RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1001294 SEPARATION DATE: 20060508

BOARD DATE: 20120305

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve member, SSG/E-6 (91G, Patient Administration), medically separated for a lumbar spine condition. She injured her back in 2001 with lifting in a civilian occupational setting; but, experienced a recurrence of back pain radiating to the left leg during a subsequent mobilization to Germany. She was diagnosed with discopathy, and underwent two diskectomy surgeries in 2003. Despite an aggressive post-operative trial of rehabilitation, she did not improve adequately to fully perform within her Military Occupational Specialty (MOS) or meet physical fitness standards. She was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Degenerative disc disease (DDD) was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Depressive disorder was forwarded by the MEB as a medically acceptable condition. The PEB adjudicated the lumbar spine condition as unfitting, rated 10%, citing criteria of the US Army Physical Disability Agency (USAPDA) pain policy; and, adjudicated the depressive disorder as not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I continue to have medical problems; 80% disable [sic] through VA. Conditions – PTSD, Chronic Low Back Pain, Sciatic L leg, depression/PTSD, High Blood Pressure.”

RATING COMPARISON:

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| **Service PEB – Dated 20060110** | **VA (9 Mo. Pre Separation) – All Effective 20060508** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain… | 5299-5242 | 10% | Herniated Disc, Lumbar Spine… | 5243 | 40% | 20050820 |
| Radiculopathy Left Leg… | 8720 | 10% | 20040917 |
| Depressive Disorder… | Not Unfitting | PTSD | 9411 | 50% | 20070129 |
| ↓No Additional MEB/PEB Entries↓ | Anorexia Nervosa… | 9520 | 10% | 20041016 |
| 0% x 1 / Not Service Connected x 2 | 20050820 |
| **Combined: 10%** | **Combined: 80%** |

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 and her current VA rating. 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. The 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board also acknowledges the CI's contention suggesting that service ratings should have been conferred for other conditions documented at the time of separation and for conditions not diagnosed while in the service (but later determined to be service-connected by the DVA). 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. The DVA, however, is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Lumbar Spine Condition. Following findings on imaging of disc herniation with left S1 nerve root compression, the CI underwent a series of epidural steroid injections. She initially responded well, but then again developed intractable back and left leg pain. She underwent L5-S1 discectomy in July 2003, and revision surgery in December 2003. Findings at the second surgery were “exuberant scar tissue literally encasing the dura and neural foramina, which was very difficult to mobilize and much was left intact due to the adhesions to the dura and risk of a large dural tear.” Post-operatively she continued to experience back pain and left leg pain recalcitrant to adequate rehabilitation. There were three 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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| Thoracolumbar ROM | VA C&P ~9 Mo. Pre-Sep | MEB PT ~7 Mo. Pre-Sep | VA C&P ~8 Mo. Post-Sep |
| Flexion (90⁰ Normal) | 40⁰/20⁰\* | 60⁰ | 70⁰ |
| Combined (240⁰) | 85⁰ | 175⁰ | 190⁰ |
| Comments | No spasm; normal gait/contour. | Left leg weakness; stiff movements. | Normal gait, posture; no spasm; DeLuca negative. |
| §4.71a Rating | 20%/40%\* | 20% | 10%\*\* |

\*Conceding DeLuca limited motion (VA applied). \*\*VA continued prior 40%, citing not yet stable.

The MEB examiner (five months prior to separation) noted that the CI rose easily from a seated posture, but moved stiffly. Deep tendon reflexes were symmetrical, but the motor (4/5 strength) and sensory exams of the left leg were abnormal. The examiner also stated, “she feels like she has weakness in her foot, which has caused her trip while she is walking and she states that at times, she has difficulty with sensation, not being able to feel her foot.” ROM performed by physical therapy in support of the MEB showed significant impairment of motion with pain in all planes of motion. Electrodiagnostic studies (EMG) confirmed a “mild” S1 radiculopathy. Post-operative imaging studies were consistent with expected surgical changes and intra-operative observations. Results of a VA Compensation & Pension (C&P) exam performed two months prior to the physical therapy ROMs showed significantly worse findings with flexion additionally limited by repetitions. The VA examiner noted normal gait and spinal contour, no spasm, and a normal motor exam of the lower extremities. The examiner did, however, make the entry “when she has significant leg pain she has occasional tripping with her left leg.” At the VA C&P examination after separation, the CI reported continued severe pain; adding that she had suicidal ideations with exacerbations. The examiner noted normal gait and posture, no muscle spasm, and no motor or sensory deficits of the lower extremities. There were improved ROMs, with no additional limitation on repetition at this time. In debating the probative value of the data presented, the Board noted that the sequence of exam findings suggests a trend toward improvement from the time of the CI’s second surgery. The VA C&P exam prior to separation was temporally closest to that surgery, most remote from separation, and therefore of least probative value. The VA C&P exam after separation showed significant improvement in both ROM and motor function from earlier exams. However, it was the MEB exam that the Board determined to be closest to separation and to best represent the pathology and disability that resulted in the termination of the CI’s military career.

Of additional relevance to the Board’s recommendation is the following evidence pertinent to consideration for rating under the formula for rating intervertebral disc syndrome based on incapacitating episodes. The narrative summary (NARSUM) stated, “she is able to work; however, she misses approximately five to six days a month due to her pain. She is usually put on bedrest two to three days every month.” The VA C&P exam prior to separation stated, “she misses about two days each month because of her back pain and states that she is usually on bed rest those two days.” The VA C&P exam after separation stated, “she has had two incapacitating [unelaborated] episodes over the past year which lasted two days. She has missed approximately 16 days of work in the past year because of low back pain.” The service file does not contain corroborating physician orders/prescriptions or documentation for assignment to quarters. VASRD §4.71a states, “for purposes of evaluations under diagnostic code 5243, an incapacitating episode is a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician.”

The PEB assigned the VASRD code 5242 (degenerative arthritis of the spine) and the VA assigned 5243 (intervertebral disc syndrome); but, this does not bear on rating under the general rating formula for diseases and injuries of the spine. The PEB’s DA Form 199 reflected application of the USAPDA pain policy for rating, and its 10% determination was not consistent with §4.71a standards. The MEB exam, to which the Board assigns predominate probative value (as discussed above), meets criteria for a 20% rating under the general spine formula. The Board considered a rating recommendation premised on the incapacitating episodes formula under code 5243; although, it was debated whether the §4.71a definition was met based solely on the uncorroborated medical histories. Without conceding three physician directed days of bed rest per month; however, the alternate formula would still achieve the same 20% rating derived from the MEB goniometric evidence. All members agreed that such a concession required an unacceptable level of speculation. 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 lumbar spine condition. The Board agreed that 5243 was the more applicable code, given the clinical features.

Radiculopathy. The Board next considered whether the CI’s left sciatic radiculopathy warranted an additional separation rating, as per the VA rating decision. The MEB’s DA Form 3947 did not submit a diagnosis of radiculopathy to the PEB. The PEB’s DA Form 199 stated, “subjective weakness of the left leg (this has been present since original injury);” implying a non-service connected link of any radiculopathy *per se* to the civilian onset of symptoms. However the above evidence does make it clear that a left sciatic neuropathy was confirmed at separation by EMG, history and physical exam; and, there is no equivalent evidence confirming its presence prior to the 2003 mobilization. Members agreed therefore that the presumption of at least service-aggravation could not be overcome. The condition was noted on the profile as “left leg pain & weakness,” although all of the profile limitations were inherent to the spine condition alone. The commander’s statement was not specific to the diagnoses, but the last two performance evaluations preceding separation specifically stated “profile did not hinder soldier abilities.” Well established 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. The motor impairment was mild by both examination and EMG, but the documentation of stumbling in a garrison environment raised the question of an unfitting link. The action officer was skeptical regarding the mechanism for the noted mild weakness to cause tripping, since that would connote intermittent foot drop which would not result from the peripheral nerve disturbance objectively confirmed. The Board also took note that the mild weakness noted seven months prior to separation was resolved at the time of the VA C&P examination after separation; and, was logically improving up to the time of separation. After considerable deliberation, Board consensus was that the preponderance of the evidence with regard to the functional impairment of the left sciatic radiculopathy did not support a recommendation for additional service rating on this basis.

Other PEB Conditions. One other condition, depressive disorder not otherwise specified, was forwarded by the MEB and adjudicated as not unfitting by the PEB. A psychiatric addendum indicated that the CI experienced intermittent bouts of depression after marital problems in 1998 ended in divorce. She reported that her symptoms were well controlled with an anti-depressant. The MEB psychiatrist provided an unequivocal opinion that there was no unfitting psychiatric impairment as per the following excerpt.

It is the opinion of the Medical board that although this patient suffers from some mood symptoms, these symptoms have been amenable to medication and are not of the severity to require a finding of being unfit for continued military service. The patient is therefore found to meet retention standards from a psychiatric standpoint lAW the provisions of AR 40-501, Paragraph 3-32.

This condition was not profiled or implicated in the commander’s statement. It was reviewed by the action officer and considered by the Board. There was no indication from the record that it significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change in the PEB’s fitness adjudication for the depressive disorder.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD) and high blood pressure. PTSD was noted in the differential diagnosis of outpatient service mental health notes; but, specifically addressed and excluded as an axis I diagnosis by the MEB psychiatrist. Regardless of the diagnosis, the absence of unfitting psychiatric impairment has been established as above. Hypertension was noted in the medical history on the psychiatric addendum, but not in the NARSUM. It was not service connected by the VA, and there is no evidence of associated symptoms or medical complications. Both of these conditions were reviewed by the action officer and considered by the Board. 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 sinusitis, arthritis, frequent urination, dizziness, sea sickness, chest pain and endometriosis. 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 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. Additionally anorexia nervosa with bulimia and several other non-acute conditions 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. As discussed above, PEB reliance on the USAPDA pain policy for rating back was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the lumbar spine condition, the Board unanimously recommends a rating of 20% coded 5243 IAW VASRD §4.71a. In the matter of the left sciatic radiculopathy condition, the Board concurs by a 2:1 vote that it cannot recommend a finding of unfit for additional rating at separation. The single voter for dissent (who recommended a service rating of 10% for sciatic radiculopathy coded 8520) did not elect to submit a minority opinion. In the matter of the depressive disorder, the Board unanimously recommends no change from the PEB adjudication as not unfitting. In the matter of the contended PTSD and hypertension conditions, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for 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.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lumbosacral Disc Disease | 5243 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101115, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

 Deputy Assistant Secretary

 (Army Review Boards)