RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD101100088 SEPARATION DATE: 20041103

BOARD DATE: 20111221

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SSgt/E-5 (3M501 / Food Cook), medically separated for fibromyalgia associated with depression and fatigue. The CI presented with complaints of back, neck, pelvic, wrist/ankle, knee and hip area pain, allergic symptoms and depression around July 2001. Despite treatment with physical therapy, duty limitations and oral medications to include antidepressants, the CI did not respond adequately to treatment and was unable to perform within her Air Force Specialty Code (AFSC) or meet physical fitness standards. The CI was issued a P3U3L3 temporary profile and underwent a Medical Evaluation Board (MEB). The MEB, following CI rebuttal, forwarded Fibromyalgia, Depressive disorder NOS, Carpal Tunnel Syndrome (CTS), Chronic Fatigue, Osteoarthritis (knees, C-spine)-mild and Left Pes Planus Existed Prior To Service (EPTS) to the Physical Evaluation Board (PEB) on the Air Force (AF) Form 618 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 Formal PEB (FPEB) adjudicated “Fibromyalgia Associated with Depression and Fatigue” as unfitting and rated 20% with application of DoDI and Veterans Administration Schedule for Rating Disabilities (VASRD). The FPEB adjudicated the CTS and Osteoarthritis, Knees and Cervical Spine” as Category II conditions (“Conditions that can be unfitting but are not currently compensable and ratable”) and Obesity as Category III conditions (“Conditions that are not separately unfitting and not compensable or ratable”). The CI disagreed with the FPEB and requested a formal hearing; however she then rescinded her appeal. The CI was then medically separated with a 20% disability.

CI CONTENTION: The CI states: “My condition was worse than the percentage they gave me.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20040804** | | | **VA (10 Mo. Pre-Separation) – All Effective 20041104** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Fibromyalgia a/w Depression and Fatigue | 5025 | 20% | Fibromyalgia | 5025 | 10%\* | STR 20040312 |
| Major Depressive Disorder | 9434 | 10%\* | 20040202 |
| CTS | 8715-8799 | Cat II | Bilateral CTS | 8515 | NSC | 20040118 |
| Osteoarthritis Knees and C-Spine | 5003 | Cat II | Traumatic Arthritis C-Spine | 5010-5242 | 10% | 20040118 |
| Traumatic Arthritis Right Knee | 5010-5260 | 10% | 20040118 |
| Traumatic Arthritis Left Knee | 5010-5261 | 10% | 20040118 |
| Pes Planus (EPTS) | 5276 | Cat II | Bilateral Pes Planus | 5276 | 10% | STR |
| Obesity | Cat III | | Obesity | 7903 | NSC | STR |
| ↓No Additional MEB/PEB Entries↓ | | | Lumbosacral Disc Disease | 5243 | 10% | 20040118 |
| Antral and Duodenal Ulcers w/Helicobacter Pylori | 7305 | 10% | 20040118 |
| Migraines | 8100 | 10% | 20040118 |
| 0% x 5 / Not Service Connected x 8 | | | 20040118 |
| **Combined: 20%** | | | **Combined: 60%\*** | | | |

\*Fibromyalgia 5025 increased to 40% and MDD increased to 70% effective 20070409 (combined 90%)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of her condition and predictable consequences which merit consideration for a higher separation rating. It is a fact, however, that 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. This role and authority is granted by Congress to the Veterans’ Administration.

Fibromyalgia Associated with Depression and Fatigue condition: The FPEB found the CI unfit for Fibromyalgia and rated the condition 20%. The FPEB remarks stated “The (FPEB) opines the member's failure to adhere to her prescribed treatment plan has limited her ability to better manage her condition.” The CI had diagnoses of CTS, Osteoarthritis Knees and C-Spine, Pes Planus (EPTS) and Obesity as not separately unfitting and those conditions may not have been considered in rating the CI’s Fibromyalgia.

The Commander’s comments 10 months prior to separation indicated that the CI had been on profiles for approximately 2 years and that she was working under the most restrictive of standards due to her medical condition, specifically her inability to stand for long periods and the inability to lift reasonable amounts of weight. The Rheumatology examination nine months prior to separation diagnosed fibromyalgia. The psychiatric Addendum diagnosed depressive disorder (not otherwise specified), a relationship of the depression to the physical pain and a social/industrial impairment of definite with a global assessment (GAF=60) in the moderate symptom range. The MEB examination and MEB addendum eight months prior to separation noted that the CI continued to have chronic pain in the neck, shoulders, wrists and palms, upper, mid and lower back, pelvis, knees and ankles. The CI was previously diagnosed with a gastric ulcer. The CI also exhibited symptoms of allergies, insomnia, chronic fatigue and depression. On physical examination, there was symmetrical musculature without wasting or definite motor deficits. The examiner opined that the CI’s symptoms were “characteristically more severe than her exam would suggest, though for the most correlated with soft clinical findings”. The examiner further opined that the physical therapy, oral medications and duty limitations were not helpful and she had a limited response to antidepressant medication.

The VA Compensation & Pension (C&P) examination 10 months prior to separation indicated that the CI continued with persistent joint pains and stiffness with periods of exacerbation and fatigue. The CI also had migraine headaches and lumbosacral spine pains.

The PEB applied the code 5025 for Fibromyalgia Associated with Depression and Fatigue condition rated 20%. The VA chose the same code and rated Fibromyalgia without any associated conditions at 10%; along with rating five musculoskeletal conditions at 10% each, the mental health condition at 10%, and headache at 10% which appeared to be unbundling of the widespread musculoskeletal pain and associated symptoms from fibromyalgia 5025 of “With widespread musculoskeletal pain and tender points, with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud’s-like symptoms" that would be outside of the DOD provisions for rating.

In considering the rating, the Board adjudged that there was no evidence that the CI’s symptoms were controlled by medications and that the pain was present daily, therefore, the 10% and the 20% ratings were well exceeded. The deliberation focused on the 20% rating ([symptoms] that are episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but that they are present for more than one –third of the time) versus 40% ([symptoms] that are constant or nearly so and refractory to therapy.) At the time of the MEB examination and the VA C&P examination, the CI had constant symptoms of joint pain, depression, fatigue, headache, and sleep disturbance that responded poorly to therapy.

The DoDI 1332.39 prerogative for reducing a rating solely for non-compliance is not applicable to the Board’s recommendations; although, the Board applies the tenants of accepted medical principles (IAW DoDI 1332.38), and may make fundamental deductions consistent with medical facts that are so reasonable and logical as to create a virtual certainty that they are correct. Given the mental disorder overlay of depression with the CI’s fibromyalgia, it is difficult to support a reduced rating due to not following recommended treatment plans which can be considered linked to the mental health aspects of the CI’s condition. *Additionally later VA records indicate substantial symptoms while following treatment recommendations*.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 40% for the Fibromyalgia Associated with Depression and Fatigue condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were CTS, Osteoarthritis Knees and C-Spine, Pes Planus (EPTS) and Obesity. None of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the Action Officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of AFSC 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.

Other Contended Conditions. The CI’s application did not identify any conditions.

Remaining Conditions. Other conditions identified in the DES file were Myofascial Spasm Related to Neck Pain; Oropharyngeal Swelling; Allergic Rhinitis; Helicobacter Pylori; Mild Acne; Decreased Visual Acuity; Migraines; Bilateral Sacroileitis; Ankle Pain; and Kidney/Bladder Problem. 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. The three conditions (Lumbosacral Disc Disease, Antral and Duodenal Ulcers w/Helicobacter Pylori and Migraine listed in the rating comparison chart) as identified by the VA proximal to separation 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 thus has no 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 Fibromyalgia Associated with Depression and Fatigue condition, the Board *by a vote of 2:1* *recommended a 40% rating.* The single voter for dissent who recommended a 20% rating did not elect to submit a minority opinion. unanimously recommends a rating of 40% coded 5025 IAW VASRD §4.71a. In the matter of the CTS, Osteoarthritis Knees and C-Spine, Pes Planus (EPTS) and Obesity conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. In the matter of the Myofascial Spasm Related To Neck Pain; Oropharyngeal Swelling; Allergic Rhinitis; Helicobacter Pylori; Mild Acne; Decreased Visual Acuity; Migraines; Bilateral Sacroileitis; Kidney/Bladder Problem and Ankle Pain 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 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Fibromyalgia Associated with Depression and Fatigue | 5025 | 40% |
| **COMBINED** | **40%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101023, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00088.

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 not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended your separation be re-characterized to reflect disability retirement, rather than separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at 1-800-531-7502 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 30 days from the date of this letter, you will not be enrolled in the SBP program unless at the time of your separation, you were married or had an eligible dependent child, in such a case, failure to render an election will result in automatic enrollment.

Sincerely,

Director

Air Force Review Boards Agency

PDBR PD-2011-00088

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) and Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating to XXXXXXX, be corrected to show that:

a. The diagnosis in her finding of unfitness for Fibromyalgia Associated with Depression and Fatigue, VASRD code 5025; was rated at 40% rather than 20%.

b.  On 2 November 2004 she elected not to participate in the Survivor Benefit Plan.

c.   She was not discharged on 3 November 2004; rather, on that date she was released from active duty and on 4 November 2004 her name was placed on the Permanent Disability Retired List.

Director

Air Force Review Boards Agency