RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900218 BOARD DATE: 20100414

SEPARATION DATE: 20040203

20020909 onto TDRL

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SUMMARY OF CASE: This covered individual (CI) was a Major, Air Battle Manager, medically separated from the Air Force after 15 years of service. The medical basis for the separation was Herniated Nucleus Pulposus L5-S1 w/Left Radiculopathy. The condition was determined to be medically unacceptable and the CI was referred to the Physical Evaluation Board (PEB), found unfit for continued military service, and separated at 20% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations.

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CI CONTENTION: “I was placed on TDRL at 40% for my back disorder and then reduced to 20%. I was rated at 60% by the Denver, CO VARO for my back disorder.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service** | | | | **VA (15 months before and 5 months after Separation)** | | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Herniated Nucleus Pulposus L5-S1 w/Left Radiculopathy | 5293 | 20% | 20031216  (Off-TDRL) | Lumbar L2, L3, L4, L5, and S1 Degenerative Disc Disease and Bilateral Sacroiliac Joint Strain  Lumbar L2, U, L4, L5 And S1 Degenerative Disc Disease and Bilateral Sacroiliac Joint Strain with Incomplete Paralysis of the Left Sciatic Nerve  (Formerly Shown As 20  Percent Under Diagnostic Code 5010-5292 And 10 Percent Under Diagnostic Code 8520) | 5010- 5292  5010-5243 | 20%  60% | 20020906  DRO Review and 20040707 | 20020910  20020910 |
| Chronic Left Radiculopathy | 5293 | 40% | 20020708  (On-TDRL) |
|  |  |  |  | Incomplete Paralysis Of Left Sciatic Nerve associated  with Lumbar L2, L3, L4, L5 and S1 Degenerative Disc Disease  And Bilateral Sacroiliac Joint Strain | 8520 | 10%  N/A | 20020906  DRO Review and 20040707 | 20020910  Initially included but removed when 5010-5243 increased to 60% |
| Mild Asthma | 6629 | CAT II | 20020708 | Allergic Asthma | 6699-6602 | 0%  30% | 20020906  20040707 | 20020910 |
| History of Endometriosis | 7629 | CAT II | 20020708 | Endometriosis (Claimed as Dysmenorrhea, Menorrhagia, Metamenorrhagia and Hormone Therapy) | 7629 | 10%  0% | 20020906  20060517  20060718  20060725 | 20020910  20060517 |
| TMJ Syndrome | 9905 | CAT II | 20020708 | TMJ Syndrome | 9905 | 10%  20% | 20020906  20060517  20060718  20060725 | 20020910  20060410 |
| Multifactoral Insomnia | -- | CAT III | 20020708 | Sleep Disorder (Insomnia Type) as Secondary to the Service Connected  Disability of Lumbar L2, L3. L4, L5 and S1 Degenerative Disc Disease and  Bilateral Sacroiliac Joint Strain | 9410  9434-9410 | 30%  100% | 20020906  20060517  20060718  20060725 | 20020910  20060410 |
| No PEB Entry |  | Not in DES Package | | Rosacea, Nevus and Granulomatous | 7813-7806 | 0%  10%  30% | 20020906  2004070  20060517  20060718  20060725 | 20020910  20060410 |
| No PEB Entry |  | Not in DES Package | | Cervical C6-7 DDD and DJD | 5290-5242  5242-5243 | 20% | 20020906  20060517  20060718  20060725 | 20020910 |
| No PEB Entry |  | Not in DES Package | | Right Shoulder Proximal Trapezius Myofascial Strain | 5299-5203 | 10% | 20020906 | 20020910 |
| No PEB Entry |  | Not in DES Package | | Right Knee Status Post Plica Surgery w/Osteoarthritis | 5260  5010-5261 | 10% | 20020906 | 20020910 |
| No PEB Entry |  | Not in DES Package | | Tinnitus | 6260 | 10% | 20020906 | 20020910 |
| No PEB Entry |  | Not in DES Package | | Right Ankle Traumatic Talofibular Ligament Strain | 5271 | 10%  0% | 20020906  20060517  20060718  20060725 | 20020910  20060517 |
| No PEB Entry |  | Not in DES Package | | Right Elbow Lateral Epicondylitis | 5206 | 0%  10% | 20020906  20060517  20060718  20060725 | 20020910  20060410 |
| No PEB Entry |  | Not in DES Package | | Right 4th Digit Residuals S/P Ganglion Cyst Removal | 5230 | 0% | 20020906 | 20020910 |
| No PEB Entry |  | Not in DES Package | | Bilateral Plantar Fasciitis | 5299-5276 | 0% | 20020906 | 20020910 |
| No PEB Entry |  | Not in DES Package | | Sinusitis | 6510 | 0% | 20020906 | 20020910 |
| No PEB Entry |  | Not in DES Package | | Residuals Status Post Tonsillectomy and Uvulopalatopharyngoplasty | 6599-6516 | 0% | 20020906 | 20020910 |
| No PEB Entry |  | Not in DES Package | | Allergic Rhinitis w/History of Nasal Septum Deformity due to Trauma and History of Nasal Polyps | 6502-6522 | 0% | 20020906 | 20020910 |
| No PEB Entry |  | GERD in Neurology Addendum | | Hiatal Hernia w/ Gastroesophageal Reflux (Claimed As Bowel Condition) | 7346 | 0% | 20020906 | 20020910 |
| No PEB Entry |  | Not in DES Package | | Status Post Ovarian Cysts | 7615 | 0% | 20020906 | 20020910 |
| No PEB Entry |  | Not in DES Package | | Status Post Left Salpingo-Oophorectomy | 7619 | 0% | 20020906 | 20020910 |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (Includes Non-PEB Conditions):**  **90% from 20020910**  **100% from 20060410** | | | | |

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ANALYSIS SUMMARY:

Herniated Nucleus Pulposus L5-S1 w/Left Radiculopathy

The CI had intermittent radicular low back pain since Sep 1997 and was first seen by neurology in Jan 2000. In 1997 a herniated disc on the left side at L4-5 was noted on Magnetic Resonance Imaging (MRI) and she also had weakness in left ankle dorsiflexion with 4/5 motor strength. She was initially managed conservatively with Non-Steroidal Anti-Inflammatory Drug (NSAIDs), physical therapy (PT), osteopathic manipulation and water aerobics and had improvement in her strength and temporary improvement in her sensory symptoms. However, over time she has had recurrent radicular pain and dysesthesia that limited her ability to exercise. At the time of her initial narrative summary (NARSUM) in Jun 2002, she reported pain in the left lateral knee and calf, numbness in the left ankle and foot pain and spasms in the foot and ankle. She also reported radiating pain that would shoot from the buttock to the foot and intermittent weakness of dorsiflexion. These symptoms were exacerbated with exercise, bending or lifting. Her back pain was also exacerbated with activity and often woke her up at night. She also had ongoing low back that limited activities such as prolonged standing, walking or sitting. The pain typically radiated into her left leg. She was able to achieve temporary relief with chiropractic treatment but this did not produce sustained improvement. The chronic pain affected her sleep and gave her difficulty performing her duties.

A 1999 MRI of her lumbar spine showed that the herniated fragment had resolved and there was no significant residual mechanical compression of the nerve root. A third MRI from 2001 also showed no evidence of nerve root compression. The NARSUM completed for the initial PEB noted negative straight leg raising bilaterally, 5/5 motor strength in the bilateral lower extremities, and decreased sensation to pin on the dorsum of the left foot. She was evaluated by both military and civilian neurosurgery and was not a surgical candidate. Her treatment with medication and chiropractic care continued. The Neurologic Addendum to the NARSUM also showed decreased sensation, specifically to light touch, cold and pinprick over the dorsum of the left foot. This examination also revealed a slight weakness with 5-/5 power in the left anterior tibialis, extensor digitorum brevis, and peroneus longus muscles. Her gait was antalgic and had had great difficulty doing heel-to-heel gaits but adequate toe-to-toe gaits. Reflexes were 2+ in bilateral knees and the right Achilles and 1+ at the left Achilles. Her back examination showed limited range of motion and moderate paraspinal muscle spasm with tenderness to palpation.

On 20020702 the Informal PEB (IPEB) determined she was unfit for continued service but her condition was yet stabilized. She entered the Temporary Disability Retired List (TDRL) on 20020909 with a 40% rating for 5293 Chronic Left Lumbar Radiculopathy.

A VA Compensation and Pension (C&P) examination done in Sep 2002 documented low back pain with flares three to eight times a month that is exacerbated by sitting in one place for 30 to 40 minutes but no radicular pain. The examiner noted normal posture and gait without spasms. Stiffness and limited range of motion (ROM) were noted (see chart below) and pain did increase with repetitive motion. The straight leg raising test was negative bilaterally, motor was 5/5 bilaterally, and no sensory impairment was noted. Bilateral calf measurements were 15.25 inches. The examiner noted the 2001 MRI documented degenerative disc disease at L3, L4, l5, and S1 with no evidence of a herniated Nucleosus pulposus, neuroforaminal stenosis, or nerve root impingement.

At her TDRL evaluation in Nov 2003 she reported continued pain in the left lower extremity and described an L5 distribution. She had some moderate weakness in dorsiflexion of the left lower limb, rated as 4/5 by the examiner. The examination also revealed decreased pinprick in the left L5 distribution. The examiner reported he obtained an MRI and it showed a left-sided disk bulge at the L5-S1 level that was compressing the left L5 and S1 nerve roots and could be responsible for her symptoms.

Based on this TDRL evaluation, on 20031216 the IPEB determined the CI’s condition had improved with chiropractic care and was not likely to change over the next several years. The CI was then separated with a rating of 20% for 5293 Herniated Nucleus Pulposus L5-S1 w/Left Radiculopathy.

The CI had another VA C&P examination done in Jul 2004, five months after separation. At the time of this examination, the CI was unemployed. She had not worked since leaving the military and reported she had been unable to find a job she could do with her back problems. She was taking Naprosyn twice a day for back pain and seeing a provider about once a month.

She reported daily back pain regardless of activity with flares approximately once a week. There were no physician-ordered periods of bed rest. However, she did have some interference with activities of daily living as it was difficult for her to lift or twist or sit for long periods of time. X-rays from Feb 2003 showed early degenerative changes of the L5-S1 disk, right lateral lumbar curvature, and a hyperlordotic lumbar spine.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Thoraco-lumbar  Movement | Normal ROM | Separation date: after 20031216 | | |
| ROM Mil  NARSUM (TDRL) 20031216  NARSUM 20020619  Neurologic Addendum 20020618 | ROM C&P 20020906  (2002 VASRD in effect as of July 2002; 2003 VASRD in effect as of July 2003) | ROM C&P 20040707  Initial (with repeated motion)  (done by Neurology)  (Current VASRD General Rating Formula for Diseases and Injuries of the Spine in effect 6/25/04) |
| Flex | 0-90 |  | 65 | 70 (65) |
| Ext | 0-30 |  | 20 | 10 (5) |
| R Lat flex | 0-30 |  | 35 (30) | 10 (5) |
| L lat flex | 0-30 |  | 35 (30) | 10 (5) |
| R rotation | 0-30 |  | 35 (30) | 30 (25) |
| L rotation | 0-30 |  | 35 (30) | 30 (25) |
| TOTAL | 240=VA normal |  | 205 | 160 (130) |
| Notes: |  | Not measured but Neurological Addendum 20020618 stated limited ROM with moderate muscle spasm, antalgic gait and DTRs 2+ except left Achilles 1+; Neuro Addendum and TDRL eval also noted: motor 5-/5 and 4/5 in dorsiflexion; all three exams noted: decreased sensation in L5 distribution-left foot | - The examiner opined that you would experience additional range of motion loss of 10 degrees in flexion and 5 degrees in hyperextension due to pain during flare-ups and repeated use;  Normal motor exam 5/5 | Additional 5 degrees loss ROM with repeated motion; 5/5 motor; negative straight leg raise; decrease in sensation to pinprick and light touch on left leg and great toe; normal gait and posture, no spasm, weakness, or tenderness; absent left ankle jerk reflex; 4/5 motor for left dorsiflexion, eversion and toes |

The VA initially rated the CI’s condition in 2002 at a combined 30% with 20% for 5010-5292 Lumbar L2, L3, L4, L5, and S1 Degenerative Disc Disease and Bilateral Sacroiliac Joint Strain and 10% for 8520 Incomplete Paralysis of Left Sciatic Nerve associated with Lumbar L2, L3, L4, L5, and S1 Degenerative Disc Disease And Bilateral Sacroiliac Joint Strain. However, the CI appealed the rating and a Decision Review Officer (DRO) review was completed. The rating was changed to a single rating of 60% for Lumbar L2, L3, L4, L5 and S1 Degenerative Disc Disease and Bilateral Sacroiliac Joint Strain with Incomplete Paralysis of the Left Sciatic Nerve.

Back Pain with Limited Range of Motion

The 60% rating was determined using the 2002 VASRD (it was in effect prior to 9-23-2002; her original claim was received 7-25-2002), the VA exams from 2002 and 2004, and her service and VA treatment records.

However, this Board must rate her condition using the VASRD in effect at the time of her separation from the TDRL; 20040203. The VA Statement of the Case states the rating criteria they used were in effect prior to 9-23-2002. New rating criteria for Intervertebral Disc Syndrome became effective 9-23-2003. These criteria state that ratings of Intervertebral Disc Syndrome will be based on either the total duration of incapacitating episodes over the past 12 months or by combining under Sec. 4.25 separate evaluations of its chronic orthopedic and neurologic manifestations along with evaluations for all other disabilities, whichever method results in the higher evaluation.

As there is no evidence of any physician directed bed rest (required for determination of periods of incapacitation) the CI’s condition must be rated on its chronic orthopedic and neurologic manifestations: limited range of motion (ROM) and radiculopathy.

VASRD 5293-5292 is used to rate the CI’s limited ROM. The CI’s ROM measurements are documented in the chart above and are considered slight by the Board.

Radiculopathy

The radiculopathy is rated under VASRD 8520 and the rating criteria for this code has not changed from 2002 to the present time. VASRD §4.123 Neuritis, cranial or peripheral has also remained unchanged from 2002 to the present time and states:

Neuritis, cranial or peripheral, characterized by loss of reflexes, muscle atrophy, sensory disturbances, and constant pain, at times excruciating, is to be rated on the scale provided for injury of the nerve involved, with a maximum equal to severe, incomplete, paralysis. See nerve involved for diagnostic code number and rating. The maximum rating which may be assigned for neuritis not characterized by organic changes referred to in this section will be that for moderate, or with sciatic nerve involvement, for moderately severe, incomplete paralysis.

No electromyogram (EMG)/nerve conduction velocity (NCV) testing was done so there is no evidence of organic changes and therefore, moderately severe is the highest rating we could apply. The CI did have pain radiating down her left leg. While pain, whether or not it radiates, is included in the back rating when today’s General Rating Formula for the Spine is used, this symptom is not included in rating 5292 using the 2003 VASRD. The CI also loss of reflexes, sensory disturbance and weakness noted on multiple examinations including the Jul 2004 C&P. With radiating pain (at times excruciating), persistent motor weakness, and absence of the Achilles reflex, the CI’s radiculopathy is considered to be moderate and is rated at 20%.

Other conditions Adjudicated by the PEB

Mild Asthma, History of Endometriosis, Temporomandibular Joint (TMJ) Syndrome, and Multifactoral Insomnia

No duty restrictions or functional limitations are attributable to these conditions and none of appear to be unfitting.

Other Conditions in DES

Hiatal Hernia w/ Gastroesophageal Reflux—GERD in Neurological Addendum

No duty restrictions or functional limitations are attributable to this conditions and it does not appear to be unfitting.

Other Conditions Not in DES

Rosacea, Nevus and Granulomatous; Cervical C6-7 DDD and DJD; Right Shoulder Proximal Trapezius Myofascial Strain; Right Knee Status Post Plica Surgery w/Osteoarthritis; Tinnitus; Right Ankle Traumatic Talofibular Ligament Strain; Right Elbow Lateral Epicondylitis; Right 4th Digit Residuals S/P Ganglion Cyst Removal; Bilateral Plantar Fasciitis; Sinusitis; Residuals Status Post Tonsillectomy and Uvulopalatopharyngoplasty; Allergic Rhinitis w/History of Nasal Septum Deformity due to Trauma and History of Nasal Polyps; Status Post Ovarian Cysts; and Status Post Left Salpingo-Oophorectomy

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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. After careful consideration of all available information the Board unanimously determined that the CI’s condition is most appropriately rated at a combined 30% with 20% for 8520 Left Radiculopathy rated as Moderate Incomplete Paralysis of Sciatic Nerve and 10% for 5293-5292 Herniated Nucleus Pulposus L5-S1.

The VA rating of 60% was determined using the VASRD that was in effect at the time the CI entered the TDRL. However, the VASRD rating criteria were changed and the criteria used by the VA cannot be used to rate the CI’s condition at the time she separated from the TDRL. The 2003 VASRD rating criteria must be applied. The Board determined the CI’s radiculopathy is considered moderate based on the presence of radiating pain (at times excruciating), persistent motor weakness, and absence of the Achilles reflex. Her intervertebral disc disease is rated based on her limited range of motion under VASRD 5293-5292. Her lumbar flexion was measured at 65 and 70 degrees and her combined range of motion was measured at 205, 160, and 130 degrees. These limitations are considered slight.

The Board also considered the following conditions and determined that none were unfitting at the time of entrance into TDRL or at the time of separation: Mild Asthma, History of Endometriosis, TMJ Syndrome, Multifactoral Insomnia, and Gastroesophageal Reflux diseases (GERD). There were no functional limitations or duty restrictions attributable to any of these conditions.

The other diagnoses rated by the VA (Rosacea, Nevus and Granulomatous; Cervical C6-7 DDD and DJD; Right Shoulder Proximal Trapezius Myofascial Strain; Right Knee Status Post Plica Surgery w/Osteoarthritis; Tinnitus; Right Ankle Traumatic Talofibular Ligament Strain; Right Elbow Lateral Epicondylitis; Right 4th Digit Residuals S/P Ganglion Cyst Removal; Bilateral Plantar Fasciitis; Sinusitis; Residuals Status Post Tonsillectomy and Uvulopalatopharyngoplasty; Allergic Rhinitis w/History of Nasal Septum Deformity due to Trauma and History of Nasal Polyps; Status Post Ovarian Cysts; and Status Post Left Salpingo-Oophorectomy) were not mentioned in the Disability Evaluation System (DES) package and are therefore outside the scope of the Board. The CI retains the right to request her service Board of Correction for Military Records (BCMR) to consider adding these conditions as unfitting.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation.

|  |  |  |
| --- | --- | --- |
| UNFITTING CONDITION | VASRD CODE | RATING |
| Left Radiculopathy rated as Moderate Incomplete Paralysis of Sciatic Nerve | 8520 | 20% |
| Herniated Nucleus Pulposus L5-S1 | 5293-5292 | 10% |
| COMBINED | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090305, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB, MD 20762-7002

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2009-00218.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended your separation be re-characterized to reflect disability retirement, rather than separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at 1-800-531-7502 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 30 days from the date of this letter, you will not be enrolled in the SBP program unless at the time of your separation, you were married or had an eligible dependent child, in such a case, failure to render an election will result in automatic enrollment.

Sincerely

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

PDBR PD-2009-00218

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) and Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating to XXXXXXXXX, are corrected to show that:

a.  The diagnoses in her finding of unfitness were Left Radiculopathy rated as Moderate Incomplete Paralysis of Sciatic Nerve, VASRD code 8520, rated at 20%; and Herniated Nucleus Pulposus L5-S1, VASRD code 5293-5292, rated at 10%, with a combined rating of 30%.

b.  On 3 February 2004, she was removed from the Temporary Disability Retired List and was placed on the Permanent Disability Retired List, rather than discharged with entitlement to disability severance pay.

Director

Air Force Review Boards Agency