RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200278 SEPARATION DATE: 20050923

BOARD DATE: 20121019

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSGT/E-6 (19K30/M1 Armor Crewman), medically separated for chronic right foot pain which persisted despite a bunionectomy of the right first metatarsophalangeal joint (MTPJ) for hallux valgus not responsive to non-operative measures. Chronic right foot pain persisted despite an otherwise excellent recovery and the CI could not 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 determined the condition was medically unacceptable and forwarded it to the Physical Evaluation Board (PEB). No other conditions were forwarded for PEB adjudication. The PEB adjudicated the chronic right foot pain condition as unfitting, rated 10%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “Nerve damage sustained from bunienectomy surgery on my right foot. Extensive pain on right foot, lower back and knees from injuries documented on my medical records from the Army. Injuries from the Army have affected my current employment & position as a NYC police officer. I have to purchase special shoes for patrol or wear sneakers b/c of extensive tissue damage from my Army surgery, I cannot wear boots. I have been taking numerous medication for the past 5 years and have been suffering from headaches due to T.B.I sustained from the military injury in Iraq. I was off from work for a total of 8 months due to my lower back & foot pain from Army injury. I go to physical therapy for my injuries. I have severe nerve damage to my right toe, which prevents me from wearing boots. I wear soft shoes for my job. Only thru severe stretching & physical therapy can I attain a full range of motion. My groin area is very sensitive due to my hernia. Passing bowel movements is very painful & causes severe bleeding in my anus. My lower back gives out at times, I have taken 7 to 8 months off due to my back being herniated. Headaches have been nonstop from T.B.I. for 6+ years, and its embarrassing at times to go thru nightmares & cold sweats due to Iraq nightmares. I’ve been suffering from PTSD & have not been compensated.”

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 chronic right foot pain condition, as requested for consideration, meets the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below. The other requested conditions [headaches, TBI, lower back pain, hernia, bleeding in my anus, lower back herniated, and PTSD] are not within the Board’s purview. The remaining conditions rated by the VA at separation and/or listed on the DA Form 294 application 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 Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050822** | | | **VA (~13 Mos. Post-Separation) – All Effective Date 20050924\*** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Foot Pain | 5099-5003 | 10% | Chronic Right Foot Pain | 5280 | 10% | 20060717 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% X 1 / Not Service-Connected x 1\*\* | | |  |
| **Combined: 10%** | | | **Combined: NSC\*\*** | | | |

\*Initially, all conditions were NSC as the CI did not show for the first scheduled C&P examination. Tension headaches were added after the C&P Exam on 20090507; the combined rating was increased to 20% effective 20090409.\*\*Three on 20090409.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. The DES has neither the role nor the authority to compensate 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.

Chronic Right Foot Pain Condition. The CI first noted pain in the right great toe in February 2001 which was managed with medications, padding and shoe modification. A bunionectomy of the right great toe was performed on 7 October 2004, almost one year prior to separation. His post-operative course was complicated by separation of the wound edges after suture removal over about 1/3 of the incision, but otherwise unremarkable. At a post-operative visit 3 months after surgery, he had good range-of-motion (ROM) without swelling, but with persistent pain, although reduced from previous visits. Three months later on 8 April 2005, he stated that he was unable to wear his boots without pain and requested a L3 profile to allow for cross-training. Imaging with X-rays was unremarkable. There was pain over the incision site with palpation, but ROM remained good. The examiner observed that the CI walked without a limp when leaving the clinic. The CI was referred to an orthopedic surgeon who specialized in foot and ankle disorders. The examiner noted a good surgical outcome and could not explain the failure of the CI to have recovered at 6 months post-surgery. The CI was next seen in podiatry on 13 April 2005 and endorsed walking without limitation, but limitations in running to 1/2 mile; he also stated that he could not stand in boots and would need to sit down. At the MEB examination performed on 31 May 2005, 4 months prior to separation, the CI reported persistent pain. The MEB physical exam noted a right medial bunion which was tender to touch and weight bearing. The narrative summary (NARSUM) utilized the 21 July 2005 podiatry visit for the history and examination. At this podiatry visit, the final while in service and 2 months prior to separation, the CI noted that he could run or walk around a mile and could stand for 30-60 minutes. Military footgear still bothered his foot. On examination, he was noted to have good sensation and strength, normal vascular supply, but to be tender along the scar. The scar was noted to be thickened. Dorsiflexion was greater on the right than the left; however, plantar flexion reduced on the right compared to the left. At the VA Compensation and Pension (C&P) exam, performed 10 months after separation on 17 July 2006, the CI reported nerve damage with reduced ROM and stiffness which required him to “crack” the right great toe when he first got up. Pain was aggravated by the wear of shoes, standing and walking. He was treated with medications, shoe inserts and stretching. He was working as a security guard and on his feet 5 to 8 hours a day. His supervisors did allow him to sit periodically and to wear a soft shoe for comfort. On examination, the scar was tender and sensation about the incision site decreased. Mild edema was noted, but no effusion. There was no crepitus with ROM, but distraction was painful as were dorsal and plantar flexion. Gait was mildly antalgic. On X-ray examination, there was uneven joint space narrowing. He was thought to have right first MTPJ arthralgias and mild proper digital nerve neuritis of the right great toe secondary to the surgery. The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the chronic right foot pain at 10%, coded 5099-5003 as analogous to degenerative arthritis, utilizing the since rescinded pain policy. The VA also rated the right foot pain at 10%, but coded it 5280-5284, hallux valgus and other foot conditions, respectively. The coding and rating were retained when the CI was reevaluated in 2009, 4 years after separation. The Board considered the various coding options available, but none provided a higher disability rating than the 10% awarded by the PEB. While the coding option of 5280 for hallux valgus would better describe the right foot condition, the Board typically does not recommend a change in coding when there is no benefit to the CI. There was no indication in the record that the post-surgical scar separately restricted the use of military footwear; moreover, it was not noted by any examiner as causing disability in addition to that which is seen from the underlying post-surgical changes to the toe. By precedent, the Board does not recommend separation rating for scars unless their presence imposes a direct limitation on fitness. 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 chronic right foot 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. As discussed above, PEB reliance on the USAPDA pain policy for rating right foot condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right foot 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 Right Foot Pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120301, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXX, AR20120020014 (PD201200278)

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 XXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA