RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1000013 SEPARATION DATE: 20070323

BOARD DATE: 20110628

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC (42L, Human Resources Specialist) medically separated for a lumbar spine condition. The condition began in 2005 and was exacerbated one year later by a work incident. It was not amendable to surgical intervention and the CI did not respond adequately to a trial of conservative management. She was consequently unable to perform within her military occupational specialty (MOS) or meet physical fitness standards; a request for retraining in a new MOS and retention on active duty was denied. She was consequently issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Lumbar spondylosis was forwarded to the Physical Evaluation Board (PEB) as a medically unacceptable condition IAW AR 40-501. The PEB adjudicated the lumbar condition as unfitting, rated 10% with presumptive application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Military gave me a rating of 10% when within 6 months VA gave me a 40% rating for same condition using the same medical documents as the military. If both boards are using same rating system then one of the boards did not rate properly. I was also found to be 100% disabled by Social Security Administration within six months of being released by the army. The military did not even rate me for my PTSD for which the VA gave me a 0% and then changed to a 30% within a year.” She additionally lists all of her VA conditions and ratings as per the rating chart below.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20070110** | | | **VA (4 Mo. Pre Separation) – All Effective 20070324** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbar Spondylosis | 5299-5237 | 10% | Lumbar Spondylosis | 5239-5243 | 40% | Service Records |
| No Additional MEB Entries | | | 4 x 0% / 3 x Not Service Connected | | | |
| **Final Combined: 10%** | | | **TOTAL Combined: 40%** | | | |

\*Service Treatment Record

ANALYSIS SUMMARY:

Lumbar Spondylosis. There was only one goniometric range of motion (ROM) evaluation proximal to separation available to the Board in arriving at its rating recommendation. In conjunction with the MEB (~four months prior to separation) a physical therapy (PT) examiner measured lumbar flexion at 30⁰ (90⁰ normal) and combined ROM at 178⁰ (240⁰ normal). That exam documented that ROM was limited by pain, supporting the PEB’s application of the USAPDA pain policy for rating. The PT and MEB physician examiners noted tenderness but documented the absence of muscle spasm. Normal gait, contour and straight leg raising tests were documented. Motor strength, sensation and reflexes were normal. The post-separation VA rating decision deferred to the MEB goniometric measurements, noting that the CI failed to report for her scheduled rating exam, and derived its 40% rating determination based on flexion of 30⁰. The first VA spine examination, and the only comparison goniometric examination available to the Board, was performed 16 months after separation. It documented a flexion of 65⁰ and combined ROM of 215⁰, with no gait or contour abnormalities, and would support a §4.71a rating of 10%. Although the disparate VA measurements were temporally delayed from separation, they were performed by a physician and associated with the most detailed spine examination in evidence. It was also opined by the action officer that the other exam elements documented by the MEB physical therapist (negative spasm, normal gait and contour) were inconsistent with the severe ROM limitations reflected by the recorded measurements. The probative weight of the MEB’s PT exam was not conclusive enough to satisfy Board members that its rating recommendation should rest solely on the ROM criteria derived from it. There were numerous outpatient clinical entries over the 12-month interval preceding separation, which were scrutinized for corroboration of the significant ROM impairment inherent in a rating premised on this one set of measurements. One examiner stated, “patient did not appear uncomfortable,” and another stated, "thoracolumbar spine showed no abnormalities." One examiner stated that the CI "did not demonstrate full range of motion,” but “did not demonstrate tenderness on palpation ... pain was not elicited throughout the range of motion [or] at the extreme limits of the range of motion ... exhibited no muscle spasms … gait and stance were normal.” All recorded neurologic exams and straight leg raising exams were normal. No exam documented abnormal gait or contour, significant muscle spasm, distressed general appearance or any other suggestion that truncal motion was guarded or severely limited. This included the MEB physical examination performed in close proximity to the PT exam.

After protracted deliberation and mindful of the VA Schedule for Rating Disabilities (VASRD) §4.6 (evaluation of evidence), the Board concluded that its rating recommendation should not default to the ROM criteria derived from the single PT exam as discussed above. It concluded rather that the preponderance of the evidence was more consistent with the disability reflected in the later VA examination as discussed above. Based on these conclusions, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the lumbar spine condition. VASRD code 5243 is preferred as the best fit with the pathology in this case.

The Board deliberated if additional disability rating was justified for peripheral nerve impairment due to lumbosacral radiculopathy in this case. There was, however, no evidence of loss of lower extremity strength or sensation, or of diminished tendon reflexes indicative of radiculopathy. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. While the CI may have suffered additional pain from nerve involvement, this is subsumed under the general spine rating criteria, which specifically states “with or without symptoms such as pain (whether or not it radiates).” There is no evidence in this case of functional impairment attributable to peripheral neuropathy. The Board therefore concludes that additional disability rating was not justified on this basis.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD). The Disability Evaluation System (DES) file notes a history of “depression and worry” in 2005. At that time she was evacuated from Iraq for adjustment disorder with anxiety and chronic PTSD related to childhood trauma. After a few weeks of treatment that did not include psychotropic medication, she required no further psychiatric follow-up. The VA rated the condition 0% at separation, but increased the rating to 30% (effective date more than one year after separation). At the time of separation, there was no evidence of occupational or functional impairment due to a psychiatric disorder. There was no evidence for concluding that the PTSD condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that this condition was not subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were hypertension, allergic rhinitis, bilateral wrist tendinitis and depression. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period, none carried attached profiles and none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally acne, bilateral breast scars and several other non-acute conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. 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.

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 lumbar spondylosis was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the lumbar spondylosis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB rating adjudication. In the matter of the PTSD, 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.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lumbar Spondylosis | 5243 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091212, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

