RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900018 BOARD DATE: 20090204

SEPARATION DATE: 20050711

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was an active duty Warrant Officer (helicopter pilot) medically separated from the Army in 2005 after 14+ years of service. The medical bases for the separation were a back condition and a bilateral hip condition. The back pain began gradually in 2003, presenting initially as pain in the tailbone (coccyx) during pregnancy. Back spasms, upper back pain and migraine headaches developed with chiropractic manipulations for the initial complaint, and this treatment was discontinued. Bilateral hip pain developed in conjunction with the back pain. It was initially described as radiating pain from the back, but a bursitis/arthritis type condition of the right hip was separately diagnosed. An exhaustive ancillary evaluation of the complaints included multiple x-rays, MRI of spine and hips, EMG (nerve conduction study) of the right lower extremity, arthrogram (joint dye) of the right hip and a bone scan. The only significant objective finding from the above was some chondrolysis (joint erosion) of the right hip. None of the conditions were amendable to surgery and maximal conservative management was attempted, including physical medicine and pain specialty consultation. Despite this, she was hampered by physical limitations incompatible with her MOS. Specifically, she was unable to sit or remain in a static position for longer than brief intervals because of the pain. She was referred for a Medical Evaluation Board (MEB), which forwarded back pain and bilateral hip pain to the Physical Evaluation Board (PEB) as medically unacceptable conditions (IAW AR 40-501). Additional conditions supported in the disability evaluation system (DES) packet are discussed below, but only the above were forwarded for PEB consideration on the DA Fm 3947. The CI was found unfit by the PEB for both of the conditions, rated 10% each, and medically separated with a combined disability rating of 20%.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: The CI (through VSO representative) states: ‘After being diagnosed and evaluated by a variety of different physicians, many of whom had no specialty in the area of medicine related to the service member's complaints, and a review of the medical evaluation report, it appeared to the service member that the conditions evaluated were not adequately addressed. ...Subsequent to discharge, the Veterans Administration issued an initial disability rating of 40% for the conditions warranting discharge.’

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB** | **VA (Pre-Separation) – All Effective 20050712** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Back Pain | 5299-5237 | 10% | 20050519 | Thoracolumbar Strain | 5237 | 10% | 20050623 |
| Coccydynia | 5299-5298 | 10% | 20050623 |
| Bilateral Hip Pain | 5099-5003 | 10% | 20050519 | Trochanteric Bursitis, R Hip | 5019-5252 | 0% | 20050623 |
| Left Hip Pain | 5019-5252 | NSC | 20050623 |
| No DA 3947 Entry; Covered in NARSUM. | Migraine Headaches | 8100 | 30% | 20050623 |
| No Additional DA 3947 Entries. | Non-PEB X 1 / Additional NSC X 1 | 20050623 |
| **TOTAL Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 40%**   |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY:

Back Condition. The thoracolumbar condition, in itself, is subject to straightforward rating IAW the Veterans' Affairs Schedule for Rating Disabilities (VASRD) §4.71a and supported by three goniometric range-of-motion (ROM) exams in evidence. The most probative value is assigned to the formal MEB and pre-separation VA rating examinations, although an earlier (14 months prior to separation) exam by Physical Therapy (P.T.) provides support for the findings at separation. All three exams are summarized in the following chart.

|  |  |  |  |
| --- | --- | --- | --- |
| Thoracolumbar ROM | P.T. – 3/16/04 | MEB - 4/2/05 | VA C&P - 6/23/05 |
| Flexion | 90⁰ | >90⁰ | 80⁰ |
| Combined | >240⁰ | 230⁰  | 200⁰ |
| §4.71a Rating | 0% | 10% | 10% |

Pain end-points were not elaborated in the MEB examination, although normal gait and absence of tenderness were specified. The VA examination noted no abnormalities of gait or contour, but noted some paraspinal tenderness. It specifically stated that painful motion was absent. The PEB’s DA Fm 199 specified application of the U.S. Army Physical Disability Agency (USAPDA) pain policy for rating, but the 10% rating determination would have been unaffected by rating strictly IAW §4.71a. The VA examination was accurately reflected in the 10% rating assigned under the VASRD. There was no evidence of ratable peripheral nerve impairment in this case. There is no reasonable doubt in the CI’s favor, therefore, to justify a Board recommendation for other than the 10% rating assigned by the PEB for the back condition. Although the analogous prefix is unnecessary, the PEB coding is accurate.

Bilateral Hip Pain. The PEB combined a bilateral joint condition under an analogous 5003 rating presumably IAW AR 635-40 (B.24 f.). Since there was no radiographic support for 5003 designation of the left hip, the Board must treat the joints separately IAW §4.71a. As noted in the summary, there was distinct pathology associated with the right hip pain. There was an orthopedic addendum to the NARSUM which specifically addressed the right hip condition. Right hip pain was the focus of clinical visits and P.T. notes in the service record distinct from the left hip pain or bilateral hip pain. The right hip was the only one associated with any positive physical findings on exam (slightly less flexion by the MEB orthopedist and tenderness by the VA examiner). Unlike the right hip which was diagnosed as chondrolysis by the MEB and bursitis by the VA (equivalent for rating purposes), there is no distinct diagnosis for the left hip. Both the NARSUM and the VA rating exam identified bilateral hip pain as an associated component of the back condition, which is the only etiology in evidence for the left hip. Neither hip had any compensable ROM impairment or painful motion. This was the reason for the non-compensable rating assigned to the right hip by the VA. Regarding the left hip, the following is excerpted from the VA rating decision.

Your service medical records show you received treatment for right hip; however, no complaints of treatment for, or diagnosis of left hip condition is shown. Your VA exam results show left hip pain with no current condition diagnosed. This pain was associated with your thoracolumbar strain and has been rated with that condition. These results show normal range of motion on both of your hips with no pain and no change on repeated motion. Complaint of pain without an established diagnosis is not a ratable entity. Service connection is denied for left hip pain.

The Board concurs that any ratable pain for the left hip under the VASRD would be subsumed under the spine rating already established. The Board does not have the VA’s latitude of not service connecting the left hip pain, since it is established as a component of an unfitting condition adjudicated by the service PEB. Likewise the Board does not have the latitude of recommending a lower rating for the right hip condition than that conferred by the PEB, nor does it believe it is fair to do so. Under DoDI 6040.44 the Board could default to the service regulation as the most favorable to the CI and recommend no recharacterization of the PEB coding and rating. Since there is a clinical distinction underpinning its decision-making, however, the Board believes that its position is better reflected by adhering to VASRD authority and providing separate recommendations for each hip. Although VASRD §4.59 (painful motion) is not supported by the evidence as justification of a compensable rating for the right hip, VASRD §4.40 (functional loss) does provide a basis. There is no question that the right hip became painful on use and meets the description for the disability covered by §4.40. The Board therefore recommends a 10% rating for the right hip on that basis, coded 5019-5252 as per the VA decision. Since the left hip disability cannot be severed from the spine rating as discussed above, there is not reasonable doubt in the CI’s favor to apply §4.40 for a compensable rating of the joint. The Board, therefore, recommends addition of left hip pain as an unfitting condition coded 5019-5252 but rated 0%.

Coccydynia. The complaint of coccygeal pain was a prominent component of the CI’s overall unfitting condition and was noted in numerous clinical entries in the service record. It was the presenting symptom in the evolution of the back pain and, by history, the most limiting factor in her inability to tolerate prolonged sitting. The NARSUM identified and discussed coccydynia and upper back pain separately in the discussion of back pain, but as a ‘final diagnosis’ it was incorporated as ‘chronic mechanical low back pain, upper back pain, and coccydynia’. A VA physician reviewer stated, ‘The coccydynia was a subjective complaint only, a part of the spine condition, without any objective findings at the time of the exam. The correct diagnosis should be Lumbosacral Strain with Coccydynia and Referred Pain into Bilateral Hips.’ No exam in the record documented any coccygeal tenderness. Indeed the absence of tenderness is more suggestive of ‘coccydynia’ as a symptom, not a diagnosis. As opined by the MEB and VA physicians, coccydynia translated into coccygeal pain as a component of the overall spine condition. The VA rater did not make that distinction and provided a separate analogous rating to a code intended for surgical residuals after removal of the coccyx. After due deliberation, the Board does not find reasonable doubt in the CI’s favor for recommending addition of coccydynia as a separate unfitting condition for service disability rating.

Migraine Headache. This condition was the only one which, in total, resulted in a difference between the PEB’s and the VA’s original combined disability ratings. The CI suffered an onset of vascular-type headaches as a component of the exacerbation of her symptoms with the trial of chiropractic manipulations. The condition was not forwarded on the DA 3947 for PEB adjudication, but was mentioned in the NARSUM and addressed specifically in the MEB physical exam. The latter stated (medical shorthand translated), ‘Migraine headaches, 2-3 times per week, treated successfully with Excedrin’. The VA rating examiner stated the frequency as ‘once in a week and it lasts for about 2 hours to 2 days’ and also stated, ‘She did not have any prostrating episodes requiring emergency room visits.’ Of note, the only other pain medication in use by the CI for any of her conditions at the time of separation was Tylenol. The Commander’s statement noted that the CI was performing as the Company Executive Officer and elaborated the following physical limitations, ‘Soldier cannot be in any one position (sitting or standing) for more than 15 minutes at a time. Soldier cannot perform any duties consisting of bending and lifting of heavy objects.’ This provides no support for an argument that headaches were unfitting, nor was the condition covered by the physical profile. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of migraine headache as an unfitting condition for separation rating.

Other Conditions. The only relevant additional conditions documented in the DES packet were upper back pain, a sensory deficit of the right thigh, a left shoulder condition and a right ankle condition. Of these, only the ankle condition was coded by the VA in its original rating decision (rated 0%). The upper back pain was discussed above as a component of the unfitting overall back condition and cannot be rated separately IAW §4.71a. The MEB physical exam noted an area of numbness on the right thigh as a component of the sensory exam. Etiology is not clear, but no connection with fitness is in evidence. The ankle and shoulder conditions were chronic and stable. They were not under active treatment during the MEB period and were not noted in the Commander’s statement or physical profile. No link to fitness is in evidence for either of them. A psychiatric adjustment disorder and gastric reflux disease were rated by the VA within a year of separation, but the Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. Any other contended conditions, except for those discussed above, remain eligible for Board for Correction of Military Records (BMCR) consideration.

The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 the back and hip conditions and AR 635-40 for rating the hip condition was operant in this case and the conditions were adjudicated independently of that service policy and regulation by the Board. In the matter of the back condition, the Board unanimously recommends a rating of 10% coded 5237 IAW VASRD §4.71a. In the matter of the coccydynia condition, the Board unanimously agrees that it is integral to the unfitting back condition and subsumed under the preceding spine rating IAW VASRD §4.71a. In the matter of the bilateral hip condition, the Board unanimously recommends that each joint be separately adjudicated as follows: an unfitting right hip condition coded 5019-5252 and rated 10%; and, an unfitting left hip condition coded 5019-5252 and rated 0% (also subsumed under the spine rating); both IAW VASRD §4.71a. In the matter of the migraine headache condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the upper back pain, sensory deficit of the right thigh, left shoulder condition, right ankle condition or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Back Pain with Coccydynia | 5237 | 10% |
| Bursitis and Chondrolysis Right Hip | 5019-5252 | 10% |
| Left Hip Pain Secondary to Back Pain | 5019-5252 |  0% |
| **COMBINED** | **20%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090115, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Physical Disability Board of Review

