RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1000988 SEPARATION DATE: 20080729

BOARD DATE: 20111207

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TSgt/E-6, (3S0, Personnel Craftsman), medically separated for chronic low back pain*.* She did not respond adequately to treatment and was unable to perform within her Air Force specialty (AFS) or meet physical fitness standards. She was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB).Chronic lumbago was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123.No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below.The Informal PEB (IPEB) adjudicated the chronic low back pain condition and the arthritis syndrome of lower extremities condition as unfitting, rated 10% and 10% respectively, combined 20%, with application of Department of Defense Instruction (DoDI) 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD).The CI appealed to the Formal PEB (FPEB), was found fit, and returned to duty. The CI appealed to the Secretary of the Air Force Personnel Council (SAFPC) and was then medically separated for chronic low back pain with a 10% disability rating.

CI CONTENTION: I was rendered unfit for chronic low back pain with mild thoracolumbar scoliosis rated at 10%. However, at the time I was separated, I met the criteria for a higher rating. Also, request review of the conditions identified on my narrative summary and medical records that were not determined to be unfitting by the PEB of the Air Force as well as address the legal errors in the PEB's adjudication of my case. lAW AFl 41-210, paragraph 10.6.10. The following special consultations and additional information are required for the diseases listed (these conditions or updates must not be over 90 days old when received at HQ AFPC): 10.6.10.7. Eyes: Ophthalmology consult to include visual acuity, degree of peripheral constriction, and perimeter charts. For my condition of chronic bilateral epiphora, I should have had a consult with Ophthalmology specifically for the PEB which would have provided a timely, complete and concise clinical status of my condition with specific functional limitations (IAWAPI 10-203, paragraph 2.8.). Also, the preparing physician of my narrative summary (NARSUM), recommended consults with neurology, neurosurgery and orthopedics which was to he discussed further at the follow up appointment. However, per our conversation on 9 October 2007 they physician stated she had to submit the MEB paperwork even though all testing and consults were not complete. AFI 10-2032.8., clinical consultants will provide timely, complete, and concise narrative summaries regarding the member's clinical status with specific functional limitations. Narrative summaries will be accomplished within 14 days of patient encounter. My first and only encounter with the physician was 14 September 2007 and the NARSUM was accomplished 5 November 2007. The only functional limitations listed was that of no running or sit-ups no mention of my other limitations. lAW 48-123 paragraph 10.8., Use of the Department of the Army (DA) Form 3349. DA Form 3349, Physical Profile Serial, is acceptable in lieu of AF Form 422. Review any entry in DA Form 3349 which recommends temporary or permanent geographic or climate assignment restrictions. Army "3" profile is not compatible with worldwide assignment in the Air Force and must be converted to a "4" profile. Due to this error, my profiles did not convey the appropriate physical or functional limitations/restrictions for my medical conditions. IAW AFl 41-210, paragraph 10.6.1. and paragraph 10.7.2 my NARSUM should have been returned by AFPC for documentation deficiencies due to it being older than 30 days. My NARSUM was accomplished 5 November 2007 and my formal board was 4 April 2008 and my appeal was submitted 15 April 2008. For purposes of determining the correct rating, the medical records, NARSUM must be current and include relevant condition-specific information. The NARSUM was outdated, incomplete, and inaccurate and my medical records were not complete nor current resulting in injustice to me. My conditions were and are of permanent nature and stable. I contend, at the time of my separation, I was unfit due to conditions in the NARSUM and my medical records. In addition, I met the criteria for higher ratings and should have been rated differently according to the rules governing the board resulting in a Disability Retirement.

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| **Service SAPC – Dated 20080527** | **VA (5 Mo. After Separation) – All Effective Date 20080730** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic low back pain with mild scoliosis and significant osteophytes at L1-2 | 5242 | 10% | Dextroscoliosis, levoscoliosis and degenerative arthritis of the thoracolumbar spine, claimed as thoracic and lumbar spine strain with degenerative disc disease | 5299-5239 | 20% | 20090121 |
| Right ankle pain | Cat II | Right ankle strain claimed as polyarthropathy | 5271 | 0% | 20090121 |
| Bilateral epiphora | Cat II | Dry eye syndrome with epiphora | 6025 | 20% | 20090701 |
|  | IN DESMEB Physical | Major depressive disorder, chronic, ongoing with anxiety and insomnia with depression | 9434 | 50% | STR/VA20090120 |
|  | NOT IN DES | Status Post salpingectomy with scar | 7614 | 30% | 20090121 |
|  | IN DESNARSUM | Cervical strain claimed as polyarthropathy | 5237 | 10% | 20090121 |
|  | NOT IN DES | Tinnitus | 6260 | 10% | 20090122 |
|  | IN DES NARSUM | Mitral and tricuspid valve regurgitation with systolic murmur, claimed as mitral valve regurgitation | 7000 | 10% | 20090122 |
|  | IN DESNARSUM | Hypertension | 7101 | 10% | 20090122 |
|  | NOT IN DES | Acne vulgaris | 7899-7806 | 10% | 20090122 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 4/Not Service Connected x 27 | 20090121 |
| **Combined: 10%** | **Combined: 90%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that there were legal errors in the PEB's adjudication of her case. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected Service improprieties in the processing of her case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. The Board also acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for her other conditions and for the gravity of her condition and predictable consequences which merit consideration for a higher separation rating. While the Disability Evaluation System (DES) considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member's career, and then only to the degree of severity present at the time of final disposition. However, the Department of Veterans’ Affairs (VA), operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate Veterans for the purpose of adjusting the disability rating should his degree of impairment vary over time, and to compensate for all service connected conditions without tie to fitness.

Chronic low back pain with mild thoracolumbar scoliosis and significant osteophytes condition. The member has a history of back pain spanning her entire career. Scoliosis was noted on an examination in 1995 and documented on an X-ray in 1998. Medications and physical therapy (PT) treatments were utilized; however, her symptoms gradually worsened to the point that she found it difficult to sit for long periods of time and could not stand at attention without pain. A magnetic resonance imaging (MRI) scan of her spine was completely normal. An MEB was initiated for this condition when her Physical Medicine provider determined that she had reached the limits of maximal medical therapy. There was one goniometric range-of-motion (ROM) evaluation in evidence which the Board weighed in arriving at its rating recommendation. This exam is summarized in the chart below.

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| Goniometric ROM - Thoracolumbar | MEB 20071105 ~ 9 Mo. Pre-Sep | PT ~ 2 Mo. Pre-Sep | VA C&P 20090121 ~ 6 Mo. After-Sep |
| Flex (0-90) | Not measured | WNL | 60⁰ |
| Ext (0-30) | Not measured | WNL | 20⁰ |
| R Lat Flex (0-30) | Not measured | WNL | 20⁰ |
| L Lat Flex 0-30) | Not measured | WNL | 20⁰ |
| R Rotation (0-30) | Not measured | WNL | 20⁰ |
| L Rotation (0-30) | Not measured | WNL | 15⁰ |
| COMBINED (240) | Not measured | Not measured | 155⁰ |
| Comment | Full motion with slight dextroscoliosis | Mild scoliosisTight/ache with flexion | Normal curvature of spine; antalgic gait; no sign of disc disease |
| §4.71a Rating | 10% | 10% | 20% |

The MEB NARSUM nine months pre-separation and a PT evaluation two months pre-separation noted normal ROM without goniometric evaluation. The VA Compensation and Pension (C&P) examination six months post-separation is a comprehensive goniometric evaluation. Pain began at the degrees of motion noted in the chart above. The IPEB found the chronic low back pain with mild thoracolumbar scoliosis and significant osteophytes condition unfitting, coded 5242 (degenerative arthritis of the spine), with a 10% rating. The FPEB found her fit for continued active duty, noting that she was under treatment and was an excellent performer at work. SAFPC, on 27 May 2008, found only the low back pain condition unfitting with a 10% rating, coded 5242. The VA Rating Decision on 23 July 2009 (one year post-separation) rated the dextroscoliosis and levoscoliosis and degenerative arthritis of the thoracolumbar spine condition at 20%, coded 5299-5239 (analogous for spondylolisthesis or segmental instability). The PEB and VA chose different coding options for the condition, but both rating decisions were in accordance with VASRD, General Rating Formula for Diseases and Injuries of the Spine rating criteria. SAFPC noted that, since a specific measurement in degrees could not be located, her condition was best rated at 10 percent. The VA assigned a 20% rating for forward flexion of 60 degrees. After consideration of all evidence, the Board, by simple majority, found no reasonable doubt in the CI’s favor supporting a change from SAFPC’s rating decision for the chronic low back pain with mild thoracolumbar scoliosis and significant osteophytes condition, coded 5242, at 10% IAW §4.71.

Arthritis syndrome of the lower extremities with sicca symptoms condition. The CI suffers from chronic, intermittent right ankle pain and swelling that reportedly originated in 2007. Her symptoms are triggered by prolonged standing of more than thirty minutes or walking for more than one mile. This leads to severe pain and swelling that sometimes prevents her from wearing her boots. For this problem she was referred to rheumatology for evaluation of possible inflammatory arthritis. After a battery of tests, including an MRI, the rheumatologist noted that "these tests were unrevealing" and that the MRI was reportedly normal.

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| Goniometric ROM –R Ankle | MEB 20071105 ~ 9 Mo. Pre-Sep | PT ~ 2 Mo. Pre-Sep | VA C&P 20090121 ~ 6 Mo. After-Sep |
| Right Dorsiflexion (0-20) | Not measured | 5⁰ | 20⁰ |
| Right Plantar Flexion (0-45) | Not measured | 50⁰ | 45⁰ |
| Comment | Tenderness, swelling | Achilles tenderness | Tenderness, no swelling |
| §4.71a Rating | 0% | 10% | 0% |

The NARSUM noted tenderness with lateral malleolar swelling but did not document ROM. A PT note on 30 May 2008, two months pre-separation, did note limited dorsiflexion at 5 degrees. The VA C&P examination, six months post-separation, noted normal ROM with some tenderness. There was no swelling, weakness, subluxation, ankylosis, malunion, or guarding of movement. Repetitive use did not cause limitation of function. The IPEB found the arthritis syndrome of the lower extremities with sicca symptoms manifested by right ankle pain with inflammatory arthritis condition unfitting, coded 5003 (degenerative arthritis), with a 10% rating. The FPEB found the condition to be a not unfitting category II condition. Final appeal to SAFPC resulted in adjudication of the right ankle pain condition as a category II condition. SAFPC based this decision on a lack of evidence of a diagnosis indicating a serious condition, the fact that her severe symptoms were intermittent, and her physical profile did not significantly restrict her activities in regard to walking. The VA rating decision, one year post-separation, service connected the right ankle strain (claimed as polyarthropathy) condition, coded 5271 (ankle, limited motion of), with a 0% rating. The Board noted that the profiles do not specify limitations based on ankle pain versus low back pain. The commander’s statement does note that “she also has difficulty wearing and purchasing comfortable footwear which interferes with the wearing of the uniform and use of military equipment. TSgt B’s inability to perform very basic physical tasks such as walking, standing, running and any high impact activity reduces her ability to perform primary and additional duties.”

The Board carefully considered the evidence for the right ankle condition as unfitting. The PT evaluation on 30 May 2008 is most proximal to separation and, given higher probative value, would support a 10% rating under code 5003 or code 5271 for limited motion. Code 5003 allows a rating of 10% when the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes. In this case code 5271 assigns 10% for moderate and 20% for marked limitation of ankle motion. The VA examination six months post-separation with normal ROM does demonstrate that the limitation of motion was not permanent and the condition was assigned a 0% rating. There is no evidence for malunion or ankylosis. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from SAFPC’s rating decision for the arthritis syndrome of the lower extremities with sicca symptoms (right ankle pain) condition, coded 5003, as a category II condition.

Other PEB Conditions. The IPEB found hypertension to be a category II condition with the NARSUM noting that it was controlled on medication. The FPEB and SAFPC did not adjudicate the hypertension condition. It was not profiled, noted in the commander’s statement and was not linked to fitness. Dry eye syndrome with epiphora was not addressed by the IPEB; however, both the FPEB and SAFPC found it to be a category II condition. The CI had a long history of dry eyes and recently suffered from excess tearing. The condition was profiled, requiring only that she be allowed to take a break from the computer screen once an hour and use eye drops as needed. Her visual acuity was 20/20 when corrected with glasses. 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. Other conditions identified in the DES file were mild mitral regurgitation with heart murmur, non-cardiac chest pain due to rotated rib cage, headache syndrome, polyarthropathy (bilateral hip, elbow, hand, and knee joints), anxiety disorder, gastroenteritis, tubal pregnancy, enlarged heart (suggested on echocardiogram), achilles tendinitis, and pes planus. None of these conditions were clinically active during the MEB period, none carried attached profiles or were the bases for limited duty, 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 tinnitus, acne vulgaris, cervical strain, hyperhidrosis, left and right wrist strains, left and right shoulder strains, chronic fatigue syndrome, Lyme disease, left and right hallux valgus with bunions, left and right foot ingrown toenails, sinusitis, atypical chest pain, hearing loss, conjunctivitis, left and right eye keratitis, and bilateral plantar fasciitis 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. 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. In the matter of the chronic low back pain with mild thoracolumbar scoliosis and significant osteophytes condition the Board, by simple majority, recommends no recharacterization of SAFPC adjudication at 10%, code 5242, IAW §4.71. The single voter for dissent (who recommended a 20% rating, code 5242) did not elect to submit a minority opinion. In the matter of the right ankle pain condition the Board unanimously recommends no change in SAFPC adjudication. In the matter of the hypertension, dry eye syndrome with epiphora, mild mitral regurgitation with heart murmur, non-cardiac chest pain due to rotated rib cage, headache syndrome, polyarthropathy (bilateral hip, elbow, hand, and knee joints), anxiety disorder, gastroenteritis, tubal pregnancy, enlarged heart (suggested on echocardiogram), achilles tendinitis, and pes planus or any other medical condition eligible for Board consideration; the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation.

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 Low Back Pain | 5242 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100729, 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 MD 20762

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00988

 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