RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101096 SEPARATION DATE: 20080205

BOARD DATE: 20120801

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (15S2 OH-58D/Helicopter Rep), medically separated for chronic left Achilles tendonitis*.*  The CI had significant left posterior heel pain that persisted despite months of conservative therapy. The chronic left Achilles tendonitis condition did not improve with treatment, surgery was not indicated, and the CI was not able 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). Non-radicular lumbar back pain, chronic knee pain, and left shoulder discomfort conditions, identified in the rating chart below, were also identified and forwarded by the MEB. An initial Physical Evaluation Board (PEB), adjudicated the chronic left Achilles tendonitis as unfitting and rated it as 5099-5003 at 0% disability with application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining condition(s) were determined to be not unfitting. The DA Form 199 was revised on 11 December 2007 but the rating was not changed. The CI made no appeals, and was medically separated with a 0% disability rating. The DA Form 199 was revised a second time on 17 March 2009 when the code was changed to 5099-5024 and the rating was increased to 10%. This revision applied the Veteran’s Affairs Schedule for Rating Disabilities (VASRD) and included consideration of VASRD §4.10 Functional impairment, §4.40 Functional loss, and §4.45 The joints.

CI CONTENTION: “I was afforded sev. and received more from the DVA.”

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. 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:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Revised Service PEB – Dated 20090317** | | | **VA (4 Mo. After Separation) – All Effective Date 20080206** | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | | **Code** | **Rating** | **Exam** |
| Chronic left achilles tendonitis | 5099-5024 | 10% | Left Achilles Tendonitis | | 5099-5024 | 0%\* | 20080611 |
| Nonradicular lumbar back pain | Not Unfitting | | Degenerative Arthritis,  Lumbar Spine | | 5242 | 20% | 20080611 |
| Chronic knee pain | Not Unfitting | | Left Knee Strain | | 5260 | 10% | 20080611 |
| Right Knee Strain | | 5260 | 10% | 20080611 |
| Left shoulder discomfort | Not Unfitting | | Not Service Connected | | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Right Groin Strain | 5315 | | 10% | 20080611 |
| 0% x 2 others/Not Service-Connected x 2 others | | | | 20080611 |
| **Combined: 10%** | | | **Combined: 40%\*\* with Bilateral Factor 2.7** | | | | |

\* Increased to 10% effective 20090511.

\*\*Increased to 70% effective 20090511 due to increase in Left Achilles Tendonitis 5099-5024 to 10% and increase in previous 0% to 10% for Right Achilles Tendonitis, and change from 0% for Bilateral Shin Splints to 10% for Left Lower Extremity Shin Splints and 10% for Right Lower Extremity Shin Splints. Increased to 80% effective 20090608 with addition of PTSD at 50%.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of his condition merits consideration for a higher separation rating. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Left Achilles Tendonitis. Without any known traumatic event, the CI had intractable pain at the posterior aspect of his left heel at the insertion of the Achilles tendon. The condition did not improve despite extensive treatment which included profiling, nonsteroidal anti-inflammatory medications, rest, physical therapy, heel lifts, and stretching. No surgical options were indicated. At the time of the podiatry addendum to the MEB narrative summary (NARSUM) examination, approximately 6 months prior to separation, the podiatrist noted the CI had tenderness to palpation at the insertion of the left Achilles tendon but none on the right side. The examiner also noted a mildly lower medial longitudinal arch bilaterally and calcaneal eversion or tilting outward of the foot noted to the distal third of the leg, indicating a mild flat foot deformity. The examiner also noted that on the CI’s entrance physical mild asymptomatic pes planus was noted and there were no foot related complaints. X-rays taken at the time of the exam noted a mild left bunion, a slight inferior left heel spur, and an accessory bone (os peroneum) which appeared to be fragmented. The right foot also showed a small inferior heel spur. The impact on duty performance was noted to be severe and limited and the examiner opined the CI’s prognosis was poor and the condition was unacceptable for military duty. He was issued a permanent L3 profile with significant limitations. The VA Compensation and Pension (C&P) examination, completed approximately 4 months after the CI separated, noted a 2 year history of left Achilles tendonitis. The CI reported weakness, stiffness, swelling, heat, redness, lack of endurance and fatigability. He did not have giving way, locking, or dislocation. The pain occurred constantly and was localized. The pain was described as squeezing, burning, aching, sharp, and cramping and was rated at 10/10. The pain was elicited by physical activity and by touch but also occurred spontaneously. It was relieved by medication, Flexeril and sometimes resolved spontaneously. When he had pain, he could still function with medication. The current treatment was Flexeril, Motrin, shoe inserts, and tennis shoes. He had not had any prosthetic implants of the joint and was unable to: run, stand, or walk for prolong periods, or jump or put weight on his heels. The bilateral foot examination documented no signs of abnormal weight bearing or breakdown, callosities or unusually shoe wear pattern and the CI did not require any assistive device for ambulation. Gait and posture were normal. There was tenderness to palpation over the distal Achilles tendon on both the right and left sides. There was no edema, effusion, weakness, redness, heat, or guarding of movement. There was no limitation of motion of either ankle joint. Motor, sensory, and reflex examination of the bilateral lower extremities was normal and right and left ankle X-rays were normal.

There was one goniometric range-of-motion (ROM) evaluation of the ankles in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |
| --- | --- |
| Goniometric ROM –  Right and Left Ankle | VA C&P ~ 4 Months Post-Separation  (20080611) |
| Right Dorsiflexion (0-20) | 20⁰ |
| Right Plantar Flexion (0-45) | 45⁰ |
| Left Dorsiflexion (0-20) | 20⁰ |
| Left Plantar Flexion (0-45) | 45⁰ |
| Comment | No painful motion |
| §4.71a Rating | 0% |

Both the PEB and the VA used the analogous code 5099-5024 tenosynovitis and both the PEB and the VA initially applied a 0% rating. The PEB arrived at a 0% IAW with the USAPDA pain policy. However, it revised its rating to 10% in March 2009 citing VASRD §4.10 Functional impairment, §4.40 functional loss, and §4.45 the joints. The VA initially applied a 0% based on the lack of functional limitation and painful or limited motion. The rating was increased to 10% after a new C&P examination was completed 30 September 2009 and it documented functional impairment due to pain. Whereas previously the CI had been able to function when pain was present if he took medication, he was now unable to function during flare-ups of his pain. He also reported that narcotic pain medication was sometimes the only thing that brought him pain relief. The examination was similar to the previous examination except for bilateral plantar flexion was now limited to 40°. The VA then applied a 10% rating for each foot.

The Board directs attention to its rating recommendation based on the above evidence. While painful or limited motion was not noted on either the podiatry addendum or the initial VA C&P examination, the CI did have significant functional limitations and was not able to perform the duties required of his MOS. Therefore, a 10% rating is warranted from the time of separation. Chronic Achilles tendonitis does not have a specific VASRD code and is rated analogously. After due deliberation, exploring all coding options, considering all of the evidence, and remaining 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 chronic left Achilles tendonitis 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. As discussed above, PEB reliance on the USAPDA pain policy for rating chronic left Achilles tendonitis was operant in this case in the initial PEB rating but was not in the final revised rating. In the matter of the chronic left Achilles tendonitis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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 left achilles tendonitis | 5099-5024 | 10% |
| **COMBINED** | **10%** |

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 XXXXXXXXXXXXXXXXXXXXX, AR20120013943 (PD201101096)

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 XXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA