RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900063 BOARD DATE: 20100107

SEPARATION DATE: 20040925

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SUMMARY OF CASE: This covered individual (CI) was an active duty officer (Nurse Corps) medically separated from the Army in 2004 after 8 years of service. The medical basis for the separation was dermatitis and suspected latex allergy. She began to develop an intermittent rash in 2001 during a deployment to Korea, which was temporally related to her nursing clinical duties. Initially the rash predominantly involved the hands, but later it was more widely disseminated. Latex allergy was suspected and she was evacuated to Tripler Army Medical Center for further evaluation. Although she had a suggestive ‘use test’ for latex sensitivity, she was not positive to more specific skin and serologic testing for latex allergy. It was felt that she probably had a more non-specific contact dermatitis related to the repetitive hand washing and use of surgical gloves required of her nursing duties. She was returned to her duty station, but the profile limitations imposed by the condition were incompatible with her MOS and she was referred to WRAMC for further evaluation and an MEB. During further skin testing there, she developed subjective symptoms of anaphylaxis (a life-threatening allergic reaction) which required the use of epinephrine. Although the specific etiology of this episode remained uncertain, the allergist at WRAMC opined that in addition to ‘irritant contact hand dermatitis’ there was ‘latex allergy causing anaphylaxis’. The dermatologist who prepared the NARSUM doubted the latter diagnosis, citing the lack of objective signs of anaphylaxis or clear relationship to a latex allergen. He diagnosed only the irritant contact dermatitis. Both the allergist and the dermatologist opined that the condition was medically unacceptable in light of the MOS. The initial MEB DA 3947 listed separate ‘chronic dermatitis’ conditions for the hands and the ‘trunk and extremities’ as medically unacceptable. These were combined as a single unfitting condition by the Informal PEB and rated 0%. Latex allergy was added as a separate condition on appeal and considered by a Formal PEB. The Formal PEB combined the latex allergy with the previous two dermatitis conditions as a single unfitting condition rated 10%.

The CI additionally suffered a left knee condition which was forwarded on the DA 3947 as medically acceptable. This was found not unfitting by the Informal and Formal PEB’s. Subsequent to the Informal PEB, but prior to the Formal PEB, the CI suffered an automobile accident complicated by persistent neck and back pain. These conditions were evaluated and treated at WRAMC, but not formally added as MEB conditions. They were considered at the Formal PEB hearing and judged to be not separately unfitting, but this was not reflected as a specific DA 199 adjudication. The findings of the Formal PEB were upheld on USAPDA appeal and the CI was medically separated at 10% disability for the dermatitis/latex allergy condition. The case was re-evaluated and upheld by a USAPDA advisory opinion in 2006.

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CI CONTENTION: The CI states: ‘Was rated ten percent for dermatitis, not the actual, actual diagnosis was latex allergies which documented in service medical records.’

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (4 Mo. after Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Chronic Hand Irritant Dermatitis with a Component of Latex Sensitivity… | 7809-7806 | 10% | 20040713 | Allergic Reaction to Latex… | 7806 | 30% | 20050128 | 20040926 |
| Healed L Knee Medial Meniscus | Not Unfitting | | 20040713 | Residuals of L Knee Surgery | 5259 | 10% | 20050128 | 20040926 |
| No DA 3947 Entry. | | | | Cervical Spine Strain | 5237 | 0% | 20050128 | 20040926 |
| No DA 3947 Entry. | | | | Degenerative Disc Disease L5-S1 | 5243 | 10% | 20050128 | 20040926 |
| No Additional DA 3947 Entries. | | | | Non-PEB X 6 / NSC X 6 | | | 20050128 | 20040926 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 50%** | | | | |

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ANALYSIS SUMMARY:

Dermatitis/Latex Condition. The medical details of this condition (or group of conditions) are somewhat complex. There was a plethora of specialty evaluations, testing and opinions. It is clear that, as a minimum, there was a contact dermatitis related to offending agents specific to the CI’s medical MOS. It is clear that this was associated intermittently with a wider distribution than just the hands; clear that there were occasional systemic allergic symptoms; and clear that the condition was incompatible with her clinical MOS. It will be assumed that latex played a role, although there is conflicting evidence in that regard. The allergy specialist’s conclusion that the CI suffered an anaphylactic complication is subject to doubt, given the clinical details. She suffered a later episode with some evidence of a more serious reaction, and the presence of urticaria (hives) was documented on various occasions. She was prescribed an emergency epinephrine auto-injector, and it will be assumed that she suffered from a life-threatening allergy. As the USAPDA pointed out in an advisory opinion dated 7 SEP 2006; however, neither the loss of a preferred career nor the risk of possible future complications are grounds for a higher disability rating than can be supported under the VASRD. The 7806 dermatitis code, applied by the PEB and the VA, was an appropriate fit for the contact dermatitis component of the condition. The rating under 7806 is dependent on the percentage of body surface area (BSA) involved (≥ 20% for the higher 30% rating) and whether protracted courses of corticosteroids (≥ total of 6 weeks duration for the higher 30% rating) are required. One exam during an ‘acute flare’ documented a BSA involvement of 25%. All other exams documented < 5% or no BSA involvement. The records also document that the CI did not tolerate side effects of corticosteroids, and that their routine use (except for single emergent doses) was discontinued after 2002. With strict application of the VASRD language for 7806, therefore, there is no foundation for a rating higher than the 10% accorded by the PEB. The VA Rating Decision for 30% was not supported by a rating examination which documented a higher BSA involvement (skin was clear on that exam) or by corticosteroid requirement, although a conflicting history of intermittent oral steroid use was obtained (not at the 30% rating threshold). The examiner concluded, ‘This is an unusual case. It would really be difficult to say what percentage of the body this actually covers.’ The Rating Decision paraphrased this conclusion but went on to state, ‘Resolving all remaining doubt in your favor, it is held that the recorded manifestation of this disability more nearly resemble the requirements for an evaluation of 30 percent.’ Notwithstanding the single 25% BSA exam documented among the many examinations in evidence, there really is no foundation for the ‘remaining doubt’ referenced in the VA decision. Although the rater may well have taken into account the ‘non-VASRD’ elements of the condition, this would constitute an extra-schedular rating which was not specified. The Board cannot support a higher rating than 10% under 7806 which would be both compliant with the language of the VASRD and consistent with the facts in evidence. There is not reasonable doubt in the CI’s favor, therefore, supporting recharacterization of the PEB rating adjudication for the dermatitis component of her condition.

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A central contention in this case, as repeatedly stressed by the CI and her counsel, is that latex allergy is more debilitating than can be coded for under the existing VASRD. The diagnosis of latex allergy (or whatever offending allergen) was conceded by the PEB as unfitting. The systemic allergic manifestations and implications of latex allergy are not encompassed by the 7806 code, although both the PEB and the VA subsumed them under that code. It was perhaps the ‘hidden agenda’ for the VA’s higher rating. Although there is not a clean fit for latex allergy as a distinctly coded condition in the VASRD, fairness dictates that an additional code and rating be applied in this case. It was a separately diagnosed and separately unfitting condition. This was established by the MEB, reflected on the DA 3947 and acknowledged on the DA 199. Anaphylaxis is typically coded under 7118 for angioneurotic edema. The CI’s acute reactions were not clinically distinct for anaphylaxis; however, and were not associated with laryngeal (or even oral or facial) edema. What they were associated with was urticaria, which does have a VASRD code (7825). At one point this was suggested by a VA physician and petitioned for by the CI. The VA examiner’s opinion was that ‘she may meet the requirements for a 30% evaluation’ under 7825. It was also documented that the VA physician did not stand by that opinion after reviewing the entire case file. This approach; however, was premised on substituting (not adding) the 7825 code. The Board agrees that the 7806 code best addresses the dermatitis as discussed above, but believes that the latex allergy condition does merit separate coding and rating under 7825. The 7825 code stipulates that urticaria be manifested at least four times over the past twelve months, and hives or urticaria was documented at that frequency in the Army record. This alone supports a 10% rating under 7825. The next higher 30% rating requires at least four ‘debilitating’ episodes and ‘intermittent immunosuppressive therapy for control’. There were only two episodes documented which required prompt treatment, and no other indications of any ‘debilitating’ episodes. Also the ‘immunosuppressive therapy’ requirement was not met by the CI’s sporadic (at most) use of steroids. The Board therefore recommends the addition of latex allergy as a separately coded (7899-7825) unfitting condition, but can find criteria only in support of a 10% rating recommendation.

Left Knee Condition. The CI had a four year history of left knee pain, which had included two prior arthroscopic surgeries and temporary profiles. An orthopedist raised the question of repeat surgery in 2003, but this was not followed through. She was not profiled for her knee at the time of separation. Her Commander’s statement, although exceptionally brief and devoid of details, specified only ‘latex allergy’ as detrimental to performance. There was no indication on the MEB physical that it was an acute issue, and the MEB determined the condition to be medically acceptable. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the knee condition.

Neck and Back Conditions. These conditions surfaced late in the MEB process as a consequence of an automobile accident six months prior to separation, but there are numerous physical therapy notes and imaging studies from WRAMC documenting their evaluation and treatment during that period. The CI was, in fact, issued permanent U3 and L3 profiles for them four months prior to separation. The conditions post-dated the Informal PEB and were not submitted by the MEB to the Formal PEB for adjudication. Quoting the 2006 USAPDA advisory opinion, ‘The applicant also provided an undated addendum for back and neck pain before the formal hearing. None of these ‘addendums’ were ever processed or reviewed in accordance with MEB procedures (Chapter 7, AR40-400).’ The undated ‘addendum’, signed by a Physical Medicine staff physician at WRAMC, designated both conditions as medically unacceptable. Although the USAPDA advisory opinion stated ‘back and neck pain were properly considered by the PEB to not be independently unfitting’, there was no entry to that effect on the Formal PEB’s DA 199. The conditions were not contended in the Formal PEB appeal or prior to separation. While apparently a point of contention in 2006, the conditions were not mentioned in the CI’s application to the Board. Although the VA ratings (0% neck, 10% back) question the severity of either condition, a case could be made in challenge to the Formal PEB’s ‘informal’ findings that they were not unfitting. There are imposing limitations to such a challenge, however. The conditions were not subject to formal scrutiny regarding fitness, not addressed by a Commander’s statement and non-existent during the performance of the CI’s usual MOS duties. The authority of the Board to consider these conditions is unclear, since it is not clear whether they were in fact part of the DES review. Lacking evidence of an egregious error that would be appropriate to point out to the designated decision authority, the Board may not rule on whether these conditions should have been found unfitting and rated. This would still leave the CI the option of taking these issues to the ABMCR. There is evidence that she may have done so, but no record of such proceedings. The Board, therefore, has neither firm jurisdiction nor strong evidence for recommending the neck or back as additional unfitting conditions.

Other Conditions. The CI was followed by Psychiatry for a period prior to separation. She was felt to have an adjustment disorder, although consideration was given to PTSD (related to details involving the automobile accident). No psychiatric conditions were coded by the VA. No fitness implications are in evidence. There were several other medical conditions documented in the service and VA records. These included post-traumatic headaches, eye nevus, rhinitis, irritable bowel syndrome, cervical dysplasia and various conditions not service connected by the VA. The only condition with a compensable rating by the VA, not already discussed, was post-traumatic headaches (rated 10%). This was related to the motor vehicle accident which precipitated the neck and back conditions. It was mentioned in a few of the Physical Medicine notes. A neurology referral was documented, but no consult is found in the record. The same Board jurisdiction issue applies to this condition as with the neck and back. There is scant documentation and no connection to fitness in evidence.

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

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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 dermatitis/latex condition the Board unanimously recommends that it be coded as two separate unfitting conditions. These consist of dermatitis coded 7806 and rated 10% IAW VASRD §4.118, and latex allergy coded 7899-7825 and rated 10% IAW VASRD §4.118. In the matter of the left knee condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the neck pain, back pain, post-traumatic headache and all of the CI’s other medical conditions; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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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** |
| Chronic Irritant Contact Dermatitis | 7806 | 10% |
| Allergic Reactions to Latex and Other Occupational Allergens | 7899-7825 | 10% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090121, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

