RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1000458 SEPARATION DATE: 20020909

BOARD DATE: 20110426

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSGT (3M071, Services, Lodging, Food, and Recreation Specialist) medically separated from the Air Force for chronic back pain. She did not respond adequately to treatment and was unable to perform within her Air Force Specialty or meet physical fitness standards. She was placed on light duty and a temporary profile and underwent a Medical Evaluation Board (MEB). Chronic nonsurgical back pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. The PEB adjudicated the back pain condition as unfitting, rated 20% IAW with Veterans’ Administration Schedule for Rating Disabilities (VASRD). Migraine headache was added to the PEB’s findings as a Category II condition (conditions that can be unfitting but are not currently compensable or ratable.) The CI made no appeals, and was medically separated with a 20% disability rating.

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CI CONTENTION: The CI states: “In my original separation papers the surgery I had a classical c-section, and the posttraumatic stress syndrome I suffered from the death of my son in 1994 was not in the paperwork. I have been on anti-depressant medication for many years due to this event to include when I was active duty. When I had my third son after the hospital stay I suffered from spinal headaches and received a blood patch with left me with back injuries. In Oct. of 2005 I was found to have a very large cancerous cist [sic] on my right kidney; my doctor believed that due to the many shots I had for pain for my back may have lead to the cyst. I received many upon many Toradol shots for pain in my right hip; the shots were to ease the pain in my lower back, which lead me to leave the military. There are many note [sic] in my medical records while I was active duty that mentioned my urine having an awful odor, and the discoloration of my urine suggested a problem. Nothing was ever checked and some of my pain in the lower back could have been mistaken for a kidney problem; the right kidney was fully removed and I am left with kidney stones every year. I still have the back pain at this time surgery may be in order.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20020528** | | | **VA (At Separation) – All Effective Date 20020910** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Back Pain, non surgical | 5295 | 20% | Back Pain Condition | 5295 | 10% | STR |
| Migraine Headache | Category II | | Migraine Headache | 8100 | 0% | STR |
| No Additional MEB/PEB Entries | | | 0% x 1 /Not Service Connected x 2 | | | STR |
| **Combined: 20%** | | | **Combined: 10%** | | | |

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ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that her current condition has had on her quality of life. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions that are service connected. This role and authority is granted by Congress to the Veterans Administration.

Back Condition. The 2002 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were modified on 23 September 2002 (code 5293, intervertebral disc syndrome), and then completely revised to the current §4.71a rating standards in 2004. The 2002 standards for rating based on range of motion (ROM) impairment were subject to the rater’s opinion regarding degree of severity; whereas, the current standards specify rating thresholds in degrees of ROM impairment. Of the note, the older spine rules handle sciatic pain differently, especially with disability code 5293.

The CI had chronic, non-surgical back pain unrelieved with extensive physical therapy, pain management with medications, transcutaneous electrical nerve stimulation (TENS) unit, and injections. The low back included lumbar radicular pain with right sacroiliac joint syndrome. There was one examination in evidence which included incomplete goniometric range of motion (ROM) measurements, and the treatment record documented numerous visits for both muscle related back pain and radiating back pain on which the Board primarily relied in arriving at its rating recommendation. There was no VA examination proximate to separation, and the VA used the service treatment records (STR) for their rating. The MEB examiner, quoting the exam of a civilian pain specialist, noted there was no history of trauma, but the CI had complained of radicular symptoms during an exacerbation of her back pain two years earlier. He recorded an antalgic gait and tenderness to palpation with moderate spasm. ROM measurements included 80⁰ of forward flexion and full ROM with pain noted on extension. The sensory exam was normal; motor exam noted slightly decreased dorsiflexion on the right. Magnetic resonance imaging showed a small central disc protrusion with mild neural foraminal narrowing. However, electromyogram and nerve conduction studies failed to show any abnormalities. The pain specialist diagnosed low back and lumbar radicular pain with right sacroiliac joint syndrome.

The Board must correlate the above clinical data with the 2002 rating schedule. For convenience the three applicable codes are excerpted as follows:

**5292** Spine, limitation of motion of, lumbar:

Severe ………………………………………………………..……….………….... 40

Moderate …………………………………….……………….…….…………...…. 20

Slight ………………………………………………………..……………….…..… 10

**5293** Intervertebral disc syndrome:

Pronounced; with persistent symptoms compatible with sciatic neuropathy with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief.................... ............................................... ............................................. 60

Severe; recurring attacks, with intermittent relief...................................................... 40

Moderate; recurring attacks........................................................................................ 20

Mild............................................................................................................................ 10

Postoperative, cured................................................................................................... 0

**5295** Lumbosacral strain:

Severe; with listing of whole' spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion …………….................................................... 40

With muscle spasm on extreme forward bending, loss of lateral spine

motion, unilateral, in standing' position ...……………...……..………….….. 20

With characteristic pain on motion ………………………………..……....………. 10

With slight subjective symptoms only …………..…………...………………....….. 0

The Board notes that the MEB exam was sufficiently well documented in terms of ratable data. The Board considered the PEB and VA ratings under the 5295 code. The 20% rating for 5295 is fairly specifically defined as noted above. The CI’s condition clearly did not meet the criteria for a rating higher than 20% under the 5295 code based on the examination of data in evidence. The Board does, however, find sufficient evidence to support the PEB’s rating of 20%, in light of the documented spasm and antalgic gait. Likewise, the Board considered a rating under the 5292 code for limitation of spine motion. The minimally impaired ROMs documented on the examination would justify no rating higher than the “mild” 10% rating under that code. The Board also considered a rating under the code 5293; the record supported “moderate; recurring attacks,” for a 20% rating. The record did not support the higher rating of “severe; recurring attacks, with intermittent relief.” The Board noted the VA 10% rating was continued following exam in 2007 under the newer (current) VASRD §4.71a general rating formula. The Board could find no evidence for an unfitting radiculopathy justifying additional service rating for peripheral nerve impairment. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s 20% rating of the lumbar spine condition.

Other PEB Conditions. The other condition added and adjudicated as not unfitting by the PEB was migraine headache. The CI’s medical records document a headache condition. This condition was not profiled, implicated in the commander’s statement or noted as failing retention standards. The headache condition was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the headache condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD) and kidney cyst. The CI’s service medical records contain no diagnosis or information alluding to PTSD. There are records of clinic visits to mental health that predate her miscarriage in 1994. In March 1990, the CI consulted mental health regarding a tubal ligation relating that she did not plan to have children. In March 1994 while pregnant before the miscarriage, there was a mental health visit for anxiety. Subsequent mental health visits were for uncomplicated bereavement, occupational problems, and marital problems without full clinical depression. An 30 June 2000 entry relates resolution of these issues and states, “case closed.” Later medical records prior to her MEB state that her behavior was “health-seeking.” The CI has medical record entries for urinary tract infections in 1991 and again in 1995 and vaginitis is 1990. The workup did not provide evidence of an underlying kidney condition. There is no clinical basis for relating the injections for her back condition to the kidney issue that developed after her discharge. Both of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that either of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that neither of the stated conditions was subject to service disability rating.

Remaining Conditions. One other condition, fractured fourth toe, was identified in the Disability Evaluation System (DES) file. This condition was not clinically active or occupationally significant during the MEB period, did not carry an attached profile, or was implicated in the commander’s statement. This condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to 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 back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the PTSD, kidney, and fractured fourth toe conditions or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic back pain condition | 5295 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100407, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

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-2010-00458.

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 appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings