RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1100029 SEPARATION DATE: 20040807

BOARD DATE: 20120130

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO1/E-6 (SK1, Storekeeper) medically separated for right knee pain and chronic low back pain. The right knee pain condition presented in 2000 and was not a consequence of injury. Pain persisted despite arthroscopic surgery. The low back pain condition began in 1996 and was not associated with a surgical indication. Neither condition responded adequately to treatment and she was unable to perform within her rating or meet physical fitness standards. She was placed on limited duty and underwent a Medical Evaluation Board (MEB). Right knee pain due to degenerative joint disease and chronic low back pain due to degenerative disc disease and disc bulge were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. Varicose veins of the lower extremities, ankle pain without instability and bereavement were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the right knee pain and low back pain conditions as unfitting, rated 10% each. The knee condition was rated IAW the Veterans Administration Schedule for Rating Disabilities (VASRD) and the back condition with application of the SECNAVINST 1850.4E. Additionally, ankle pain without instability and lower extremity varicose veins without complication were rated as Category III: conditions that are not separately unfitting and do not contribute to the unfitting conditions. The CI did not appeal the PEB findings and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “Please review the complete documentation on my medical issues for which I was determined unfit for duty.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| **Service IPEB – Dated 20040707** | **VA (6 Mo. After Separation) – All Effective 20040808** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Knee Pain | 5099-5003 | 10% | Right Knee Meniscal Tear | 5299-5260 | 10% | 20050204 |
| Chronic Low Back Pain | 5237 | 10% | Lumbosacral disc disease | 5243 | 50% | 20050204 |
| Ankle Pain | Cat III | Left Ankle Laxity | 5299-5271 | 0% | 20050624 |
| Varicose Veins | Cat III | Right Leg Varicose Veins |  NSC | 20050203 |
| ↓No Additional MEB Entries↓ | Left Wrist Strain | 5215 | 10% | 20050204 |
| Left Knee Arthritis | 5003-5260 | 10% | 20050204 |
| Bladder Surgery Residuals | 7599-7517 | 10% | 20050203 |
| Depression With Anxiety | 9499-9434 | 10% | 20050223 |
| Morton’s Neuroma Right Foot | 5279 |  10%\* | 20050204 |
| 0% x 1 / Not Service Connected x 3 | 20050203 |
| **Combined: 20%** | **Combined: 80%** |

\*Increased to 100% from 25 January 2005 to 1 April 2005 for post operative convalescence; then returned to 10%

(C-spine arthritis, hiatal hernia added 10% effective 29 December 2005; 4 other conditions added effective > 2 yrs post-sep))

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 without regard to impact on performance of military duties 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.

Right Knee Condition. The CI presented in 2000 with complaints of right knee pain of a few years duration. Evaluation revealed a subtle meniscal tear which was treated arthroscopically in October 2000. Ongoing knee pain and swelling resulted in the need for repeat arthroscopic treatment in November 2003 of a medial meniscal tear, patellofemoral joint inflammation and loose joint bodies. She continued to have knee pain after post-operative physical therapy. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

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| Right Knee ROM | MEB ~ 3 Mo. Pre-Sep | VA C&P ~ 6 Mo. After-Sep |
| Flexion 0-140⁰ normal | 130⁰ | 140⁰ |
| Extension 0⁰ normal | 0⁰ | 0⁰ |
| §4.71a Rating | 10%\* | 10%\* |

 \*Conceding pain with use or painful motion

The narrative summary (NARSUM) examiner (19 May 2004) reported that knee symptoms prevented her from participating in physical readiness testing and that standing for longer than 15 minutes caused knee problems. Examination showed a normal gait and no significant effusion. Some equivocal medial joint line tenderness was present but there was no evidence of ligament instability. Magnetic resonance imaging (MRI) showed an osteochondral defect that was unchanged from prior studies. The VA Compensation and Pension (C&P) examiner (4 February 2005) reported that knee pain occurred when attempting to climb two flights of stairs or walking more than one half mile. Balance was noted to be normal and she sat down and arose from a chair without difficulty. Pain occurred in the knee in the half squatted position. Mild medial knee pain appeared to occur with any knee motion. There was no swelling and full ROM was noted to be painless. There was no knee tenderness or ligament instability. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB’s 10% determination was consistent with §4.71a standards. Although limitation of motion was noncompensable, there is sufficient evidence of pain with use (§4.40) or painful motion (§4.59) to justify a minimal compensable rating. Due to the history of meniscus tear, the Board considered the 5258 (locking due to dislocated meniscus) coding pathway to a higher rating. However, there was no evidence of “frequent” episodes of locking required for the 20% rating under this code. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the right knee condition.

Low Back Condition. The first clinical entries regarding low back discomfort were in 1996 when mild intervertebral disc disease was discovered on MRI (physical therapy notes record history of back pain for approximately ten years). Gradually worsening pain responded partially to conservative treatments, but ongoing pain prevented her from performance of physically demanding duties. MRI in 2002 showed degenerative disc disease with bulging discs of L4-5 and L5-S1, and arthritis but with patent neuroforamina. Examinations in April 2002 and May 2002 recorded ROM to be “full,” and flexion 100%, extension 75%. X-rays performed in May 2003 showed significant degenerative disc disease of L5-S1 and evidence of lumbar spondylolisthesis (increased movement of vertebral bodies due to degenerative disruption of the bony arch; spondylolysis) of L4 on L5 and L5 on S1. The Orthopedic surgeon, 7 May 2003, advised no impact activities such as running, a lifting restriction of 30 to 35 pounds, and limited kneeling, squatting and bending. He noted a potential need for surgery in the future. Except for a normal gait, the NARSUM examination, May 2004, did not include any other findings regarding the spine. Muscles strength and sensation of the lower extremities were normal. The C&P examiner, February 2005, six months after separation, reported onset of back pain when walking more than one half mile or climbing more than one flight of stairs. Posture was erect with no kyphosis. She was observed to get in and out of a chair and lie on an examining table with no problem. Her spine “appeared supple, not stiff.” The examiner stated that trunk mobility was not examined completely because the CI refused to remove her gown (despite presence of chaperone), and did not allow the examiner to palpate her back. With this impediment to examination, flexion was 25⁰ (90⁰ normal) and combined ROM was 200⁰ (240⁰ normal). Flexion and extension appeared to be limited by mild pain. Because the examination was limited, an assessment of muscle spasm could not be made. The examiner further noted that in the sitting position, straight leg raise testing was normal with each leg alone and both together. When supine however, mild midline lumbar pain occurred at 35⁰ when both legs were flexed together at the hips. Deep tendon reflexes were symmetric. In concluding summary statements (joint and spine share core indicators”), the examiner indicated that “functional impairment apparently is minimal.” The PEB rated the back condition with application of SECNAVINST 1850.4E since no range of motion data or other VASRD-required rating criteria were in evidence. The VA erred in its evaluation because unfavorable ankylosis of the entire thoracolumbar spine, the only criterion for a 50% rating, was not present. Although the MEB exam was more proximal to separation, it lacked any detail, and the Board therefore carefully reviewed the post separation C&P examination. The C&P examination’s reported flexion of 25 degrees would correlate with a 40% rating while the combined ROM of 200 degrees supports a 10% rating. The Board debated the significant disparity between the reported flexion and other elements of the examination, including “mild lumbar pain” on flexion, results of straight leg raising maneuvers in sitting and supine position that would indicate a thoracolumbar range of motion as defined in the VASRD of more than 30 degrees, and discordance between flexion and extension with movement in lateral bending (35 degrees) and rotation (50 degrees) which were close to normal. In addition, the ease with which the CI arose from a chair also appeared inconsistent with the noted limited flexion as an ability to arise from a chair without difficulty requires forward thoracolumbar flexion sufficient for weight transfer over the feet to stand, approximately 45 degrees, which the CI did without problem. The Board further considered that the CI refused a comprehensive physical examination, thereby not only clouding the accuracy of the ROM measurements, but also rendering an evaluation of the 20% rating criteria (spinal contour, muscle spasm) problematic. It was also noted however that abnormal gait due to muscle spasm (one of the 20% rating criteria) was not present (gait was observed to be normal during the general examination the day before). Board members agreed that 25 degrees of flexion was too inconsistent with all other data to be an accurate indicator of disability. After detailed discussion, it was agreed that the preponderance evidence including the anticipated severity suggested by the clinical pathology indicated that the flexion more likely than not was greater than 30 degrees but not greater than 60 degrees more nearly approximating a 20% disability rating. The Board also considered rating intervertebral disc disease under the alternative formula for incapacitating episodes, but could not find sufficient evidence which would meet even 10% criteria under that formula. There was no evidence of ratable peripheral nerve impairment in this case.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were ankle pain without instability and lower extremity varicose veins without complication. Neither of these conditions carried attached duty limitations, were implicated in the non-medical assessment or noted as failing retention standards. The NARSUM exam documented normal gait and lower extremity strength. At the time of the C&P examination Feb 2005, there was no pain or swelling and range of motion was full. Gait was normal. C&P examination did not show current varicose veins, previous documented as “tiny spiders” that were injected. The examiner concluded the CI was status post successful obliteration of tiny spider veins. Both were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory performance of duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were left wrist pain, urinary incontinence, chronic sinus problems, right bundle branch block, left knee pain, hip pain and bereavement. Several additional non-acute conditions or medical complaints were also documented. Bereavement was due to the death of her 20 year old son in December 2003. A psychiatric NARSUM addendum performed on 2 June 2004 (two months prior to separation) stated that the CI reported she had grieved appropriately and that she denied significant depressive or anxiety symptoms other than some premenstrual syndrome symptoms. The assessment was that she had no disabling mental health conditions. None of these conditions were clinically or occupationally significant during the MEB period, none carried attached duty limitations and none were implicated in the non-medical assessment. 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 right foot Morton’s neuroma 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.

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 SECNAVINST 1850.4E for rating low back pain was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right knee pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the low back pain condition and IAW VASRD §4.71a, the Board unanimously recommends a rating of 20% coded 5237 IAW VASRD §4.71a. In the matter of the ankle pain without instability and lower extremity varicose veins conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the left wrist pain, urinary incontinence, chronic sinus problems, right bundle branch block, left knee pain, hip pain and bereavement 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. 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 and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Knee Pain | 5099-5003 | 10% |
| Chronic Low Back Pain | 5237 | 20% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101208, 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 3 Feb 12

 I have reviewed the subject case pursuant to reference (a) and non-concur with the recommendation of the PDBR as set forth in reference (b) Having considered all available evidence, I found the disability rating award by the Physical Evaluation Board (PEB) accurately represents the degree of xxxxxxxxx impairment and is in accordance with regulations. Therefore, xxxxxxx records will not be corrected to reflect a change in either her characterization of separation or in the disability rating previously assigned by the Department of the Navy’s PEB.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)