RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101009 SEPARATION DATE: 20021127

BOARD DATE: 20120731

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (88M, Truck Driver), medically separated for bilateral pes valgoplanus (bowed, flat feet) with plantar fasciitis and right wrist pain. Plantar fasciitis developed in 1999 and was not a consequence of injury or associated with a surgical indication. Right wrist pain began in 1999 after a fall; in 2002, surgery was performed for carpal tunnel syndrome. Neither condition responded adequately to rehabilitative treatment, and he was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3L3 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded pes planus and carpal tunnel syndrome to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The PEB adjudicated pes valgoplanus and secondary plantar fasciitis as unfitting, rated 20%. The Informal Reconsideration PEB adjudicated the pes valgoplanus and secondary plantar fasciitis condition and the right wrist pain condition as unfitting, rated 20% and 0% respectively, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD) and specified application of the US Army Physical Disability Agency (USAPDA) pain policy respectively. The plantar fasciitis secondary to pes valgoplanus was determined to be EPTS (existed prior to service) but was compensable under 10 USC 1207a. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

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 unfitting pes valgoplanus with plantar fasciitis and right wrist pain conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly 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 (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service Informal Recon PEB – Dated 20021030** | | | | **VA (5 Mos. Post-Separation) – All Effective Date 20021128** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| Pes valgoplanus / Plantar Fasciitis | 5399-5310 | R. | 10% | Bilateral Pes Planus / Plantar Fasciitis | 5276-5279 | 10% | 20030422 |
| L. | 10% |
| Right Wrist Pain | 5099-5003 | 0% | | Right Carpal Tunnel Syndrome | 8599-8515 | 10%\* | 20030422 |
| ↓No Additional MEB/PEB Entries↓ | | | | 0% X 4 / Not Service-Connected x 2 | | | 20030422 |
| **Combined: 20%** | | | | **Combined: 20%\*** | | | |

\*Rating decision 20100701 increased carpal tunnel syndrome (based on new exam) to 20% effective 20100211 (combined 40% including non-PEB diagnoses)

ANALYSIS SUMMARY:

Bilateral Foot Condition. The narrative summary (NARSUM) on 26 September 2002, 2 months prior to separation, notes a 3 year history of bilateral foot pain exacerbated by running and long periods of walking or standing. Multiple therapeutic modalities including orthotics, profile restrictions and medications were not significantly helpful, and he continued to experience duty limitations due to the condition. Examination revealed moderate to severe pes valgoplanus deformities of both feet. Although reduced range-of-motion (ROM) of both ankles to 0⁰ was noted, it was not stated in which plane this was the case. ROM of the subtalar joint was normal (the same examiner on 13 August 2002 stated that ankle ROM was “full”). Bilateral tenderness of the plantar fascia was present. Gait was not mentioned. The MEB podiatrist diagnosed plantar fasciitis as secondary to the primary diagnosis of pes planus. The commander’s statement indicated that the CI’s profile prohibited performance of MOS related duties and supervision of soldiers in the field. The VA Compensation and Pension (C&P) examiner on 22 April 2003, 5 months after separation, reported that no ambulatory assistance devices were necessary. Gait was observed to be normal. There was no observed limitation with standing or walking, no appreciable pes planus and no abnormal weight bearing signs on the lower extremities. Tenderness was not mentioned. X-rays confirmed the presence of flat foot changes.

The Board directs attention to its rating recommendation based on the above evidence. It should be noted that the unfitting pes planus conditions were designated as EPTS by the PEB, but compensable under Title 10 (length of active duty service ≥ 8 years). The VA also considered the condition EPTS but since the pre-service rating was determined to be zero, no deduction was applied. The PEB and VA chose different coding options for the condition. The PEB’s approach was separate ratings of 10% for each foot under the analogous code 5310 (muscle group X, plantar aponeurosis), with appropriate application of the bilateral factor (BLF). The VA combined the diagnosed conditions of both feet in support of a single rating under a 5276-5279 code (pes planus, metatarsalgia) at 10%. The Board considered the PEB’s analogous coding under 5310, which is commonly used for rating plantar fasciitis. It can be convincingly argued that the sequela of plantar fasciitis best captures the unfitting pain which is eligible for service rating, since the anatomic pathology *per se* was EPTS. No additional rating under a separate code would comply with VASRD §4.14 (avoidance of pyramiding); and, application of separate ratings under 5310 would meet the requirements of VASRD §4.7 (higher of two evaluations). The 5310 code confers a 0% rating for “slight,” 10% for “moderate,” 20% for “moderately severe,” and 30% for “severe” muscle disabilities. Since the evidence establishes that the left and right feet were equal in severity, the separate ratings should be equivalent. All members agreed that “moderately severe” could not be supported by the evidence. Deliberation between “slight” and “moderate” was rendered moot since the Board cannot rate lower than the PEB’s rating. The Board further agreed that the pes planus condition was EPTS, but that no deduction should be applied since the pre-service level of disability was zero. 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 foot condition.

Right Wrist Pain Condition. The NARSUM examiner indicated that the left hand dominant CI had a two year history of pain and weakness after a fall onto his right hand. Persistent symptoms were determined by electro-physiologic testing (EMG) to be due to carpal tunnel syndrome (CTS). Surgery on 29 July 2002, 2 months prior to the NARSUM and 4 months prior to separation, did not result in significant improvement by the time of the NARSUM exam. Paresthesias, weakness and swelling persisted. Examination revealed a well-healed surgical wound with mild swelling of the hand and wrist area. There was full ROM of all fingers with pinch and grip strength noted to be 4/5 (normal is 5/5). There was some hypersensitivity about the scar. Wrist ROM was not documented. An occupational therapy (OT) note on 11 October 2002, 2 1/2 months after surgery and 6 weeks prior to separation, documented hand and wrist pain, but wrist ROM was within normal limits (specific measurements not given). An MEB physical exam documented tingling, pain and tenderness of the right wrist. At the VA C&P exam, performed 5 months after separation and months after surgery, the CI reported ongoing discomfort and decreased grip strength. The examiner observed that the CI did not have problems with fastening, grasping, twisting or tying, but wrist ROM was not documented. There was no swelling, grip strength was 5/5 and sensation was normal. X-rays of the hand were normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s DA Form 199 reflected use of the analogous 5003 code (arthritis, degenerative) with application of the USAPDA pain policy. No ROM measurements of the wrist were in evidence, although the OT assessment was that ROM was “normal.” The VA’s use of the analogous 8515 code (paralysis of median nerve) was supported by the fact that the underlying pathophysiology of CTS is median nerve impairment. The NARSUM exam indicated weakness and was closer to the date of separation; however, it is likely that since the surgery was recent (2-3 months), healing was not complete by the time of the exam. Independent rating of the MEB exam would rate at 10% coded analogously to median nerve paralysis (8515 code, mild) for weakness, or to 8615 code (neuritis, mild) of the median nerve. The VA exam was more distant from the date of separation reflective of a healed state with residual symptoms, and likely included post-separation improvement. Although the CI continued to complain of grip weakness and discomfort at the VA exam, this examiner found normal grip strength and no problems “fastening, grasping, twisting or tying.” Despite a normal objective examination, the VA assigned a 10% rating for “incomplete paralysis of hand movements which is mild.” The VA rating decision further opined that continued right hand discomfort justified a 10% rating. After debating if these examination findings warranted the application of §4.40 (pain with use) or §4.59 (painful motion), Board members agreed that this pathway to a 10% rating under the PEB’s coding approach was justified. The Board determined that the primary unfitting wrist condition was pain, most likely related to the nerve involved in the CTS condition and best analogized to coding of 8615 at 10% for mild neuritis IAW VASRD §4.123 and §4.124a. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.7 (higher of two evaluations), the Board recommends a disability rating of 10% for the right wrist pain condition using the 8699-8615 code IAW VASRD §4.124a.

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 right wrist pain condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the bilateral pes planus condition and IAW VASRD §4.73, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right wrist pain condition, the Board unanimously recommends a disability rating of 10%, coded 8699-8615 IAW VASRD §4.124a. 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** |
| Bilateral Pes Valgoplanus and Plantar Fasciitis | Right | | 5399-5310 | 10% |
| Left | | 5399-5310 | 10% |
| Right Wrist Pain s/p Carpal Tunnel Release | | | 8699-8615 | 10% |
| **COMBINED (w/ BLF)** | | **30%** |

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXXXX, AR20120013946 (PD201101009)

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 XXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA