 5252 | 10% | 20090729 |
| L Hip Strain | 5252 | 10% | 20090729 |
| Refractive error-Myopia | Not Unfitting | No VA Entry |
| Migraines\* | Not Unfitting\* | Migraine Headache | 8100 | 0% | 20090729 |
| Motion Sickness | Condition Not Constituting a Physical Profile Disability | No VA Entry |
| ↓No Additional MEB/PEB Entries↓ | 0% X 1 / Not Service-Connected x 0 | 20090729 |
| **Combined: 20%** | **Combined: 60%\*** |

\*Army BCMR adjudicated and denied CI’s request for disability rating for these conditions.

ANALYSIS SUMMARY: As discussed above in the scope of review section, most of the CI’s contentions have already been addressed by the BCMR and are therefore outside the scope of the Board. 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. 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 (DVA), 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. 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 6044.40, 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.

Bilateral Plantar Fasciitis. At the MEB exam and narrative summary (NARSUM) addendum, the CI reported continued significant symptoms of bilateral plantar fasciitis despite aggressive non-surgical treatment. He had daily flare-ups and “denies any limitations in range of motions.” Radiographs of the feet showed “no acute processes. No radiographic evidence of plantar fascitis (*sic*) bilaterally” and there was right foot first metarsophalangeal degenerative joint disease (great toe). He had pain at the base of his right great toe with occasional swelling. On exam he had a slow and mildly antalgic gait with objective indicators of pain with toe-walking. The MEB exam indicated tenderness to palpation on the soles of both feet. Neurologic and motor exams were normal.

At the VA Compensation and Pension (C&P) exam at separation, the CI reported he had daily pain with weight bearing and standing and walking in the arches, as well as the heel. He was taking Aspirin “as needed with efficacy,” and had pain at the base of the bilateral first metatarsophalangeal (MTP) joint. He stated he had no episodes of flare, but he did use a cane as needed, with no other adaptive devices. On exam his gait was normal and there was no weakness. Range-of-motion (ROM) was normal with tenderness to palpation over both arches and heels. There was no pes planus or abnormal foot callosities. The VA rated this exam at 0% for combined bilateral plantar fasciitis with right foot first MTP joint degenerative joint disease and distorted great toe nail.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the bilateral plantar fasciitis analogously to 5284 foot injuries other at 20% (moderately severe) with a not unfitting right first MTP osteoarthritis. The VA rated the bilateral plantar fasciitis, with inclusion of all additional foot pathology at 0%, coded analogously to 5276 (flatfoot, acquired) with 0% criteria of “mild: symptoms relieved by built-up shoe or arch support. The Board considered that the exams and treatment records did not approach the disability picture of a severe (30%) foot injury. The record best supported a 10% rating (moderate), under any of the foot disability coding possibilities for the bilateral plantar fasciitis condition. The 5299-5284 foot injury, other coding was considered predominate and there was no avenue to a higher rating for the bilateral foot condition. 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 plantar fasciitis condition.

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 plantar fasciitis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bilateral Plantar Fasciitis | 5299-5284 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111021, 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 XXXXXXXXXXXX, AR20120011840 (PD201100961)

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 XXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA