RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1101102 SEPARATION DATE: 20061005

BOARD DATE: 20120801

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (42A30/Human Resources Specialist), medically separated for bilateral, chronic plantar fasciitis. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS). She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the bilateral, plantar fasciitis and bilateral flat feet conditions as unfitting, rated 0%, with application of the U.S. Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “Pes Planus and Plantar Fasciitis with degenerative conditions was and is still severe. The above conditions are the contributing factor/cause for knee and back issues. The Dept of Veterans Affairs awarded 10%-Left foot plantar fasciitis/pes planus; 10%-Right foot degenerative changes w/ plantar fasciitis/pes planus; 10%-Right knee; 10%-Left knee: 20%-Chronic lumbar strain totaling/combining 60% which should have been considered in the Medical Board proceedings being related to Pes Planus and Plantar Fasciitis.”

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 plantar fasciitis condition requested for consideration and the unfitting bilateral flat feet condition meet the criteria prescribed in DoDI 6040.44 for Board review, and are accordingly addressed below. The other requested conditions, right knee, left knee and chronic lumbar strain 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 (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060828** | | | **VA (4 Mo. After Separation) – All Effective Date 20061006** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral, Chronic Plantar Fasciitis (w/ Bilateral Flat Feet) | 5399-5310 | 0% | Left Foot Plantar Fasciitis and Pes Planus | 5279-5276 | 10% | 20070202 |
| Right Foot Degenerative Changes with Plantar Fasciitis and Pes Planus | 5284 | 10% | 20070202 |
| No Additional MEB/PEB Entries | | | Depressive Disorder | 9499-9434 | 50% | 20070125 |
| Migraine Headaches | 8100 | 30% | 20070223 |
| Cervical Spine Strain | 5237 | 30% | 20070202 |
| Chronic Lumbar Strain | 5237 | 20% | 20080204 |
| Degenerative Changes of Right Knee | 5260-5010 | 10% | 20070202 |
| Left Knee Chondromalacia | 5260-5014 | 10% | 20070202 |
| Tenosynovitis of the Right Wrist | 5024-5215 | 10% | 20070202 |
| Tenosynovitis of the Left Wrist | 5024-5215 | 10% | 20070202 |
| Gastroesophageal Reflux Disease (GERD) | 7399-7346 | 10% | 20070127 |
| Scar Due to Right Breast Surgery | 7804 | 10% | 20070127 |
| Scar Due to Left Breast Surgery | 7804 | 10% | 20070127 |
| Scar Due to C-Section | 7804 | 10% | 20070127 |
| 0% x 1/Not Service-Connected x 14 | | | 20070127 |
| **Combined: 0%** | | | **Combined: 90%** | | | |

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 Department of Veterans’ Affairs (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, Chronic Plantar Fasciitis and Bilateral Flat Feet (Pes Planus) Conditions. The CI had progressive pain in both feet that began in 1998. She was seen numerous times and was treated for pes planus and plantar fasciitis with orthotics, night splints, physical therapy, non-steroidal anti-inflammatory medication, and limitations of her activities without relief of her symptoms. However, her pain continued to worsen and was exacerbated with high impact activities. A 12 September 2005 podiatry clinic entry records “soldier does well when not engaged in high impact activity, consider P3 PEB,” and in June 2006 she was issued a permanent L3 profile and an MEB was initiated. The MEB narrative summary (NARSUM) was completed 13 June 2006, approximately 4 months prior to separation. It noted the progression of the bilateral foot pain despite conservative treatment and limitation of activities; “currently, her feet still hurt and she is not doing any high impact activities but the pain is starting to increase.” The examination documented bilateral pes planus and tenderness on plantar palpation of the heels. Full range of motion of the ankles and feet was documented but the CI had tenderness on palpation of the medial longitudinal arch bilaterally and dorsal tenderness on palpation. Both dorsal and plantar movement elicited pain. No swelling, erythema, warmth, or deformity was noted and motor and sensory exams were normal. The examiner reported that at that time the CI was able to walk normally but was on activity limitations including restricting prolonged standing for more than five minutes. Surgery was not indicated. In July 2006 she was prescribed a cane by a podiatrist. The PEB that convened on 28 August 2006 determined the CI was unfit or continued service due to bilateral, chronic plantar fasciitis. They applied a 0% rating for intermittent and slight pain IAW the USAPDA pain policy. The PEB rated the condition as 5399-5310, analogous to a code for functional disability of the muscles of the foot.

The VA Compensation and Pension (C&P) examination, completed on 2 February 2007, approximately 4 months after separation, noted a similar clinical and treatment history. It also documented the CI's pain was constant, severe, and rated at 8/10. The CI was unemployed and reported her activities of daily living were affected by her bilateral foot pain. If she stood longer than five minutes or walked more than a few yards her pain would increase to 10/10 and remain at that level all day. The general medical C&P examination, completed on 2 February 2007 noted the CI walked with a cane. The examination noted bilateral tenderness of the feet but there was no weakness, instability, or painful or restricted movement. Although the CI had been significantly overweight for several years (approximately 70 pounds), there were no corns or callouses to indicate abnormal weight bearing. There was no edema, and the Achilles tendon was non-tender. Flexible pes planus was present (“no decrease in architecture of the arches; the fully reconstitute with non-weight bearing with minimal decrease with weight bearing”). The examiner noted the presence of hallux valgus of the great toes (right 14 degrees, left 30 degrees) and X-rays documented degenerative changes at the proximal portion of the right navicular bone of the foot (shown previously); these latter findings were incorporated into the VA rating rationale. The VA rated each foot separately with the right foot rated at 10% under code 5284 other foot injuries, moderate, and the left foot rated at 10% under code 5279-5276 metatarsalgia and moderate flatfoot, acquired.

The Board directs attention to its rating recommendation based on the above evidence. The VASRD does not have a specific code for plantar fasciitis and it must be rated analogously. The Board considered the options used by PEB and VA. The PEB indicated the analogous VASRD code 5310 for muscles of the foot but adjudicated its rating with application of the USAPDA pain policy. The VA adjudicated its ratings with different codes for each foot; 5284 other foot injuries (right foot) and 5279-5276 for metatarsalgia and acquired flatfoot (left foot). With regard to the 5310 muscle code indicated by the PEB, the Board noted that there was no disorder of the muscles of the feet present however the 5310 code includes “other important plantar structures: plantar aponeurosis, long plantar and calcaneo-navicular ligament, tendons of posterior tibial, peroneus longus, and long flexors of great and little toes” and therefore the selection of this code by the PEB is reasonable. The ratings under this code apply to each foot and are based on a judgment of severity (slight 0%; moderate 10%; moderately severe 20%; and severe 30%). With regard to the codes selected by the VA, the analogous code for acquired flat feet (5276) more nearly matched the unfitting plantar fasciitis associated with pes planus condition. Board members agreed that the CI’s condition more nearly approximated the moderate level for a single 10% rating (bilateral) as described in the criteria under VASRD code 5276 than the 30% rating for severe (bilateral). A mild 0% rating requires symptom relief by built-up shoe or arch support while a severe bilateral 30% rating requires objective evidence of marked deformity and characteristic callosities which are not present in this case. The 5284 code, other foot injuries, assigns ratings based on assessment of severity as moderate (10%), moderately severe (20%), and severe (30%) applicable to each foot. The Board considered whether the preponderance of evidence supported rating each foot separately under the 5310 muscle code used by the PEB or the code for other foot injuries (5284) used by the VA. Board members agreed that the preponderance evidence more nearly approximated moderate disability for each foot coded under 5310 (foot muscle, aponeurosis) or 5283 (other foot injuries) warranting a 10% rating for each foot. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for each foot, coded 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. As discussed above, PEB reliance on the USAPDA pain policy for rating 0% was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the bilateral plantar fasciitis condition, the Board unanimously recommends a disability rating of 10% for the right foot and 10% for the left foot 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:

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111129, 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 XXXXXXXXXXXXXXXXXX, AR20120013940 (PD201101102)

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 XXXXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA