RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1001170 SEPARATION DATE: 20060919

BOARD DATE: 20120327

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSGT/E-5 (3M071/Service Craftsman), medically separated from the Air Force in 2006. The medical basis for the separation was chronic low back pain (LBP), status post (S/P) discectomy and L4-5 fusion, with right side radiculopathy. She did not respond adequately to treatment and was unable to fully perform within her Air Force Specialty (AFS) or meet physical fitness standards. She was issued a P4 profile and underwent a Medical Evaluation Board (MEB). Migraine headaches, rheumatoid arthritis, systemic lupus erythematosus and chronic back pain were 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 PEB adjudicated the low back condition as unfitting, rated 20%, with nephrolithiasis, rheumatoid arthritis, systemic lupis erythematosus and migraine headaches all rated as category II conditions, (can be unfit, but not compensable/ratable), with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB), and was then medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “Low Back Fusion, Chronic Right side Radiculpathy, Migraine Headaches, Arthritis, Nephrolithiasis and Lupus.” She additionally lists all of her VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20060804** | | | **VA (7 Mos. After Separation) – All Effective 20060920** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic LBP, S/P Discectomy and L4-5 Fusion with Right Side Radiculopathy | 5241 | 20% | Lumbar Degenerative Disk Disease L4-5, L5-S1, S/P Laminectomy L3 … | 5242 | 10% | 20070423 |
| Lumbar Scar S/P Diskectomy Assoc with Lumbar … | 7805 | 0% | 20070423 |
| Nephrolithiasis | Cat II | | Renal Lithiasis | 7508 | NSC | 20070423 |
| Rheumatoid Arthritis | Cat II | | Rheumatoid Arthritis | 5002 | NSC | 20070423 |
| Systemic Lupus Erythematosus | Cat II | | Lupus | 6350 | NSC | 20070423 |
| Migraine Headaches | Cat II | | Vascular Cephalgia (Migraines) | 8100 | 10% | 20070423 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 2/Not Service Connected x 7/Deferred x 1\* | | | 20070423 |
| **Combined: 20%** | | | **Combined: 20%** | | | |

\*Claimed reactive airway disease deferred; subsequently rated 0% as mediastinal sarcoidosis effective 20060920

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. While the 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 (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Chronic LBP, S/P Discectomy and L4-5 Fusion with Right Side Radiculopathy Condition. The CI developed low back pain with right radicular symptoms after a motor vehicle accident in December 2001. She was initially treated conservatively and was deployed to Oman where her pain continued to worsen. She was evacuated back to the United States and subsequently underwent three back operations: in November 2002, October 2004 and a lumbar spinal fusion in January 2005. Additionally, the CI had multiple interventional pain procedures that included joint, back and spinal steroid and anesthesia injections. She did not respond adequately to treatment and was unable to perform within her AFS or meet physical fitness standards. She received a P4 profile and underwent an MEB. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB ~ 3 Mos. Pre-Sep  (20060619) | VA C&P ~ 7 Mos. After-Sep  (20070423) |
| Flex (0-90) | 45/45/40 (45⁰) | 0-75⁰ |
| Ext (0-30) | 5/5/5 (5⁰) | 0-10⁰ |
| R Lat Flex (0-30) | 10/10 (10⁰) | 0-15⁰ |
| L Lat Flex 0-30) | 10/10 (10⁰) | 0-15⁰ |
| R Rotation (0-30) | 25/25/20 (25⁰) | 0-45⁰ |
| L Rotation (0-30) | 20/20/25 (25⁰) | 0-45⁰ |
| COMBINED (240) | 120⁰ | 205⁰ |
| Comment | All motion limited by pain, guarding and mechanical limitations due to fusion at L4-L5 | Motion limited by “difficulty and discomfort” |
| §4.71a Rating | 20% | 10% |

The narrative summary (NARSUM) dated 19 June 2006, 3 months prior to separation, noted significantly decreased ROM due to pain, guarding and mechanical limitations due to the L4-5 fusion. Reflexes were not elicited on the right and her gait was slightly antalgic. Sensation was intact. The NARSUM (Neurology) dated 20 March 2006, 6 months prior to separation, documented decreased but not abnormal reflexes, with normal sensation, strength and gait. Spinal contour and spasm are not addressed in either NARSUM. The VA C&P examination performed 23 April 2007, 7 months after separation, noted limited ROM with normal gait, reflexes and spinal contour. There was no spasm or atrophy, and she did not use assistive devices for ambulation. Strength and sensation were normal with no objective evidence of radiculopathy or poly-neuropathy. Nerve conduction studies of the right lower extremity obtained January 2006 revealed no evidence of peripheral neuropathy. An MRI study obtained August 2007 revealed no spinal narrowing, nor evidence of nerve root compression. The commander’s statement noted that the CI’s medical condition restricted her from prolonged standing and lifting more than 15 pounds, severely limiting the capacity in which she could be used. It did not specify limitations due to low back pain versus radiculopathy or any other conditions. The IPEB on 28 June 2006, 3 months prior to separation, found the chronic LBP, S/P discectomy and L4-5 fusion, with right side radiculopathy condition unfitting, coded 5241 (spinal fusion), with a 20% rating. The rating was upheld by the FPEB on 4 August 2006, 2 months prior to separation, noting the CI’s contention for medical retirement, but finding no evidence supporting a rating of greater than 20%. The VA Rating Decision (VARD) dated 1 June 2007, 8 months after separation, service-connected the lumbar degenerative disk disease (DDD) L4-5, L5-S1, S/P laminectomy at L3 and discectomy and fusion at L4-S1 condition, coded 5242 (degenerative arthritis of the spine), with a 10% rating. The PEB rating of 20% is supported by the flexion of 45 degrees and the combined thoracolumbar motion of 120 degrees. The VA examination performed 7 months after separation demonstrated clinical improvement supporting the 10% assigned rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends no recharacterization of the separation rating of 20%, coded 5241 (spinal fusion), for the chronic LBP, S/P discectomy and L4-5 fusion, with right side radiculopathy condition, IAW VASRD §4.71a.

The Board also considered the right lower extremity radiculopathy condition as a potentially separate unfitting and ratable condition. The NARSUM (Back) dated 19 June 2006, documented continued right leg pain with some slight weakness, decreased, but present, reflexes, and normal sensation. NARSUM (neurology) dated 20 March 2006 recorded normal strength and gait. The VA C&P examination performed 23 April 2007, also noted right leg pain but with normal gait, reflexes, straight leg raising tests, and strength with no objective findings for radiculopathy or neuropathy. 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 lower extremity symptoms related to her back condition, 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. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the low back condition.

Migraine Headaches Condition. The Board considered whether the migraine headaches were unfitting. The CI had received treatment for migraine headaches intermittently since 1997. The NARSUM (neurology) noted that the headaches were completely resolved with medication. The VA C&P examination documented that she still had headaches occurring four to five times per year, resolving with oral migraine medication or sleep in a dark room. Although the VA did service-connect the vascular cephalgia condition, code 8100, and assign a 10% rating, the PEB adjudicated the condition as a category II condition that could be unfitting but is not currently compensable or ratable. Headaches are not noted in the commander’s statement, there are no related profiles and there was no indication from the record that the headache condition significantly interfered with satisfactory performance of AFS duty requirements at separation. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the migraine headache condition.

Other Contended Conditions. Rheumatoid arthritis, nephrolithiasis and systemic lupus erythematosus are all noted in the CI’s contention and these conditions are adjudicated by the PEB as category II conditions that can be unfitting but are not currently compensable or ratable. There is extensive history of nephrolithiasis with multiple stone extraction and stent placement procedures without significant residuals. The CI had a history of a blood clot affecting a finger in 2002 with full recovery that was attributed to a lupus related antibody; however, evaluation by rheumatology found no evidence to support a diagnosis of systemic lupus erythematosus or rheumatoid arthritis. Similarly, a medical statement from an internal medicine physician dated 12 February 2008, reported there was no evidence of a connective tissue disease during the preceding 4 years. None of these conditions were clinically or occupationally significant 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.

Remaining Conditions. No other conditions were identified in the DES file that has not already been mentioned. Additionally mediastinal sarcoidosis, herpes genitalis, lumbar surgical scar, hypertension, mitral valve prolapsed, ovarian cyst and reactive airway disease were noted in the VARD 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. 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 chronic LBP, S/P discectomy and L4-5 fusion with right side radiculopathy condition, the Board unanimously recommends a rating of 20% coded 5241, IAW VASRD §4.71a. In the matter of the radiculopathy right lower extremity, migraine headaches, rheumatoid arthritis, nephrolithiasis and systemic lupus erythematosus condition 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic LBP, S/P Discectomy and L4-5 Fusion with Right Side Radiculopathy | 5241 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100919, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

XXXXX

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2010-01170

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,

XXXXXXXX

Director

Air Force Review Boards Agency