RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100967 SEPARATION DATE: 20040930

BOARD DATE: 20120913

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty 2LT/O-1 (14A/Air Defense Artillery Officer), medically separated for bilateral stress fractures of the tarsal navicular bones. The CI developed atraumatic increased bilateral mid foot pain over 6 months. The stress fractures were confirmed by multiple x-rays and bone scans. The CI failed to improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded the two conditions of chronic stress fractures, bilateral, currently symptomatic and pes planus, symptomatic with hyperpronation on weight bearing to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The PEB adjudicated the bilateral stress fractures of the tarsal navicular bones as unfitting, rated 0% with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The PEB further determined that the diagnosis of pes planus cannot be separately rated because of pyramiding. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “The Army rated me at 0% for bilateral stress fractures and did not rate any of the other evaluated conditions but the VA rated me at 10% each for stress fractures in both feet and 50% total for all the conditions that were evaluated.”

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 condition pes planus as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below, in addition to a review of the ratings for the unfitting conditions of bilateral stress fractures of the tarsal navicular bones. The remaining conditions rated by the VA at separation and attached to the DA Form 294 application are not within the Board’s purview. 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 Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20040720** | | | **VA (2 Mos. Pre-Separation) – All Effective Date 20041001** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Stress Fractures of the Tarsal and Navicular Bones *(see text)* | 5099-5003 | 0% | Stress Fracture of Right Tarsal Navicular Bone | 5284 | 10% | 20040816 |
| Stress Fracture of Left Tarsal Navicular Bone | 5284 | 10% | 20040816 |
| Pes Planus *(see text)* | Not Separately Ratable (Pyramiding) | | Bilateral Pes Planus, Plantar Fasciitis and Metatarsalgia | 5276 | 10% | 20040816 |
| ↓No Additional MEB/PEB Entries↓ | | | Right Knee Chondromalacia | 5099-5014 | 10% | 20040816 |
| Left Knee Chondromalacia | 5099-5014 | 10% | 20040816 |
| 0% X 2 / Not Service-Connected x 1 | | | 20040816 |
| **Combined: 0%** | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY:

Bilateral Feet Condition. Both the bilateral stress fractures and bilateral pes planus conditions will be discussed below. The PEB disability description was:

“Bilateral stress fractures of the tarsal navicular bones seen on radiographs and correlated with bone scan. Pain in feet prevents accomplishments of many tasks associated with the rigors of soldiering and APFT. 2nd MEB diagnosis of pes planus cannot be separately rated because of pyramiding. (MEBD Dx 1, 2 & NARSUM)” MEB diagnoses were “1. Chronic stress fractures, bilateral, currently symptomatic. 2. Pes planus, symptomatic with hyperpronation on weightbearing”

There were three exams with two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Ankle ROM & Feet | Podiatry ~3 Mo. Pre-Sep | | NARSUM ~3 Mo. Pre-Sep | | | VA C&P ~2 Mo. Pre-Sep | |
| Left | Right | Left | Right | | Left | Right |
| Dorsiflexion (0-20⁰) | 5⁰ | 5⁰ | “at 90 degrees” | | | No ROM’s | |
| Plantar Flexion (0-45⁰) | 5⁰ | 5⁰ | “bilateral to 20 degrees” | | |
| Comment | (see text) | | No crepitus; calcaneal angle 15⁰ bilaterally; tenderness post-tibial tendon insertion and plantar aspects both naviculars; (see text) | | | Daily discomfort worse with running/walking; tenderness over 1st metatarsal joint; tenderness plantar surface; pes planus; gait essentially normal | |
| §4.71a Rating  Foot / pes planus | 20% | 20% | 10% | | 10% | 10% | 10% |
| 10% pes planus | | | 10% pes planus | |

The narrative summary (NARSUM) physical examination performed 3 months prior to separation documented that the CI had a 6-month history of increased pain bilaterally in the mid foot area; without evidence of trauma and not attributed to a training regimen or excessive physical training. The CI failed a course of conservative therapy which consisted of custom molded inserts, decreased activity, shoe gear modification and non steroidal anti inflammatory drugs (NSAIDS). Weight bearing x-rays demonstrated a vertical nondisplaced fracture through the body of the navicular bone on the right and bone scan demonstrated increased uptake on the right and left mid-foot regions which were consistent with bilateral navicular stress fractures. Multiple bone scans (done in Februaryand May 2004demonstrated “increased uptake in both calcanei, in the medial aspect of both mid feet, and in both great toes and first MTP joints.” The NARSUM diagnoses were “1. Chronic stress fractures, bilateral, currently symptomatic.; 2. Pes planus, symptomatic, with hyperpronation on weightbearing, which prevents the wearing of military footwear.” Current status was “currently weightbearing (*sic*) as tolerated, in a shoe of choice, and is unable to perform any of his duties …” with recommendations indicating nonunion fracture and pes planus not meeting standards. The CI was seen in podiatry five times in 2004 and each time bilateral foot pain was noted on exam. Although the podiatry exam at 3 months prior to separation found limited ROM of 5 degrees dorsiflexion and 5 degrees plantar flexion, there was no documentation of the CI needing a brace, crutches nor was there any documentation of testing the distance that the CI could walk without needing to stop because of foot pain. There were few notes indicating abnormal gait. The commander’s statement in May 2004 noted that the CI’s disability interfered with his standing for long periods of time, walking distances without resting or running. The MEB exam indicated “severe pes planus, symptomatic.” Cadet entry physical in 1998 indicated normal feet; airborne physical of November 2002 indicated a normal arch and asymptomatic feet.

The VA Compensation & Pension (C&P) examination performed one month prior to separation indicated that the CI continued to have daily foot pain made worse with running and walking with only a slight improvement in pain with an NSAID (Vioxx). Imaging summaries were similar to those above. The examiner noted tenderness over the first metatarsal joint bilaterally along with pes planus and is summarized above. Diagnoses were “bilateral foot pain secondary to: a. pes planus; b. plantar fasciitis; c. metatarsalgia.”

The Board directs attention to its rating recommendation based on the above evidence. The VA and PEB chose different coding options for the CI’s bilateral foot condition which materially impacted the level of disability rating. The VA rated the three foot conditions as: stress fracture of the right tarsal navicular bone 5284 (foot injuries, other moderate) rated at 10%; stress fracture of the left tarsal navicular bone 5284 rated at 10%; and bilateral pes planus, plantar fasciitis and metatarsalgia (claimed as bilateral flat feet) 5276 (Flatfoot, acquired, moderate) rated at 10%. The podiatry and NARSUM exams summarized above were from the same podiatrist with the first exam listing ROMs-only of each ankle and also included inversion and eversion measurements. The Board discussed possible confusion of it indicating a strength exam vs. ROM exam, which was considered unlikely by the AO. The NARSUM dorsiflexion of “90 degree” is almost certainly a typographical error as it is not anatomically possible. The PEB combined both feet as a single unfitting condition, and included pes planus as not separately rated “because of pyramiding” and coded the bilateral feet conditions analogously to 5003 rated 0%. The PEB likely relied on the USAPDA pain policy for not applying separately compensable VASRD codes. The Board’s initial charge in this case was therefore directed at determining if the PEB’s approach of combining conditions under a single rating was justified in lieu of separate ratings. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each ‘unbundled’ condition was unfitting in and of itself. Not uncommonly this approach by the PEB reflected its judgment that the constellation of conditions was unfitting, and there was no need for separate fitness adjudications or implied adjudication that each condition was separately unfitting. Thus the Board must maintain the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. Almost all exams evaluated the bilateral feet for the stress fracture and pes planus conditions together and the functional limitations and disability of the feet could not be separated or apportioned between the two conditions or between the left and right foot.

Throughout the podiatry notes and NARSUM there is ample documentation of limited ankle ROM, pain and tenderness in both feet in multiple areas (forefoot and mid-foot) not responsive to treatment including shoe inserts, and imaging evidence of pathology distant from the navicular or tarsal fracture. The Board agreed that there was sufficient evidence to support the unbundling of the feet based on the abnormal bone scans and constant pain in each foot. The Board discussed in-depth the PEB determination that separately rating pes planus would be pyramiding (IAW VASRD §4.14, avoidance of pyramiding), in contrast to the VA rating for the same conditions with similar exam findings pre-separation. The CI had non-tarsal area fore-foot pain, and additional restriction of foot wear due to pes planus not attributed to the tarsal fracture conditions. The Board adjudged that the left foot fracture, the right foot fracture and the symptomatic pes planus were unfitting.

After due deliberation considering all evidence and mindful of VASRD §4.3 (reasonable doubt), the Board elected to rate and code the bilateral feet conditions similar to the VA rating determinations of stress fracture of the right tarsal navicular bone coded 5284 (moderate) at 10%; stress fracture of the left tarsal navicular bone coded 5284 (moderate) at 10%, and bilateral pes planus coded 5276 (moderate) at 10%.

Contended PEB Conditions: The contended condition, pes planus, was considered and discussed above with the bilateral feet 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the bilateral foot conditions was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the bilateral stress fractures of the tarsal and navicular bones with pes planus, the Board unanimously recommends that each foot be separately adjudicated as follows: an unfitting stress fracture of the right tarsal navicular bone condition coded 5284 and rated 10% and an unfitting stress fracture of the left tarsal navicular bone and rated 10%; and that bilateral pes planus be separately compensable and rated 5276 at 10%, all IAW VASRD §4.71a. 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Right Stress Fracture of the Tarsal Navicular Bone | | 5284 | 10% |
| Left Stress Fracture of the Tarsal Navicular Bone | | 5284 | 10% |
| Bilateral Pes Planus | | 5276 | 10% |
| **COMBINED (w/ BLF)** | | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111025, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX

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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXXXX, AR20120018598 (PD201100967)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

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:

a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

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 XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA