RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900234 SEPARATION DATE: 20071128

BOARD DATE: 20110125

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SPC (Basic Trainee/91G) medically separated from the Army in 2007 after 10 months of service. The medical basis for the separation was fibromyalgia. The condition began as widespread musculoskeletal complaints after two falls on an obstacle course during basic training. An extensive orthopedic evaluation was positive only for cervical disc disease (C4/5) with local spinal stenosis, but this correlated poorly with the overall symptom complex. She received a diagnosis of fibromyalgia by a rheumatologist. A psychiatric addendum to the narrative summary (NARSUM) yielded an Axis I diagnosis of “pain disorder associated with both psychological factors and a general medical condition”. The psychiatric condition was complicated by the serious situational stressor of the death of her child shortly prior to basic training. After an eight month course of evaluation and treatment, the CI was unable to complete the training requirements or physical fitness standards. She was consequently issued permanent U-3, L-3 and S-3 profiles and underwent a Medical Evaluation Board (MEB). The MEB forwarded the psychiatric diagnosis noted above and fibromyalgia as separate conditions on the DA Form 3947, both judged to be medically unacceptable IAW AR 40-501. The cervical disorder was forwarded separately as a medically acceptable condition. Additional conditions supported in the Disability Evaluation System (DES) file are discussed below, but were not forwarded for adjudication. The Informal Physical Evaluation Board (IPEB) combined the psychiatric diagnosis and fibromyalgia as a single unfitting condition, rated 20% under the fibromyalgia code IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). The cervical condition was adjudicated as not unfitting. The CI made no appeals, and was thus medically separated with a 20% disability rating.

CI CONTENTION: The CI states: ‘’The military only addressed 1 condition--fibromyalgia. Additional secondary conditions should have been considered and rated.” The application refers in turn to the VA rated conditions detailed in the chart below. As a matter of policy, all service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

| **Service PEB 20071030** | **VA (4 months after Separation) – All Effective 20071129** |
| --- | --- |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Fibromyalgia…Depression | 5025 | 20% | Fibromyalgia … Headache | 5025 | 20% | 20080324 |
| Major Depression | 9434- 9422 | 70% | 20080324 |
| Cervical Spinal Stenosis | Not Unfitting | Cervical Deg. Disc | 5242 | 10% | 20080324 |
| ↓No Additional MEB Entries.↓ | Lumbar/Thoracic… | 5237 | 10% | 20080324 |
|  0% X 1 / Not Service Connected X 1 | 20080324 |
| **TOTAL Combined: 20%** | **TOTAL Combined: 80%**   |

ANALYSIS SUMMARY:

Combined Rating Fibromyalgia and Psychiatric Conditions. A significant component of the Board’s decision regarding the PEB’s adjudication of this case is whether there was indeed a separately unfitting and separately ratable psychiatric condition at separation. VASRD §4.71a in regards to the 5025 (fibromyalgia) rating states that the code is applied “with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud’s-like symptoms”. The VASRD does not specify whether or not the component symptoms which it elaborates under 5025 may be separately rated; although, §4.14 (avoidance of pyramiding) makes it clear that any included condition cannot be separately rated unless its contribution to the disability for a 5025 rating can be identified and separated from the rating. The VA rating decision was silent regarding how the §4.14 proscription was avoided in the separate ratings it conveyed. The PEB’s DA Form 199 specified that its rationale for not providing separate ratings was grounded in §4.14, stating that the pain disorder “cannot be separately rated due to overlapping symptoms, and is included in this rating”. Both the MEB and VA psychiatrists made it clear that the pain disorder was integral to the associated depression. Both expressed an opinion that a repressed grief reaction to her child’s death could be a significant contribution to (if not the cause for) the somatic pain symptoms. Separating pain disorder and depression in this case is thus clinically impossible and devolves into a futile ‘chicken or egg’ deliberation. The Board must also take into account that to recommend separate conditions as ratable, it must concede that both conditions are individually unfitting. Neither of the psychiatric examiners noted serious vegetative symptoms such as incapacitating fatigue or cognitive symptoms which could be directly correlated with performance. The MEB psychiatrist, although opining that the overall disorder did not meet retention standards, stated that the “degree of military psychiatric impairment” was “minimal” and that social/industrial impairment was “minor”. All of the impairments cited in the NARSUM were physical. The Commander’s statement unfortunately was cursory and did not elaborate specific impairments. It is easily argued that there was unfitting pain in this case, but difficult to argue that there was unfitting purely psychiatric impairment. After due deliberation, the Board agreed that there was not reasonable doubt favoring a recommendation for a separate §4.130 psychiatric rating in this case. The Board acknowledges the psychiatric contribution to the etiology of the unfitting condition; but, it cannot overcome the requirement to avoid pyramiding if separate ratings are granted, and it cannot adequately justify the requisite conclusion that there was separately unfitting psychiatric impairment. The disability attendant to depression will be included in the Board’s 5025 rating recommendation as addressed in the following discussion.

Fibromyalgia Rating. The highest rating offered under 5025 is 40% for symptoms "that are constant, or nearly so, and refractory to therapy". The next lower 20% rating is for symptoms “that are episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but that are present more than one-third of the time”. Neither the NARSUM nor the VA examination use the descriptor ‘constant’ in characterizing the frequency and duration of pain. Both exams differentiate different types and location of pain and both specify various triggers to exacerbation of the different types of pain. The NARSUM describes “daily intermittent pain in her neck, back and hips”. The VA exam describes flares of back pain “once a week” lasting “about 5 minutes” and flares in neck pain “daily” but “she is not sure how long the flares last”. Both examiners documented the ongoing use of pain medications, but neither provided a clear description of the effectiveness. Neither exam would support a conclusion that the pain was ‘refractory’ but it can be surmised that relief was transient at best. It was documented by the VA examiner that the prescribed antidepressant was helpful for the depression component, and the service record documents a favorable response to chiropractic intervention. It is noted that CI walked with the use of a cane and that her daily activities were severely restricted by pain. There was no objective evidence from a very thorough medical investigation that there was muscular weakness, neurological disease or other clinical indication for assistive devices or physical impairments not attributable to the pain symptoms. The 5025 rating comes down to the duration of disabling symptoms, not the severity. The Board takes note that both the PEB and the VA concluded that the 40% threshold was not met under the code; it notes that there is not conclusive evidence that can be invoked in support of near constant and refractory symptomatology; but, likewise notes that there is no conclusive evidence that would refute the VASRD §4.71a description of a 40% rating for 5025. The Board deliberated therefore whether there was adequate reasonable doubt favoring the CI in support of the higher rating. After due deliberation and in consideration of the totality of the evidence, the Board concluded that a fair rating for the fibromyalgia condition in this case is 20%. It cannot therefore recommend a change in the PEB adjudication.

Cervical Spine Condition. Range-of-motion (ROM) measurements for the cervical spine by both the MEB and the VA reflected modest limitations. There was no evidence for a clinically significant radiculopathy. There is no question that the neck symptoms played a part in the unfitting fibromyalgia condition, but the attendant disability is rated with that condition. The Board’s main charge in respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudication. The MEB examiner judged that the cervical condition met AR 40-501 retention standards and the condition was not included in the physical profile. There was no documentation of any specific impairments directly attributable to the cervical spine. The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations; but, remains adherent to the DoDI 6040.44 “fair and equitable” standard. After due deliberation and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the cervical spine condition as additionally unfitting for separation rating.

Contended Thoracolumbar Spine Condition and Remaining Conditions. The NARSUM identified the thoracolumbar condition in the context of back pain following the falls in basic training and as a component of overall musculoskeletal complaints. It provided a specific examination of the thoracolumbar spine which included ROM measurements (Flexion 90⁰). Since (unlike the abnormal imaging findings with the cervical spine) there was no objective evidence of specific pathology, the back complaint was justifiably not treated as a separate condition but as a component of the overall pain disorder. As with the depression, in fact, the separate VA thoracolumbar rating in addition to the 5025 rating is subject to a §4.14 challenge. On the same grounds as those described above for the cervical spine condition, the Board cannot find reasonable doubt in the CI’s favor for recommending thoracolumbar strain as a separately unfitting and ratable condition. Hypertension and dizziness with subjective pre-syncope were additional conditions captured in the DES file and noted by the VA. Both of these conditions were reviewed by the Action Officer and considered by the Board. It was determined that neither of them could be argued as unfitting and subject to separation rating. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. 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. 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 pain disorder with psychological factors/major depression psychiatric condition, the Board unanimously agrees that it is properly rated as a component of fibromyalgia and not as a separately unfitting condition. In the matter of the fibromyalgia and associated conditions, and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the cervical spine condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of contended thoracolumbar spine condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090818, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

