RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1200105 SEPARATION DATE: 20060506

BOARD DATE: 20121002

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (25S, Satellite Communication Systems Operator Maintainer), medically separated for bilateral plantar fasciitis. The CI developed chronic bilateral foot pain that did not respond to multiple treatment modalities, including surgery of the right foot. He was unable 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). The MEB forwarded no other conditions for adjudication with the Physical Evaluation Board (PEB). The PEB adjudicated the bilateral plantar fasciitis condition as unfitting, rated 20% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “Condition (Severe and Chronic Bilateral Plantar's [*sic*] Fasciitis) renders member unable to stand, sit, or walk without encountering increasing and untreatable physical pain in both feet. Member unable to run or participate in other physical activities that require the use of the feet. Member has difficulty in obtaining employment due to disability asmost employers require the ability to "lift and carry" various loads or standing and walking for extended periods of time. Member has undergone numerous medical treatments for the condition, to include but not limited to; numerous shoe orthotic devices, steroid injections, prescription NSAID medications, various pain medications, splinting, rest and elevation for extended periods, stretching exercises, physical therapy, partial instep release surgery (right foot), plantar fasciotomy surgery (right foot), and decompression of tibia nerve surgery (right foot). The condition is permanent and no treatment has worked to alleviate the pain on manipulation and use of the feet. The right foot is permanently scarred and deformed. Extended use of both feet causes intense pain, swelling, and numbness. The surgeries have made the condition worse in the right foot. Pain causes member to "walk" or "stand” on knees when possible - as the pain suffered as a result of the use of knees is not as severe as the foot pain. As a result - the knees are increasingly becoming more painful. Physical exercise is painful as there are no low impact exercise facilities local to the member. The only method for physical exercise is currently a stationary bicycle - which is the least painful form of exercise available. Member is unable to participate in physical activities that require the use of feet with three dependents. Condition still exists and is increasingly causing more pain as time transpires in the back (from the result of non-regular gait and standing positions), legs, knees, ankles, and especially the entirety of the feet.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 rated condition bilateral plantar fasciitis as requested for consideration is the only condition that meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is 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 Correction of Military Records (ABCMR).

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20060209** | **VA (~2 Months Pre-Separation) – All Effective Date 20060507** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Plantar Fasciitis | 5399-5310 | 20% | Bilateral Plantar Fasciitis with Status Post Right Foot Partial Release with Scar | 5099-5020 | 10% | 20060228 |
| ↓No Additional MEB/PEB Entries↓ | Not Service-Connected x 1 |  |
| **Combined: 20%** | **Combined: 10%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s opinion that a medical error was responsible for his disability, with the implication that the disability rating should provide for remedy. It must be noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to allegations regarding suspected improprieties or faulty medical care. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB disability ratings and fitness determinations. redress in excess of the Board’s scope of recommendations must be addressed by the ABCMR and/or the United States judiciary system. The Board also acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of his condition and predictable consequences merit 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 member's medical conditions, compensation can only be offered for those medical conditions that cut short a 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.

Bilateral Plantar Fasciitis Condition. The CI reported his bilateral foot pain began in 2004 after he attended PLDC training. His symptoms increased with subsequent activity and did not respond to extensive conservative treatment including injections, medications, inserts, and rest or to surgery on the right foot in October 2005. An MEB narrative summary (NARSUM) completed in January 2006, 4 months prior to separation, documented no distress and a normal gait. The CI was able to heel walk but had difficulty trying to toe walk. Mild tenderness in the plantar area of the right foot over the surgical scar and over the plantar aspect of the left foot was present. No swelling or warmth was noted. X-rays from the previous month were reportedly normal. A VA Compensation and Pension (C&P) exam was performed on
28 February 2006, approximately 2 months prior to separation. The C&P exam documented a report of constant pain that was described as burning, aching, sharp, cramping, and numbing and was rated at 6/10. The pain was elicited by physical activity, stress, and prolonged standing and was relieved by rest. When pain was present, he could function without medication. The condition had not responded to arch supports and shoe inserts or partial instep release surgery of the right foot. The condition limited prolonged walking, standing, and sitting but did not result in any time lost from work. The right foot had pain weakness and stiffness at rest and pain, weakness, stiffness, and fatigue while standing or walking. Physical examination documented no acute distress, equal leg lengths, no signs of abnormal weight bearing, normal posture and gait, and normal range of ankle dorsiflexion and plantar flexion bilaterally. There was increased pain with repetitive motion of the both ankles. Tenderness to palpation on the plantar surface of both feet was present. Neither foot exhibited pes planus. The motor and sensory exam was normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the condition analogous to muscle injury using VASRD code 5399-5310, rated as moderate and applied a 20% rating with apparent ratings of 10% for each foot, combining to 20%. The VA rated the condition analogous to synovitis 5099-5020 which is rated as 5003 Arthritis, degenerative and applied a 10% rating for painful motion of a major joint or group of minor joints. No available coding option results in a rating greater than 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 plantar fasciitis 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. In the matter of the bilateral plantar fasciitis 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** |
| Bilateral Plantar Fasciitis | 5399-5310 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120131, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXX

 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXX, AR20120019267 (PD201200105)

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