RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100968 SEPARATION DATE: 20040603

BOARD DATE: 20120817

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (63B20, Mechanic) medically separated for a bilateral foot condition. She experienced an onset of bilateral foot pain in 2001, which was exacerbated during a 2003 deployment to Kuwait. This was diagnosed as plantar fasciitis and was associated with mild pes planus. Her symptoms failed to respond to conservative measures, and the condition could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The bilateral foot condition, characterized as “foot pain/bilateral plantar fasciitis,” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated the bilateral foot condition as unfitting, rated 0%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed to a Formal PEB (FPEB) which conferred a 10% bilateral rating, employing the same VASRD code at a higher rating; and, she was medically separated with that disability rating.

CI CONTENTION: “My conditions are more severe than what I was granted by the Department of Defense. I believe my back condition should have been considered as well.”

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 condition(s) “identified but not determined to be unfitting by the PEB.” The rating for the unfitting foot condition is addressed below. The lumbar spine condition requested for review was not identified by the PEB; and, thus does not meet the criteria prescribed in DoDI 6040.44 for Board purview. The lumbar spine condition, as well as any condition or contention not requested in this application, remain eligible for future consideration by the Army Board for the Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service FPEB – Dated 20040205** | **VA (~3 Mo. Post-Separation) – All Effective 20040604** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Plantar Fasciitisw/ Pes Planus | 5299-52765399-5310 | 10% | Plantar Fasciitis , Left Foot | 5310 | 10% | 20040826 |
| Plantar Fasciitis , Right Foot | 5310 | 10% | 20040826 |
| No Additional MEB/PEB Entries | Residuals of Hysterectomy | 7618 | 30% | 20040826 |
| Mild Scoliosis, Lumbosacral Spine | 5237 | 20% | 20040826 |
| Not Service-Connected x 3 | 20040826 |
| **Combined: 10%** | **Combined: 60%** |

ANALYSIS SUMMARY:

Bilateral Foot Condition. The 2001 onset of symptoms was ascribed to a long distance sprint in combat boots while assisting in an emergency. There are subsequent entries in the service treatment record (STR) for ongoing podiatric care with a diagnosis of plantar fasciitis. Treatment included local injections, orthotics, and a night splint. In 2003 the symptoms were severe enough to force medical evacuation from Kuwait. A further trial of conservative treatment was undertaken after redeployment without success. X-rays revealed small heel spurs and pes planus deformity on weight bearing views. Podiatry opined that there was no indication for surgery, recommending MEB proceedings. The narrative summary (NARSUM) noted constant pain, more severe in the morning and “worse when walking sometimes.” The physical exam noted bilateral heel tenderness with tenderness of the instep on the right and lateral foot on the left. Ankle range-of-motion (ROM) was normal. At the VA Compensation and Pension (C&P) evaluation, performed 3 months after separation, the CI reported constant pain rated 10/10 and inability to walk further than a block. She presented with a tedious wide based gait “walking gingerly on her feet,” employing a cane. Gait disturbance or use of an assistive device was not documented in the narrative summary (NARSUM) or in proximate outpatient notes; and was attributed to the lumbar spine condition in the VA rating decision. The VA examiner recorded that the CI resisted adequate palpation of the feet, although bilateral heel tenderness was noted.

The Board directs attention to its rating recommendation based on the above evidence. The PEB listed two analogous rating codes for its decision. The code 5276 (acquired pes planus) allows for a bilateral rating of 10% for “pain on manipulation and use of the feet,” which was cited on the DA Form 199; and, it may be assumed that code 5276 was applied as the de facto rating code. The criteria for higher ratings under code 5276 rest heavily on the anatomic deformities associated with pes planus which were not present in this case. The record makes clear, in fact, that the pain from plantar fasciitis (not the presumably pre-existing pes planus) was the dominant disability in this case. The PEB’s second listed 5310 plantar muscle code is in common use for plantar fasciitis, and is quite acceptable when applied unilaterally. Its application in this case would therefore entail separate ratings; which was the rating choice pursued by the VA. IAW VASRD §4.7 (higher of two evaluations), the Board must consider separate ratings for PEB combined adjudications; although, separate fitness assessments must justify each disability rating. In this case, both feet were considered to fail retention standards; both were implicated by the NARSUM and in the commander’s statement; and, both were profiled. Members concurred therefore that each foot should be conceded as separately unfitting; and, that separate ratings under code 5399-5310 were justified. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends separate disability ratings for each foot of 10% for “moderate” muscle disability under the code 5399-5310.

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 foot condition, the Board unanimously recommends that each foot be separately rated at 10%, coded 5399-5310, IAW VASRD §4.73. 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 her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Plantar Fasciitis with Pes Planus, Left Foot | 5399-5310 | 10% |
| Plantar Fasciitis with Pes Planus, Right Foot | 5399-5310 | 10% |
| **COMBINED (w/ BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110926, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXX, AR20120015481 (PD201100968)

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 XXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA