RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1001123 SEPARATION DATE: 20081129

BOARD DATE: 20110811

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (0231, Intelligence Analyst) medically separated for right femoral neck fracture*.*  The CI developed right hip pain in February 2006 after rigorous physical training during her military occupational specialty (MOS) school. The CI was placed on intermittent light duty, was treated conservatively, and completed a course of physical therapy (PT). The CI’s right hip pain restarted during her deployment to Iraq. The CI was granted two six-month limited duty periods and underwent surgery for a right femoral neck screw fixation. Despite surgery, PT and medications, the CI did not respond adequately to treatment and was unable to perform within her MOS or meet physical fitness standards. The CI was referred to a Medical Evaluation Board (MEB) and the MEB forwarded “pain in joint involving pelvic region and thigh, closed fracture of unspecified part of femur, unspecified orthopedic aftercare” to the Physical Evaluation Board (PEB) as medically unacceptable on NAVMED 6100/1. The PEB adjudicated the “right femoral neck fracture s/p repair with screw fixation” condition as unfitting, rated 10%, with application of the SECNAVINST 1850.4E and Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: “I would like to release my VA and service findings and records for re-evaluations.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20081010** | **VA (10 Mo. After Separation) – All Effective Date 20081130** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Femoral Neck Fracture | 5299-5003 | 10% | Right Femur Fracture | 5251-5019 | 10% | 20090916 |
| Scar S/P Right Femur Fracture | 7802 | 0% | 20090916 |
| ↓No Additional MEB/PEB Entries↓ | PTSD | 9411 | 30% | 20090605  |
| Tinnitus | 6260 | 10% | 20081230 |
| 0% x 1/Not Service Connected x 2 | 20090916 |
| **Combined: 10%** | **Combined: 40%** |

ANALYSIS SUMMARY:

Right Hip Condition. There were three exams including one goniometric range of motion (ROM) evaluation in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the following chart.

|  |  |  |  |
| --- | --- | --- | --- |
| ROM –R Hip (Thigh) | MEB~4 Mo. Pre-Sep | VA C&P ~ 1 Mo. After-Sep | VA C&P ~ 10 Mo. After-Sep |
| Flexion (0-125) | “Equal to Left” | 70⁰ “\*then d/c’d” | 90⁰ |
| Extension (0) | No data | No data | 10⁰ |
| Abduction (0-45) | No data | No data | 20⁰ |
| Adduction (0-45) | No data | No data | 30⁰ |
| Comment | Right hip flexion and IR, ROM equal to Left (Left “full ROM”); \*TTP over bursa, femoral triangle, iliotibial band (ITB); pain with hip flexion and internal rotation; normal sensory and motor | \*limited ROM especially flexion - actively flexes to 90 degrees and w/ repetitive motion the ROM is reduced, initially, to 80, then 70 then motion is d/c'd due to fatigue and pain. Internal and external rotation are almost full; WNL gait, sensory & motor | Antalgic gait; tenderness; pain with motion |
| §4.71a Rating | 10% | 10% | 10% |

In September 2006, the CI underwent an open reduction internal fixation to the right hip. The CI continued with right hip pain and in April 2008 underwent a right hip arthroscopy with removal of a bone spur. Subsequently, she developed more pain in the right hip despite the surgeries, extensive PT, steroid injections; non steroidal anti inflammatory drugs and narcotic pain medications. The MEB exam at four months pre-separation noted that the CI complained of chronic right hip pain with painful motion, tenderness to palpation and no goniometric ROM, but stated “ROM equal to left” and left hip “full ROM.”

At the VA compensation and pension (C&P) exam one month post-separation, the CI complained of limited hip motion, stiffness, fatigue ability, weakness and pain on prolonged sitting, prolonged standing, ascending inclines or stairs. The examiner stated, “Right hip exam: limited ROM especially flexion - actively flexes to 90 degrees and w/ repetitive motion the ROM is reduced, initially, to 80, then 70 then motion is decreased due to fatigue and pain. Internal and external rotation are almost full.” At the VA C & P exam 10 months after separation, the CI complained of chronic pain, with radiation, painful motion, and that her legs would give out if she stood for a prolonged period of time. An antalgic gait was noted and ROMs were as above.

The key differences in the examinations were the VA exam at 10 months after separation noted antalgic gait and subjective complaint of weakness “which had a major functional impact,” while the gait was normal on the service exam and complaint of “her legs would give out.” There was no exam finding of motor weakness or instability. The PEB and VA chose different coding options for the CI’s right hip. The VA used the VASRD as per §4.71 codes 5251 (thigh, limitation, extension of) and 5019 (bursitis) rated at 10%. The PEB coded as analogous to 5003 (arthritis degenerative hypertrophic or osteoarthritis) rated 10%. The Board reviewed the above evidence and the entire record which did not support complete loss of hip flexion on repetition as potentially indicated in the VA C&P exam one month after separation. The Board therefore assigned a higher probative value to the VA C&P exam ten months after separation. After due deliberation considering all of the evidence, there is not reasonable doubt in the CI’s favor supporting a change in the PEB’s rating decision for the right femoral neck fracture as rated at 10%.

Other Conditions. The posttraumatic stress disorder (PTSD) condition (VA 30%) was mentioned in the narrative summary (NARSUM) under the past medical history as “PTSD (noncombat related)/depression.” The review of systems noted “Psych: Pt has history of depressive symptoms including increased fatigue, lethargy, anhedonia, depressed mood, flat affect, guilt.” The MEB physical noted normal psychiatric exam. The non medical assessment indicated, “current physical condition has caused her multiple issues including chronic pain, requiring narcotic medication.” Treatment notes indicated the mental health condition in approximately October 2006, and the CI was treated beginning in 2007 with medications and was stable on medications at the time of the NARSUM. The VA C&P PTSD exam six months post-separation was evaluated as post-separation worsening. This condition was reviewed by the action officer and considered by the Board. However, there was no indication that this condition significantly interfered with satisfactory job performance. The Board therefore has no basis for recommending the PTSD condition as an additional unfitting condition for separation rating.

The scar status post right femur fracture (VA 0%) was not adherent to underlying tissue or unstable. There was no satisfactory indication that this condition significantly interfered with satisfactory job performance. By precedent, the Board does not recommend separation rating for scars unless their presence imposes a direct limitation on fitness. It was determined that scars could not be argued as unfitting and subject to separation rating. Additionally the tinnitus condition (VA 10%) was noted in the VA rating decision proximal to separation, but was not documented in the Disability Evaluation System (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.

Remaining Conditions. The other condition identified in the DES file was recurrent urinary tract infections. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period, none were the bases for limited duty and none were implicated in the NMA. 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 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 right femoral neck fracture condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the: PTSD and scar status post right femur fracture 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Femoral Neck Fracture | 5299-5003 | 10% |
| **COMBINED** | **10%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100901, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President, Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

 BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 23 Aug 11

 I have reviewed the subject case pursuant to reference (a) and, for the reasons set forth in reference (b), approve the recommendation of the Physical Disability Board of Review xxxxxx records not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

 Assistant General Counsel

 (Manpower & Reserve Affairs)