RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1000575 SEPARATION DATE: 20070102

BOARD DATE: 20110912

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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 E-5/SSgt (3M0, Services Craftsman) medically separated for low back pain (LBP), herniated disc at L3-4 (HNP). The CI’s LBP started in August 2003 when she was loading/unloading a truck while deployed in Iraq. Despite extensive physical therapy, non steroidal anti-inflammatory drugs, narcotic medication, muscle relaxants, pain management and several epidural steroid injections, the CI did not respond adequately to perform within her Air Force specialty (AFS) or meet physical fitness standards. The CI was issued a permanent L4 profile and underwent a Medical Evaluation Board (MEB). Back pain was addressed by the Medical Evaluation Board (MEB) and forwarded to the Physical Evaluation Board (PEB) on the AF Form 618. The Informal PEB (IPEB) adjudicated LBP, herniated disc at L3-4 condition as unfitting and rated 10% with DoDI 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD), respectively. The PEB also adjudicated chronic migraine headaches as a category II condition (conditions that can be unfitting but are not currently compensable or ratable) and obesity as a category III condition (conditions that are not separately unfitting and not compensable or ratable). The CI withdrew her request for a Formal PEB and was medically separated with a 10% disability rating.

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CI CONTENTION: “Due to the fact that my current physical disabilities which are directly related to my medical separation from the Air Force are worsening and causing other disabilities and medical issues, I am requesting that my medical separation under disability be updated to a medical retirement.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060928** | | | **VA (11 Mo. After Separation) – All Effective 20070103** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain, Herniated Disc at L3-4 | 5243 | 10% | Degenerative Disc Disease, Lumbar Spine | 5299-5239 | 20% | 20071203 |
| Chronic Migraine Headaches | Cat II | | Migraines | 8100 | 10% | 20071203 |
| Obesity | Cat III | | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Cubital Tunnel Syndrome, RUE | 8516 | 30% | 20071203 |
| Cubital Tunnel Syndrome, LUE | 8516 | 20% | 20071203 |
| Major Depressive Disorder | 9434 | 10% | 20080326 |
| 0% x 1 / Not Service Connected x 3 | | | 20071203 |
| **Combined: 10%** | | | **Combined: 70%** | | | |

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ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. 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 resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs. The Board utilizes VA evidence proximal to separation in arriving at its recommendations, and DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Back Condition. There was one complete goniometric range of motion (ROM) evaluation in evidence which the Board weighed with all thoracolumbar exams and treatment notes in arriving at its rating recommendation. The exams primarily used for rating are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB ~ 9 Mo. Pre-Sep  (20060406) | Ortho ~ 8 Mo. Pre-Sep  (20060523) | VA C&P ~ 11 Mo. After-Sep  (20071120) |
| Flex (0-90) | “about 80 deg” | 40⁰ | (0-70⁰) \*0-50⁰ |
| Ext (0-30) | - | 30⁰ | 0-30⁰ |
| R Lat Flex (0-30) | - | - | 0-30⁰ |
| L Lat Flex 0-30) | - | - | 0-30⁰ |
| R Rotation (0-30) | - | - | 0-30⁰ |
| L Rotation (0-30) | - | - | 0-30⁰ |
| COMBINED (240) | unk | unk | 200⁰ |
| Comment | Normal gait; bending with pain | No spasm; No motor point tenderness; Nml sensory exam; straight leg mildly reverses lordosis | \*Repetitive movement of lumbar spine causes 20 degrees loss of motion on forward flexion (Deluca positive); Lumbar lordosis; slight weakness left hip flexor; straight leg raising neg |
| §4.71a Rating | 10% | 20% | 20% |

The CI had five magnetic resonance images (MRI) during 2004-2007, all of which indicated a chronic abnormality of dessication and annular bulging at the L3-4 and L4-5 vertebral levels. An electromyelogram (EMG) done in 2004 indicated that there was no radiculopathy, myelopathy or neuropathy. The MRI report from the VA compensation and pension (C&P) examination in December 2007 indicated retrolisthesis of L4 on L5 indicative of degenerative disc and joint disease. The MEB exam nine months prior to separation indicated that the CI had chronic LBP which worsened on forward flexion. The CI underwent an orthopedic exam eight months prior to separation which indicated a significant worsening of the CI’s back condition with forward flexion to 40 degrees. The pain was rated at 9 out of 10, with 10 being the worst. The examiner documented “straight leg lifting mildly reverses lordosis.” Motor strength and sensory exam was evaluated as normal. The CI was seen at the Western Regional Center for Brain and Spine Surgery in 2006, three months prior to separation, for follow-up. The examiner documented complaints of LBP, with some pain radiating down the buttocks primarily on the right which followed a rough L5 nerve root distribution; however, the sensory and motor exams were normal. The VA C&P exam eleven months after separation documented that the CI had pain radiating in the calf area, more on the right than the left. The examiner indicated that muscle strength was normal in both lower extremities as well as a normal sensory exam. In 2008, 15 months after separation, the CI continued with radicular pain symptoms with normal sensory and motor exams. The CI subsequently had an EMG in June 2008 which demonstrated a mild right S1 radiculopathy.

Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. The sensory component in this case has no functional implications. There is no motor component in this case. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment.

The Board noted her supervisor’s comments of “several times she was put on quarters for operative procedures, and severe pain,” the Assistant Lodging Manager’s comments of “noticed her with pronounced limp at times,” and commander’s comments of “Due to extreme pain she has been released to go home six (6) times in the last month.” These comments were considered in possible alternative rating under intervertebral disc syndrome (5243). However, there was not sufficient documentation to support a higher rating due to incapacitating episodes as there was scant evidence of “bed rest prescribed by a physician and treatment by a physician” IAW VASRD 5243 Note (1).

The PEB rated the LBP, herniated disc at L3-4 as 5243 (intervertebral disc syndrome) at 10% for “forward flexion of 80 degrees.” The VA coded the condition analogous to 5239 (spondylolisthesis) at 20%. The orthopedic exam most proximate to separation and the VA exam post-separation both met the 20% criteria for “forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees.” After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the LBP condition.

Chronic Migraine Headaches. The PEB found the “chronic migraine headaches” condition as a category II condition. The VA coded the condition as 8100 (migraines) rated at 10% “with characteristic prostrating attacks averaging one in two months over the last several months.” The CI was noted to have prior head trauma in 1999 when she hit her head against a bar inside a truck after which headaches increased in intensity. The narrative summary (NARSUM) indicated that the CI was taking daily medication (Keppra) for the headaches; however, there was no indication that the CI was experiencing prostrating attacks. The CI’s commander’s statement and three letters of support focused on the back condition. The CI’s profiles were all for her back condition and migraines were not profiled. The CI was seen by a neurologist approximately five months after separation, who documented that there were weekly periods of incapacitation; however, there was no indication of prostrating attacks. The VA C&P exam 11 months after separation indicated that the headaches occurred 3 to 4 times per week with no discussion of prostrating headaches. In 2009, three years after separation, the CI was reevaluated for her headaches and the examiner opined that the history and physical findings were compatible with a post-traumatic headache syndrome, primarily tension type headache. All evidence considered there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication (category II) for the chronic migraine headaches condition.

Obesity. The PEB found the obesity condition as a category III condition. The CI had a long history of weight control problems. This condition was well documented and associated with the CI’s back pain condition. In the NARSUM, it is documented that the CI attributed her weight to her inability to exercise because of back pain. At the orthopedic exam, it is further noted that the CI was “truncally deconditioned and truncally overweight.” IAW DODI 1332.38 E5, obesity is not a condition constituting a physical disability and is not compensable or ratable. All evidence considered there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB adjudication of category III/not ratable for the obesity condition.

Remaining Conditions. Other conditions identified in the DES file, to include the CI’s Letter of Exception for the Medical Evaluation Board, were carpal and cubital tunnel (VA rated cubital tunnel syndrome right upper extremity and left upper extremity), and “being seen by Life Skills.” Several additional non-acute conditions or medical complaints were also documented. The CI had a history of two carpal tunnel surgeries and was evaluated for tingling and numbness of both upper extremities (cubital tunnel) proximate to separation. The Life Skills and mental health records indicated an Axis I diagnosis of pain disorder with psychological factors from May 2005 (20 months pre-separation). The exams most proximate to separation indicated depressive symptoms with the CI doing well and, “Patient states no follow-up desired at this time.” In December 2006 the Life Skills case was closed, without requirement for follow-up. None of these conditions were significantly clinically or occupationally 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. The Board thus has no 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 Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. In the matter of the LBP, herniated disc at L3-4 condition, the Board unanimously recommends a rating of 20% coded 5243 IAW VASRD §4.71a. In the matter of the chronic migraine headaches and obesity conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. In the matter of the cubital tunnel syndrome, right and left upper extremities, mental health 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.

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** |
| Low Back Pain, Herniated Disc at L3-4 | 5243 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20100503, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews, NAF Washington MD 20762

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00575.

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 modification of your assigned disability rating without re-characterization 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, accept their recommendation and direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

Sincerely,

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2010-00575

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 xxxxxxxxxxxxxx, be corrected to show that the diagnosis in her finding of unfitness for Low Back Pain, Herniated Disc at L3-4, VASRD Code 5243, was rated at 20% rather than 10%.

Director

Air Force Review Boards Agency