RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900147 BOARD DATE: 20091001

SEPARATION DATE: 20020405

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SUMMARY OF CASE: This covered individual (CI) was an active duty NCO medically separated from the Army in 2002 after 15 years of service. The medical basis for the separation was a back condition. She developed back pain in 1998 while lifting weights. She was subsequently diagnosed with L5/S1 disc disease and underwent a diskectomy/laminectomy in 1999. She had a bilateral radiculopathy, which was mostly resolved with surgery, although she had residual right radicular pain on an occasional basis. She experienced continued pain and limitations and was placed on a permanent L3 profile. She could not keep up with the physical requirements of her MOS (practical nurse) and underwent an MEB. Other medical conditions included a thyroid nodule, lower extremity varicosities and gynecologic infections, but none were significant regarding fitness concerns. Of note, the CI was diagnosed with fibromyalgia and ankylosing spondylitis within a month of separation and underwent lumbar fusion within 12 months of separation. Her DA 3947 from the MEB noted only the back condition, which was deemed medically unacceptable. The CI was referred to the PEB, found unfit for the back condition and separated with a 10% disability rating.

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CI CONTENTION: The CI’s application states, ‘When I was medically boarded for Low Back Pain or DDD, they did not diagnosis me with Fibromylagia[sp] or Anklyosing Spondlytis[sp] that my Rheumatologist did in Dec 2002. Those two conditions with Low Back Pain account for 100% of my pain.’ She correlates these conditions with anthrax immunization on active duty. She further states that she underwent a lumbar fusion within 12 months of separation, and contends for medical retirement based on her current occupational disability.

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (Pre-Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| CHRONIC LOW BACK PAIN | 5299-5295 | 10% | 20020116 | LUMBAR DISCECTOMY L5-S 1 | 5293 | 20% | 20020329 | 20020406 |
| NO DA 3947 ENTRY. | | | | SCAR, S/P DISCECTOMY | 7804 | 10% | 20020329 | 20020406 |
| NO ADDITIONAL DA 3947 ENTRIES. | | | | NON-PEB X 8 (No Fibromyalgia or Rheum. Dx) | | | 20020329 | 20020406 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 40%** | | | | |

ANALYSIS SUMMARY:

Back Condition. The CI underwent a pre-separation rating exam by the VA. The history obtained by the VA and MEB examiners was similar. In general, the CI could engage in walking and routine activities. She was unable to run or do heavy lifting, and had the usual activity restrictions for back patients. Her exams did not reveal tenderness or spasm, and motor/sensory findings were normal. Range of motion (ROM) measurements were as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Date | Flexion | Extension | L Flexion | R Flexion |
| MEB | 20011128 | 70⁰ | 10⁰ | 15⁰ | 25⁰ |
| VA | 20020329 | 80⁰ | 20⁰ | 20⁰ | 20⁰ |
| Normal Range | | 0-90⁰ | 0-30⁰ | 0-30⁰ | 0-30⁰ |

The VA coded the condition under 5293 (intervertebral disc syndrome). Despite better ROM values compared to the MEB exam, the VA rating was higher (20%). The PEB rated analogous to lumbar strain. The criteria for rating under 5293 are not as well defined as in the current VASRD spine rating formula. The characterization of ‘moderate’ required for a 5293 rating of 20% would appear appropriate, however, for surgical disc disease with the CI’s degree of physical limitations. The 5293 code is also more medically specific to this case. IAW VASRD §4.7 (higher of 2 evaluations), the VA code is preferable. IAW VASRD §4.3 (reasonable doubt), the higher VA rating is fair. The most reasonable Board recommendation is a 20% rating under 5293 for the back condition.

Contended Fibromyalgia and Ankylosing Spondylitis: The CI’s civilian medical records are in evidence. It is true that on her new patient appointment within 2 weeks of separation, her primary care physician suspected rheumatologic disease. This was based on a history of fatigue and diffuse joint pains. She had serologic confirmation of ankylosing spondylitis and a rheumatologist-confirmed diagnosis of fibromyalgia within months of separation. Review of her service-treatment record, however, reveals no report of similar symptoms or any indications for rheumatologic investigation. On her MEB physical, the CI responded negatively to all questions relative to the conditions. Specifically for ‘swollen or painful joints’, she responded, ‘only back’. The VA, likewise, could find no evidence in the service record for service-connecting the two conditions upon appeal. Of incidental note, there is no credible link between these conditions and anthrax vaccine in the literature. Of most relevance, the PDBR is not empowered to recommend these conditions for separation rating since they were not evident in DES documents.

Other Conditions. The non-tender lumbar surgical scar has no connection with fitness that would support a recommendation for adding it to separation rating. The CI’s only other compensable condition was varicose veins, which is not relevant for consideration as additionally unfitting. 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 PDBR 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 back condition, the Board recommends a rating of 20% under 5293 IAW VASRD §4.71a (2002). In the matter of the fibromyalgia and ankylosing spondylitis conditions, the Board recommends that the CI be directed to the Army BCMR if she wishes to pursue compensation. In the matter of all of the CI’s other medical conditions; the Board does not recommend a finding 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.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| CHRONIC LOW BACK PAIN, STATUS POST L5/S1 DISCECTOMY | 5293 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090130, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

SFMR-RB

MEMORANDUM FOR

DEPARTMENT OF THE ARMY

ARMY REVIEW BOARDS AGENCY

1901 SOUTH BELL STREET 2ND FLOOR

ARLINGTON, VA 22202-4508

Secretary of the Air Force, Military Review Board (SAF/MRBR) (PDBRCentrallntake

Unit), 550 C Street West, Suite 41, Randolph Air Force Base, Texas 78150-4743

Commander, US Army Physical Disability Agency (TAPD-ZB),

WRAMC, Building 7, Washington, D.C. 20307-5001

. SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXX, AR20090018393 (PD200900147)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of

Review (000 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 to modify the individual's disability rating to 20%

without recharacterization of the individual's separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be

corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided

to the individual concerned, counsel (if any), any Members of Congress who have

shown interest, and to the Army Review Boards Agency.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

CF:

( ) OVA

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eputy Assist nt Secretary

(Army Review Boards)

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