RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX. BRANCH OF SERVICE: air force

CASE NUMBER: PD1001247 SEPARATION DATE: 20040716

BOARD DATE: 20111208

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TSgt/E-6 (3S051, Personnel) medically separated for Type II Ehlers Danlos Syndrome (EDS), with chronic wrist and knee pain. She did not respond adequately to treatment, but was able to perform within her career field, was placed in an undeployable status and did not meet physical fitness standards. She was issued a temporary P4 profile and underwent a Medical Evaluation Board (MEB). Chronic wrist and knee pain were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. Obesity condition was forwarded on the MEB submission as medically acceptable condition, not compensable or ratable. The PEB adjudicated the Type II EDS, with chronic wrist and knee pain conditions, as unfitting, rated 20%, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 20% rating.

CI CONTENTION: “I request a re-evaluation of the disabilities that left me unfit for military service based on the significant difference between the DOD and the Veterans Administrations findings. I strongly feel that the DOD only took the disabilities with the lowest ratings into consideration to calculate the 20% rating that was noted on my DD 214. I was actively being treated for multiple psychological disorders with both medication and therapy at the time of discharge and will be for the rest of my life. I was not able to process the involuntary medical separation at the time to realize I had a case for medical retirement instead. I was not afforded the tools such as the mandatory pre-separation counseling, Department of Labor TAPemployment workshops, veterans’ benefits briefings conducted by the Department of Veterans Affairs (VA), Disabled Transition Assistance Programs, which is also facilitated by the VA and is designed to focus on the special needs of disabled service members which all service members are entitled. My separation was conducted in such a rush. While at my weekly therapy appointment, I was notified that I was being separated and escorted by my therapist to the medical separations office in the clinic and asked to sign the paperwork while standing at the service counter. I did not have time to review anything. I was merely told it was a good deal and I should take it. Looking back, this was unethical to use a trusted agent to encourage me to sign away my career. It wasn't until after I was discharged that I sought help from the VA, but at that point it was too late to have the DOD rating adjusted. I respectfully request a review of the existing rating.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20040415** | | | **VA (5 Mo. After Separation) – All Effective Date 20040717** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Type II Ehlers Danlos with Chronic Wrist and Knee Pain | 5002-5099 | 20% | Chondromalacia Patella and Osteoarthritis, Left Knee, aggravated by EDS\*\* | 5260\* | 10% | 20041203 |
| Status Post Arthrotomy, Chondromalacia and Osteoarthritis, Right Knee aggravated by EDS\*\* | 5260 | 10% | 20041203 |
| Hand Strain, Left, aggravated by EDS | 8515 | 0% | 20041203 |
| Hand Strain, Right, aggravated by EDS | 8515 | 0% | 20041203 |
| Obesity | CAT III | | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Obsessive Compulsive Disorder and Bipolar Depression\*\*\* | 9404 | 30% | 20041203 |
| 0% x 3/Not Service Connected x 6 | | | 20041203 |
| **Combined: 20%** | | | **Combined: 50%** | | | |

\* VA rating based on exam most proximate to date of permanent separation. \*\* 5257 Instability of right and left knees added at 10% each effective 20060407. \*\*\*Increased to 70% effective 20060407.

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that the service improperly prepared her for separation. 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. 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 the degree of impairment vary over time, and to compensate for all service connected conditions without tie to fitness.

Type II Ehlers Danlos with Chronic Wrist and Knee Pain. The CI complained of chronic wrist and knee pain, without specific injury, starting in 1997 and gradually worsening over time. She had right knee arthroscopy in 1987 for patellofemoral syndrome and did well until approximately 1997. Magnetic resonance imaging in April 2002 showed mild chondromalacia of the patella and computed tomography and bone scans in June 2002 showed fibrodysplasia. She had arthroscopic surgery of the right knee on 21 November 2002, followed by rehabilitation. Although she continued to have symptoms of bilateral knee pain, no surgery was required for the left knee. On 3 March 2003, she was referred to rheumatology for complaints of bilateral hand pain for six years and was diagnosed with Type II EDS, with chronic wrist and knee pain. This condition results in joint hyperextensibility with joints being easily strained and sprained. With significant lifelong risk for joint pain and sprains, she was given a permanent profile for no running, no prolonged heavy physical work, and was not deployable.

The Board considered at length whether the PEB adjudication of Type II EDS with chronic wrist and knee pain could be unbundled for separate ratings for the knee and wrist conditions. There was one goniometric range of motion (ROM) evaluation for the knees and wrists in evidence which the Board weighed in arriving at its rating recommendation as summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –  L/R Knee | MEB 20030303  ~ 16 Mo. Pre-Sep | VA C&P 20041203  ~ 5 Mo. After-Sep |
| Flexion (140⁰ normal) | Not measured | 140⁰ (pain at 120⁰) bilaterally |
| Extension (0⁰ normal) | Not measured | 0⁰ bilaterally |
| Comment | Full ROM, no instability noted | No instability noted |
| §4.71a Rating\* | 20% for Type II Ehlers Danlos with Chronic Wrist And Knee Pain | 10% each knee (20%) |

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –  L/R Wrist | MEB 20030303  ~ 16 Mo. Pre-Sep | VA C&P 20041203  ~ 5 Mo. After-Sep |
| Dorsiflexion (Extension) (0-70) | Not measured | 70⁰ (pain at 60⁰) bilaterally |
| Palmar Flexion (0-80) | Not measured | 80⁰ (pain at 70⁰) bilaterally |
| Ulnar Deviation (0-45) | Not measured | 45⁰ (pain at 35⁰) bilaterally |
| Radial Deviation (0-20) | Not measured | 20⁰ (pain at 15⁰) bilaterally |
| Comment | Full ROM without synovitis |  |
| §4.71a Rating | 0% | 0% |

The MEB narrative summary (NARSUM) on 4 March 2004 referred to the civilian rheumatologist’s musculoskeletal exam, 16 months pre-separation. This evaluation noted that the wrists ranged fully, without synovitis. The thumbs could be nearly apposed to the forearms. The joints of the hands were not swollen or tender. The proximal and distal interphalangeal joints were hyperextensible. The knees had full ROM, without effusion or laxity to A-P or varus-valgus stress. There was mild knee hyperextensibility. Marked pes planus was also noted, with inversion of the ankles. The compensation and pension (C&P) examination, five months post-separation, revealed normal general appearance of the wrists and knees. ROM of wrists and knees was normal, but pain was present as noted in the charts above. ROM of wrists was additionally affected by pain on dorsiflexion of 60°, palmar flexion of 70°, radial deviation of 15°, and ulnar deviation of 35°, but was not affected by fatigue, weakness, lack of endurance, or incoordination. ROM of knees was additionally affected by mild pain on flexion of 120°, but was not affected by fatigue, weakness, lack of endurance, or incoordination. Drawer and McMurray tests were within normal limits and no recurrent subluxation, locking pain, joint effusion, or crepitus was detected.

The PEB adjudicated the Type II EDS, with chronic wrist and knee pain conditions as unfitting, coded 5002-5099, rated at 20%. The VA rated the chondromalacia of the patella and osteoarthritis, left knee, aggravated by EDS condition at 10% coded 5260, and the status post arthrotomy, chondromalacia and osteoarthritis, right knee, aggravated by EDS condition, also at 10% coded 5260. The VA rated the hand strain aggravated by EDS condition at 0% for each hand coded 8515 for median nerve impairment.

The NARSUM noted, “The patient will need a permanent or yearly profile to exclude her from running. She certainly cannot perform heavy physical work over at least short periods of time.” The chronic knee conditions do appear to be unfitting; however, there is not sufficient evidence supporting the wrist pain as separately unfitting. The PEB and VA chose different coding options for the condition, but this did not bear on the combined 20% rating. The knees can be rated under code 5002 which states that “where the limitation of motion of the specific joint or joints involved is noncompensable under the codes a rating of 10% is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5002. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.” The VA C&P examination five months post-separation was comprehensive, most proximal to separation, and documented painful motion for the knees. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends no recharacterization of the rating of 20% coded 5002-5099 (intervertebral disc syndrome) for the Type II EDS, with chronic wrist and knee pain condition IAW VASRD §4.71a.

Other PEB Conditions. Another condition forwarded by the MEB and adjudicated as not unfitting by the PEB was obesity. This condition was not profiled or implicated in the commander’s statement. This condition is not a disability and therefore cannot be considered unfitting or rated. All evidence considered there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the stated condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for multiple psychological disorders. Treatment records from July 2003 through June 2004, just prior to separation, documented treatment with medications and counseling for obsessive compulsive disorder and for anxiety and adjustment disorder with depression. The treatment note from 15 June 2004, one month pre-separation, noted significant to full improvement for all treatment goals. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. There were no documented duty limitations secondary to a mental health condition and the commander’s letter does not mention any mental health issues. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were gastritis, fibrodysplasia of the right knee, and seasonal allergic rhinitis. None of these conditions were clinically active during the MEB period, none carried attached profiles or were the basis 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, bilateral plantar fasciitis with calcaneal spurs, hiatal hernia and appendectomy scar were service connected in the VA rating decision proximal to separation, but were not documented in the DES file. Surgical scar on the left shoulder, foreign body left eye, neck strain and arthritis of the hands and wrists were not service connected and not noted in the DES file. Nearly two years after separation right and left knee instability were service connected and rated at 10% by the VA based on a worsening of the CI’s condition after separation. Neither is mentioned 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 Type II EDS, with chronic wrist and knee pain condition, the Board unanimously recommends no change in the PEB adjudication. In the matter of the obsessive compulsive disorder, anxiety, adjustment disorder with depression, gastritis, fibrodysplasia of the right knee, seasonal allergic rhinitis 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** |
| Type II Ehlers Danlos with Chronic Wrist and Knee Pain | 5002-5099 | 20% |
| COMBINED | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101114, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

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President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-01247.

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,

XXXXX

Director

Air Force Review Boards Agency