RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200031 SEPARATION DATE: 20060926

BOARD DATE: 20120710

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (25Q1P/Multichannel Transmitter Operator-Maintainer), medically separated for a bilateral foot/ankle condition. He did not respond adequately to conservative treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Chronic bilateral foot/ankle pain due to chronic plantar fasciitis and heel spurs was forwarded 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 bilateral foot/ankle condition as unfitting, rated 20% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “Multiple problems were not considered.”

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 remaining conditions rated by the VA at separation and referred to on the DD Form 294 (hiatal hernia, pes planus bilateral feet, scar left great toe and depression) 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 20060530** | | | **VA (12 Mo. Pre Separation) – All Effective Date 20060927** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam\*** |
| Bilateral Foot/Ankle Pain | 5399-5310 | 20% | Residual Plantar Fasciitis Rt Foot w/ Heel Spur | 5284-5020 | 10% | 20060809 |
| Residuals Plantar Fasciitis Lt Foot w/ Heel Spur | 5284-5020 | 10% | 20060809 |
| Pes Planus Bilateral Feet | 5276 | 0% | 20060809 |
|  | | | Hiatal Hernia w/ GERD | 7399-7346 | 10% | 20060809 |
| ↓No Additional MEB/PEB Entries↓ | | | Scar Lt Great Toe | 7804 | 10% | 20060809 |
| Depression | 9434 | 10% | 20060811 |
| 0% x 2/Not Service-Connected x 3 | | | 20060809 |
| **Combined: 20%** | | | **Combined: 40%** | | | |

\*VARD dated 20070116 also refers to pre-discharge exams dated 20050925 (general) and 20051031 (psychiatric).

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that ratings should have been conferred for conditions not diagnosed while in the service but later determined to be service-connected by the Department of Veterans’ Affairs (DVA). While the Disability Evaluation System (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 DVA, however, 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.

Bilateral Foot/Ankle Condition. The CI reported having ankle and foot problems since basic training and received chronic treatment for over 6 years for either plantar fasciitis and or heel spurs which responded some to anti-inflammatory medications, night splints, crutches, ankle braces and profiles. About the same period of time the CI was also diagnosed and intermittently treated for gout involving his left big toe and the right ankle which responded well to Allopurinol (a chronic medication for gout) and the anti-inflammatory, Indomethacin. The gout was quiescent, without flares ups, for over a year prior to the MEB and the service treatment record (STR) documented one gouty attack per year. In October 2005, while being reevaluated for heels spurs, an enchondroma of the left first toe was discovered for which the CI opted for surgical removal, which was successful and without complication. He was then followed by podiatry for continued pain of both feet and was finally issued a permanent profile in January 2006 with a referral for a MEB. His permanent profile documented chronic ankle pain with the following limitations; no running or airborne operations. An alternate swim or bike aerobic physical training test was indicated. The commander’s statement further described the CI’s ankle and foot pain, from plantar fasciitis and achilles tendonitis, the right being worse, without resolution with alternate footwear. The commander also documented the CI’s difficulty with standing or walking for an extended period of time and his inability to meet height or weight standards, and recommended separation.

There were two goniometric range-of-motion (ROM) evaluations 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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| --- | --- | --- | --- | --- |
| Goniometric ROM –  Bilat Ankles | PT ~ 5 Mo. Pre-Sep | | VA C&P ~ 1 Mo. Pre-Sep | |
| Left | Right | Left | Right |
| Dorsiflexion (0-20) | 6⁰ | 15⁰ | 20⁰ | 20⁰ |
| Plantar Flexion (0-45) | 25⁰ | 40⁰ | 45⁰ | 45⁰ |
| Comment | Painful motion,  PROM 10⁰ and 27⁰ | Painful motion |  |  |
| §4.71a Rating | 20% | 10% | 10% | 10% |

At the MEB exam, the CI reported “I have bad ankle and foot pains” but he was not taking any pain medications. The MEB physical exam demonstrated; a slow gait, bilateral tenderness of the ankles, increased pain along the posterior region of the left ankle, negative medial and lateral pain of the right ankle, bilateral tenderness over the plantar fascia and also on the area of the medial heads of the calcaneus (heel bone), bilateral pes planus (flat foot), a scar on the left big toe, without erythema, edema or instability of the ankles. The radiograph results were documented by the MEB examiner, with the most recent in December 2005, not in evidence for review. This radiograph revealed no significant post-operative changes, calcaneal spurs of the right and left ankle and of the right and left foot and mild degenerative changes of the first metatarsal phalangeal joint: this was consistent with prior radiographs. The treating podiatrist, for the MEB, additionally documented normal active ROM of the ankles with no crepitus and normal neurovascular findings. The podiatrist diagnosed bilateral plantar fasciitis and recommended an MEB for bilateral ankle pain secondary to “what is likely Symptomatic moderately low arch.” At the VA Compensation and Pension (C&P) exam, performed a month prior to separation, the CI reported bilateral constant pain of his heels, arches and soles of his feet and ankles for over 5 years; pain level was 4-5 of 10, worsened with physical activity and prolonged walking or standing. He could function without medication for his feet, however, he reported flares of ankle pain up to three times a day for over 2 hours, incapacitating episodes as often as one time per year which could last for 3 days and did respond to rest or medication, Indomethacin, but during which he still could function. The C&P exam demonstrated no edema, effusion, weakness, tenderness, redness, heat, abnormal deformity, or guarding of movement of the bilateral ankles. The bilateral foot exam demonstrated flat foot with tenderness of the plantar surface and achilles tendon, the absence of deformities or malalignments, and a normal gait with the use of foot supports but without the use of assistive devices for ambulation. The left first toe demonstrated no valgus or rigidus and no pain. Examination of all the other joints and muscles were within normal limits. The radiographs of the right and left ankles were normal. The right and left foot radiographs reflected posterior calcaneal spurs and pes planus.

The Board directs attention to its rating recommendation based on the above evidence. While the MEB and VA exams were complete, well documented and similar in ratable data, there is a disparity between the MEB physical therapy and the VA ankle ROM exams with some implications for the Board's rating recommendation. There were no other ROM exams outside the ones cited for consideration. The Board deliberated its probative value assignment to these conflicting evaluations, and carefully reviewed the STR for corroborating evidence in the 12-month period prior to separation. The Board notes that while the treating podiatrist did not give actual goniometric measurements, the podiatric evidence in the STR reflects a normal bilateral ankle ROM which is consistent with the VA measurements. Therefore, based on all available evidence, the Board assigns higher probative value to the VA evaluation. Although the PEB and VA chose different coding options, this did not bear on each of their final combined ratings for the foot/ankle condition.

The PEB rated each foot separately under analogous 5310 code IAW VASRD §4.73—schedule of ratings–muscle Injuries, and rated each 10%, then “bundled” the overall rating for bilateral foot and ankle pain citing a clinical assessment of bilateral plantar fasciitis. The Board agreed the 5310 plantar muscle code is commonly used for plantar fasciitis and applied unilaterally, and while the PEB “bundled” their final rating, they did appropriately apply a separate rating to each foot IAW VASRD §4.56. The VA rated each foot under code 5284 (foot injuries, other) analogous to code 5020 (synovitis), which correlates to the 5003 (arthritis degenerative) code, and assigned each 10% for painful plantar fascia and the heel spurs shown on the radiographs. The VA also cited the other foot/ankle conditions to include bilateral achilles tendonitis, left great toe degenerative joint disease, left great toe gout disease and right ankle gout disease in their rating decision, apparently subsuming these foot conditions under the more general 5284 code. The Board agreed while there were other foot conditions contributing to the CI’s bilateral ankle and foot condition, IAW §4.14, avoidance of pyramiding, the bilateral plantar fasciitis was the dominant disabling condition and the evidence most closely approximated moderate pain and impairment of the left and right ankle/foot. The Board also considered whether the 5002 code (arthritis rheumatoid (atrophic) as an active process) for the gouty arthritis might be appropriate but agreed the evidence did not reflect symptom combinations productive of definite impairment of health objectively supported by examination findings or incapacitating exacerbations occurring three or more times a year to attain the 40% rating, although the 20% criteria of one or two exacerbations a year was supported.

The Board noted that IAW VASRD §4.71a, under the 5002 code, the ratings for an active process will not be combined with the residual ratings for limitation of motion or ankylosis. In this case, both the chronic residuals and the active process would rate 20%. 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/ankle 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. In the matter of the bilateral foot/ankle condition and IAW VASRD §4.73, 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** |
| Bilateral Foot/Ankle Pain | | 5399-5310 | 20% |
| **COMBINED (Incorporating BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120101, 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 XXXXXXXXXXXXXXXXXXXX, AR20120012289 (PD201200031)

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 XXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA