RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: pd1101091 SEPARATION DATE: 20041113

BOARD DATE: 20120626

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (31L20/Wire System Installer), medically separated for bilateral plantar fasciitis with underlying pes planus, and recurrent skin abscesses. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent P3/L3 profile and referred for a Medical Evaluation Board (MEB). Bilateral plantar fasciitis with underlying pes planus, and recurrent skin abscesses were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Eight other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the bilateral plantar fasciitis with underlying pes planus condition, and recurrent skin abscesses condition as unfitting, rated 0% and 0% respectively, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 0% combined disability rating.

CI CONTENTION: The CI contends for a higher rating for her unfitting recurrent skin abscess condition and describes problems with the condition since separation. She also lists plantar fasciitis, left knee osteochondral defect, and left ankle sprain in her contention.

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 left knee osteochondral defect and left ankle sprain conditions requested for consideration and the unfitting plantar fasciitis and recurrent skin abscesses conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation 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 the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20040802** | **VA (~1 Mo.After Separation – All Effective Date 20041114 Same Day** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Plantar Fasciitis with Underlying Pes Planus | 5399 5310 | 0% | Bilateral Pes Planus with Bilateral Plantar Fasciitis | 5276 | 10% | SMR |
| Recurrent Skin Abscesses | 7829 | 0% | Status Post Skin Abscesses | 7899-7820 | 10%\* | SMR |
| Status Post Pilonidal Cyst with Residual Scar | 7802-7819 | 0% | 20041018  |
| Dysmenorrhea | Not Unfitting | Gynecological Problems Including Dysmenorrhea | 7699-7701 | NSC | 20041018  |
| Recurrent Vaginitis | Not Unfitting |
| Left Knee Osteochondral Defect | Not Unfitting | Posttraumatic Posterior Tibial Plateau Non Separated Osteochondral Defect, Left Knee | 5262 | 10% | 20041018 |
| Degenerative Joint Disease Both Ankles | Not Unfitting | Left Ankle | 5271 | 10% |  |
| Right Ankle | 5271 | NSC | 20041018  |
| Positive Tuberculin Skin Test | Not Unfitting | Positive PPD Test | 7799-7710 |  |  |
| Noncardiac Chest Pain | Not Unfitting | Noncardiac Chest Pain | 5399-5321 | NSC | 20041018  |
| Allergic Rhinitis | Not Unfitting | NO VA Entry |
| Insomnia | Not Unfitting  | Insomnia | 6899-6847 | NSC | 20041018  |
| ↓No Additional MEB/PEB Entries↓ | 0% x 2/Not Service-Connected x 2 | 20041018 |
| **Combined: 0%** | **Combined: 30%** |

\*Initial VARD 20050128 rated recurrent skin abscesses 0%; increased to 10% by Decision Review Officer Decision 20061024 effective 20041114.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the DVA but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Bilateral Plantar Fasciitis with Underlying Pes Planus Condition. The CI had problems with bilateral foot pain related to pes planus since 1996 treated with orthotics. Following permanent change station in December 2003, the CI presented for care of bilateral foot pain interfering with weight bearing activities, running, jumping, and wear of military boots. The podiatry MEB narrative summary (NARSUM), dated 9 June 2004, reported there was no relief of symptoms from treatment with rest, medication and orthotics. On examination there was pes planus and tenderness to palpation in the medial arch and plantar medial heel of both feet. ROM of the joints in the foot was considered full and the remainder of the foot examination was unremarkable. The MEB NARSUM, dated 8 July 2004, recorded complaint of intermittent foot pain provoked by weight bearing activities or hard military boots. She could walk up to 10 minutes but was unable to run, jump, or tolerate impact activities without increased pain. At the time of the MEB history and physical examination, performed on 27 May 2004, the feet were non-tender on examination. The VA Compensation and Pension (C&P) examination was on 18 October 2004, a month prior to separation. The CI reported she could walk approximately one mile. On examination, the gait was normal and the CI could stand on her heels and toes. The Achilles - calcaneal alignment was normal, with grade I pes planus. The examiner stated there was plantar fasciitis especially at the calcaneal plantar aspect. The remainder of the examination was unremarkable. At a VA podiatry evaluation performed on 22 June 2005, 7 months after separation, the CI reported that orthotics issued to her while in the military “helped her foot condition very much,” but that she had lost them a year or two before. On examination, gait was normal and there was flexible pes planus with some pain of the plantar fascia. Range-of-motion (ROM) and strength was normal. The Board directs attention to its rating recommendation based on the above evidence. There is not a specific code for plantar fasciitis. The PEB adjudicated a 0% rating analogously to the VASRD foot muscle code 5399-5310, slight; while the VA rated the condition 10% analogously to the VASRD code 5276 for acquired pes planus, moderate bilateral. Although the CI had congenital flexible pes planus and not acquired pes planus, the rating criteria for acquired pes planus (5276) more nearly describes the CI’s condition of plantar fasciitis due to congenital flat feet than the code selected by the PEB. The Board noted the CI’s chronic condition existed for 8 years prior to the MEB and examination findings were unchanged over time, showing pes planus with variable presence of tenderness without other examination findings. Although the CI reported no benefit from orthotics to the MEB podiatrist, prior service treatment record (STR) entries indicated benefit and the VA treatment record noted above recorded CI report of significant benefit. Although unable to perform military duties, the symptoms were intermittent when not performing military duties. Board members agreed that the CI’s condition did not approach the 30% rating for severe as described in the criteria under VASRD 5276 and more nearly approximated the mild (0%) than the moderate level (10%). The mild to moderate rating is for the condition whether it is bilateral or unilateral. The Board also agreed that the 0% rating under the analogous code used by the PEB was supported by the preponderance of evidence of the record. Similarly, consideration under the code for other foot injuries, diagnostic code 5284 did not attain the minimum 10% for moderate symptoms. Rating under other codes would result in no change in the rating higher than that adjudicated by the PEB would result. Therefore, all evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the plantar fasciitis.

Recurrent Skin Abscesses Condition. The CI had a history of recurrent skin abscesses, furuncles, boils, pilonidal cysts, since 1996 involving her buttock, groin, axilla, and breast, usually one or two locations at a time, with a diagnosis of hidradenitis suppurativa. The recurrent condition required periodic treatment with oral antibiotics and incision and drainage or surgical excision of inflamed cysts. According to the NARSUM, during over the 8 years of service the CI had undergone pilonidal cyst excision on two occasions, cyst excision from the groin on two occasions, and from the left breast on one occasion. Despite the chronic recurrent skin condition the CI continued to satisfactorily perform duties. Prior to the MEB, the CI’s unit had been deployed. The MEB noted that the skin condition was likely to be aggravated by field conditions and the PEB concurred, finding the condition unfitting for continued military service. The risk for recurrent problems while in a deployed field environment making the CI non-deployable was the reason the skin condition was determined to be unfitting. At the time of the MEB, there were no active skin lesions, and therefore the PEB rated the condition 0% coded 7829. After the MEB, there was a thigh lesion treated with incision and drainage and a small breast lesion (the size of a quarter) treated with oral antibiotics, both resolved by the time of a dermatology clinic follow up appointment on 29 September 2004. At the time of the VA C&P examination on 18 October 2004, a month prior to separation, there were no active lesions and skin abscesses were healed. The recent left breast lesion was noted as healing and was one by one half inch in size. The Board directs attention to its rating recommendation based on the above evidence. There is not a specific code for the CI’s skin condition, and it is rated using analogous VASRD diagnostic codes and guidance. The PEB adjudicated a 0% rating analogously using the VASRD diagnostic code for chloracne (7829). The VA initially adjudicated a 0% rating analogously using the VASRD diagnostic code 7820 for skin infections. The subsequent VA decision review officer review granted a 10% rating using an analogous diagnostic code 7820-7819; skin infection and benign skin neoplasm. The Board concluded the diagnostic code for skin infection 7820 was the closest medical fit, but noted that the diagnostic code for acne selected by the PEB was also a reasonable analogous code. The skin infection code directs rating for residual scars or under the dermatitis code (7806). The benign skin neoplasm code (7819) directs rating for residual scars of impairment of function. The Board notes that scars are not unfitting for military service unless their presence imposes a direct limitation of performance of duties, therefore a rating based on residual scars is not appropriate in this case.

Over the 8 years of military service, the chronic recurrent skin condition did not interfere with performance of duties as reflected by her excellent NCO performance reports, therefore the Board concluded a rating more than 0% was not supported by the preponderance of evidence on this basis. The 7806 dermatitis code requires at least 5 percent of the body surface to be affected; however, her condition did not affect at least five percent of body surface at any given time and the CI was not treated with systemic therapy such as corticosteroids or other immunosuppressive drugs. The rating guidance under the diagnostic codes for acne (7828) and chloracne (7829) are the same. Deep acne (deep inflamed nodules and pus filled cysts) not on the face supports a 10% rating. At the time of the MEB NARSUM and at the time of separation, there were not deep inflamed nodules or pus filled cysts. After the MEB a left inner thigh/buttock and right breast lesion were treated and resolved by separation. The rating guidance under the acne codes consider a more widespread involvement of skin by acne rather than the intermittent single lesions experienced by the CI. 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 skin condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were left ankle sprain, and left knee osteochondral defect. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. The CI was on a permanent L3 profile since 1998 for left ankle pain after a sprain. The CI was returned to duty by a Military Medical Retention Board (MMRB) and allowed to use the alternate PT test. The podiatry NARSUM, made no reference to problems with ankle pain, and there was no STR entries for recurrent injuries or problem in the year leading up to separation. The ankle ROM was symmetric between right and left ankles, and the left ankle demonstrated no instability. The MEB referred the left ankle condition as meeting retention standards. At the C&P examination, ROM was better than the podiatry examination, there was tenderness at the talo-fibular ligament. The STR reflects complaints of left knee pain, since 2002 without specific injury diagnosed as tendonitis. Recurrent pain was documented in 2003 and again in January 2004 after kneeling at work. A 27 April 2004 physical therapy appointment records improving symptoms. Gait was normal. There was no swelling but pain with squatting. An MRI performed on 21 June 2004 was normal except for a small bone contusion/osteochondral lesion on the posterior aspect of the lateral tibial plateau of the knee. The osteochondral defect was non-detatched with intact articular cartilage. Orthopedic surgery evaluation on 14 October 2004 recommended periodic follow up. The CI was on a permanent profile allowing the alternate PT test due to her ankle condition and there is no evidence the knee interfered with duties. The left knee condition was not profiled and was referred by the MEB as meeting retention standards. The C&P examination noted limited activity when the knee was painful. These conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended conditions; 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. In the matter of the bilateral plantar fasciitis with underlying pes planus condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the recurrent skin abscesses condition and IAW VASRD §4.118, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended left knee osteochondral defect, and left ankle sprain conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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 with Underlying Pes Planus | 5399-5310 | 0% |
| Recurrent Skin Abscesses | 7829 | 0% |
| Left Knee Osteochondral Lesion | No Unfitting |
| Left Ankle Sprain / Degenerative Joint Disease Both Ankles | Not Unfitting |
| **COMBINED** | **0%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111116, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXX

 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, AR20120011968 (PD201101091)

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 XXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA