RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100984 SEPARATION DATE: 20070422

BOARD DATE: 20121004

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (13B/Cannon Crewmember), medically separated for chronic right foot pain. The CI stated symptoms began after a cannon round fell on his right foot in 2001. Despite two surgeries, aggressive physical therapy (PT), crutches, CAM walker, shoe orthotics; soft shoe and non steroidal anti inflammatory drugs (NSAIDS) the CI did not improve adequately 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 chronic right foot pain status post (s/p) surgery on DA Form 3947 to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the chronic right foot pain condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I have received 70% rating SC for PTSD, 10% SC for bilateral pes planus, 10% for (*left*) medial malleolus, 10% severe hallux valgus. Individual Unemployability 100%.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the 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 ratings for unfitting conditions will be reviewed in all cases. The unfitting right foot pain condition includes the right foot portion of the contended severe hallux valgus and pes planus conditions. The remaining conditions rated by the VA and contended above (PTSD, left medial malleolus and any left foot conditions) 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 IPEB – Dated 20070103** | | | **VA (2 Mos. Post-Separation) – All Effective Date 20070423** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam\*** |
| Chronic Right Foot Pain | 5280 | 10% | Right Foot, S/P Surgical … | 5299-5280 | 10% | 20070207 |
| Bilateral Pes Planus | 5276 | 0%\* | 20070207 |
| Right Foot, Scar | 7802 | 0% | 20070207 |
| ↓No Additional MEB/PEB Entries↓ | | | Respiratory Disease, … | 6699-6604 | 10% | 20070207 |
| Left Medial Malleolus, … | 5003 | 0%\* | 20070207 |
| Headaches, Unspecified … | 8199-8100 | 0% | 20070207 |
| 0% x 1/Not Service Connected x 3 | | | 20070207 |

\*PTSD increased to 70% effective 20110428; Bilateral Pes Planus increased to 10% effective 20110217; Degenerative changes left ankle malleolus increased to 10% effective 20110614 (combined 80%); Entitlement to Individual Unemployability granted effective 20110520.

ANALYSIS SUMMARY: The Board notes the current Department of Veterans’ Affairs (DVA) ratings listed by the CI for all of his service-connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The DVA ratings which it considers in that regard are those rendered most proximate to separation. The Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the DVA. The Board acknowledges that the VA Compensation and Pension (C&P) examination was referenced, but not available in the evidence before it; and, could not be located after the appropriate inquiries. Further attempts at obtaining the relevant documentation would likely be futile and introduce additional delay in processing the case. The missing evidence will be referenced below in relevant context as extracted from the VA rating determinations (VARD); and, it is not suspected that the missing evidence would significantly alter the Board’s recommendations.

Chronic Right Foot Pain Condition. There were three evaluations including one goniometric range-of-motion (ROM) evaluation in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

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| --- | --- | --- | --- |
| Great Toe (R) ROM | Podiatry ~10 Mos. Pre-Sep | PT/MEB ~6 Mos. Pre-Sep | MEB ~6 Mos. Pre-Sep |
| Flexion 0⁰-50⁰1st mtp | “Full ROM” | 5⁰ | No ROM’s |
| Extension0⁰-50⁰ 1st mtp | 10⁰ |
| Comment:  Hardware removal  ~9 Mo. Pre-Sep | Antalgic gait; full ROM with pain; tenderness to palpation (TTP) over dorsum to 1st metatarsal over screw heads | Mechanical limitation; Pt reports c/o pain; 3 trials of ROM | Antalgic gait; pain; open toe orthopedic soft shoe; numbness medial side great toe near scar; marked TTP over swollen area at base of 2nd/3rd toes extending 3cm onto dorsum of foot; pain with dorsiflexion/plantar flexion of 2nd/3rd toes; diffuse swelling over central part of right forefoot; tenderness at dorsal aspect 2nd metatarsal; tingling over scar on palpation |
| §4.71a Rating | 10% | 10% | 10% |

There chronic right foot pain condition was well documented in the service treatment record (STR) starting in December 2004. In July 2005 the CI underwent right foot surgery (cheiliectomy with first metatarsal plantar flexor osteotomy). Post-operatively the CI continued with chronic pain and antalgic gait. In July 2006, the CI underwent right foot hardware removal surgery due to complaints of pain at the hardware site; however, sharp pain when walking still persisted. In October 2006, the CI was given a permanent L3 profile for right foot pain (hallux limitus) with restrictions of no running or marching and alternate shoes were allowed. The MEB examination 6 months prior to separation indicated constant pain in the right foot despite orthotics; antalgic gait; inability to walk normally altered gait to avoid flexing his forefoot, rotation of the foot outward; inability to run, ruck do push-ups or wear boots; the wearing of an open toe orthopedic soft shoe and the necessity of medication and “occasional foot massage by his wife because of morning pain and stiffness.” X-rays indicated pes planus and results of bunionectomy. The exam is summarized above and was accomplished 3 months following surgical removal of hardware.

The VA C&P exam is missing and numerous attempts to obtain this exam were unsuccessful. However, the VARD summarized the VA exam from 2 months prior to separation, stating: “VA examination of your feet and toes did not reveal any signs of painful motion, edema, disturbed circulation, weakness, atrophy of musculature, or tenderness. Arches were low. Palpation of the plantar surface did not reveal any tenderness, and the Achilles tendons showed good alignment. There was no evidence of claw feet or hammertoes. Flexion and dorsiflexion of the toes did not induce pain, and there was no evidence of Morton's metatarsalgia. The examiner noted that you do not require and do not use any type of corrective shoe wear. X-rays of your right foot revealed a pes planus deformity.”

The Board directs attention to its rating recommendation based on the above evidence. The PEB and the VA coded the chronic right foot condition as VASRD code 5280 Hallux valgus, unilateral, and rated 10%. All exams supported a 10% rating. 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 right foot condition.

Contended PEB Conditions. The contended conditions related to the unfitting right foot pain condition were pes planus and severe hallux valgus (hallux limitus). The right hallux valgus/limitus condition (bunion surgery and post-surgical result) was the principle cause of the right foot pain surgery and chronic right foot pain and was considered in rating the CI’s primary unfitting foot pain condition. The right foot pes planus was noted in the PEB disability description. Moderate bilateral pes planus (asymptomatic) was documented on the CI’s entrance examination in 1997. The VA exam summary for pes planus is discussed above and all symptoms from the pes planus condition were considered in the rating of the foot pain condition. Of note, the VA additionally rated the right foot scar at 0%, with pre-separation exam summary indicating a flat, well healed scar with no alteration in sensory perception or vascular supply. Any left foot condition is outside the scope of the Board as noted above. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that all of the right foot symptoms and diagnoses were appropriately considered and coded under the PEB unfitting right foot pain condition; 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 chronic right foot pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended pes planus and hallux valgus conditions, the Board unanimously recommends no additional disability rating as all symptoms were contained in the PEB rating of the CI’s unfitting chronic right foot pain condition. 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** |
| Chronic Right Foot Pain | 5280 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111102, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXX, AR20120019087 (PD201100984)

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 XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA