RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100190 SEPARATION DATE: 20040517

BOARD DATE: 20120110

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SPC/E4, 74D, Nuclear Biological Specialist, medically separated for chronic bilateral hip and knee pain. She did not respond adequately to treatment and was unable to 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). Bilateral hip and knee pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated the chronic bilateral hip and knee pain as a single combined unfitting condition, rated 0%, with application of the US Army Physical Disability Agency (USAPDA) pain policy, Department of Defense Instruction (DoDI) 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% combined disability rating.

CI CONTENTION: “it should be change because my condition has become worst over the years Im in constant pain daily. I also have PTSD which is still pending in the Newark Regional Office as well as a host of disabilities that have changed my life dramatically.” She elaborates no specific contentions regarding rating or coding and refers to “a host of disabilities.” A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20040325** | **VA Initial exam 41 Mo. After Separation** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic pain, bilateral hips and knees | 5099-5003 | 0% | Right trochanteric bursitis\* | 5299-5254 | NSC | 20071012 |
| Left trochanteric bursitis\*\* | 5299-5254 | NSC |  |
| Right MCL sprain\*\*\* | 5299-5260 | NSC | 20071012 |
| Left PFS\*\*\*\* | 5299-5260 | NSC |  |
| ↓No Additional MEB/PEB Entries↓ | 0% x 1/Not Service Connected x 2 | 20071012 |
| **Combined: 0%** | **Combined: 0%** |

CI did not show for her scheduled VA examination and the claimed conditions were determined NSC. CI reopened her claim and was examined over three years after separation: \* Rated 10% effective 20050916 based on 20071012 exam, coded 5299-5251. \*\* Rated 10% effective 20071108 based on 20080925 exam, coded 5252. \*\*\* Rated 0% effective 20050916 based on 20071012 exam; increased to 10% 20090326 based on 20090602 exam, coded 5299-5257. \*\*\*\* Rated 0% effective 20071108 based on 20080925 exam; increased to 10% 20090602 based on 20090602 exam, coded 5299-5257.

ANALYSIS SUMMARY: The PEB combined the chronic bilateral hip and bilateral knee pain as a single unfitting condition, coded analogously to 5003 and rated 0%. While a 0% rating from the Department of Veterans’ Affairs (DVA) is non-compensable, a 0% rating in the DES results in disability severance pay that is the same for combined ratings less than 30%. The PEB may have relied on AR 635.40 (B.24 f.) and/or the USAPDA pain policy for not applying separately compensable VASRD codes. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases; however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting, and that there was no need for separate fitness adjudications, not a judgment that each condition was independently unfitting. Thus, the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. The Board typically will review both the PEB and VA exams proximate to separation in making its recommendation. In this case, the initial VA Compensation and Pension (C&P) examination was over three years after separation and, consequently, the probative value of the initial and subsequent VA C&P exams is significantly reduced.

Unfitting Conditions: Bilateral Knee and Hip Pain: Each condition will be discussed separately after the common history. The CI first complained of left knee pain while in basic training without specific injury, but was able to complete basic training. Subsequently, she was placed on a profile which restricted her from running in formation, marching and jumping, however she was able to deploy to Iraq. In April 2003, while deployed, a generator fell on the CI’s right thigh and knee. There is no record of medical treatment at the time of injury and she was able to continue her duties and remain in theater (returned June 2003). She sought care for right knee pain following return from deployment. Later, she developed bilateral hip pain. At a physical therapy (PT) evaluation five months prior to separation, she was diagnosed with “chronic pain of the knees and hips without apparent pathology.” On exam, genu recurvatum (a developmental condition of hyperextension of the knees), a pronated gait and bilateral femoral neck retroversion (a developmental condition) were documented (femoral retroversion was also shown on X-rays and noted by orthopedic surgery). A left FABER was positive and there was buttock pain with stress on the piriformis muscles; however, the CI’s hip pain was described as anterior or lateral. An orthopedic examination three and one half months prior to separation, noted that she had “subjective” pain, and documented an essentially normal exam. The MEB examination was two months prior to separation. The CI complained that her knees gave out and that she tripped easily. Pain was noted to be intermittent and slight. Imaging of the knees and the pelvis was normal.

Bilateral Knee Condition. No etiology for the left or right knee pain was documented in the PT, orthopedic or MEB exams. There were two range-of-motion (ROM) examinations which the Board considered. The orthopedic examination three and one half months before separation documented normal range of motion in both knees: flexion to 140 degrees and extension to zero degrees. The MEB examination, approximately two months before separation documented flexion of 130 degrees in both knees, and full extension of zero degrees. The documented range of motion did not show a compensable limitation of motion in accordance with VASRD rating guidelines. The IPEB adjudicated the bilateral knee pain condition, combined with the bilateral hip condition, as unfitting, rated 0%. The VA C&P exam on 12 October 2007, over three years after separation, noted that her symptoms had worsened, that she was unable to stand more than a few minutes without pain and that there was subjective instability. She was able to walk one to three miles. On exam, there was no effusion, flexion was slightly decreased at 134 degrees without pain, and tenderness noted over the medial collateral ligament. The VA determined the right knee to be non-compensable based on an exam over three years after separation, although she was later awarded 10% for medial collateral ligament (MCL) tenderness. The Board notes that, at that exam, the CI had stated that her symptoms were worse. The Board notes that no pathology was documented other than decreased ROM on the MEB exam; however, the ROM was identical to the ROM on the contralateral side. The VA initially determined the left knee to be 0%, based on the C&P exam, which was over four years after separation, but later raised it to 10% for patello-femoral syndrome (PFS). This exam was remarkable for tenderness to deep palpation of the patellar tendon, but was otherwise unremarkable and noted to be normal including ROM. As previously elaborated, the Board must first consider whether the left or right knee pain condition remained separately unfitting, having de-coupled it from a combined PEB adjudication. In analyzing the intrinsic impairment for appropriately coding and rating the right and left hip condition, the Board is left with a questionable basis for arguing that either knee condition was independently unfitting. No significant pathology was identifiable and examinations were normal and the commander’s letter cited problems with a panoply of minor medical complaints as well as a pattern of misconduct and lying interfering with performance of duties. After due deliberation, the Board agreed that evidence does not support a conclusion that the either left or right knee condition, as an isolated condition, would have rendered the CI incapable of continued service within her MOS, and accordingly cannot recommend a separate Service rating for them. Although some examiners noted genu recurvatum, a developmental condition that may predispose to knee pain, there was no evidence in the record to support permanent Service aggravation of condition. The Board notes that even if separate unfitting conditions could be supported, these would rate no higher than 0% and provide no advantage to the CI. After due deliberation, in consideration of the totality of the evidence, and IAW §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the left and right knee pain conditions combined with the hip pain condition.

Bilateral Hip Condition. No specific injury was noted for the left or right hip. She noted the insidious onset of pain after the generator accident. No pathology was noted other than a positive piriformis test and slightly reduced ROM as well as a positive FABER on the left. Three ROM measurements proximate to separation were available for review.

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| Goniometric ROM –Left Hip (Thigh) | PT 5.5 Mo Pre-Sep | Ortho 3.5 Mo Pre-Sep  | MEB ~ 2 Mo. Pre-Sep |
| Flexion (0-125) | 115⁰ | 120⁰ | 125⁰ |
| Extension (0) | 15⁰ | - | 10⁰ |
| Abduction (0-45) | - | - | 30⁰ |
| Adduction (0-45) | - | - | 30⁰ |
| Comment | Internal rotation 50⁰External rotation 30⁰“Chronic pain without apparent pathology” | “Subjective pain” | Internal rotation 45⁰External rotation 35⁰ |
| §4.71a Rating | 0% | 0% | 0% |

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| --- | --- | --- | --- |
| Goniometric ROM –Right Hip (Thigh) | PT 5.5 Mo Pre-Sep | Ortho 3.5 Mo Pre-Sep  | MEB ~ 2 Mo. Pre-Sep |
| Flexion (0-125) | 115⁰ | 120⁰ | 120⁰ |
| Extension (0) | 15⁰ | - | 10⁰ |
| Abduction (0-45) | - | - | 30⁰ |
| Adduction (0-45) | - | - | 25⁰ |
| Comment | Internal rotation 50⁰External rotation 30⁰“Chronic pain without apparent pathology” | “Subjective pain” | Internal rotation 45⁰External rotation 40⁰ |
| §4.71a Rating | 0% | 0% | 0% |

The IPEB adjudicated the bilateral hip condition, combined with the bilateral knee condition as unfitting, rated 0%. Three years after separation, the VA rated the right hip 10% for trochanteric bursitis based on the C&P three years after separation when she was eight months pregnant. Imaging was not obtained due to her pregnancy. Motion was non-painful other than adduction. Flexion and adduction were reduced; it is uncertain what effect the pregnancy had on this. Four years after separation the VA rated the left hip at 10% for trochanteric bursitis based on the C&P exam four years after separation. Imaging was normal. Motion was non-painful other than internal and external rotation. As previously elaborated, the Board must first consider whether the left or right hip pain condition remained separately unfitting, having de-coupled it from a combined PEB adjudication. In analyzing the intrinsic impairment for appropriately coding and rating the right and left hip condition, the Board is left with a questionable basis for arguing that either hip condition was independently unfitting. No significant pathology was identifiable and examinations were normal, except for tenderness of the piriformis muscles in the buttock which did not correlate with her symptoms and anterior and lateral hip region pain. The commander’s letter cited problems with a panoply of minor medical complaints as well as a pattern of misconduct and lying interfering with duties. After due deliberation, the Board agreed that evidence does not support a conclusion that the left or right hip condition, as an isolated condition, would have rendered the CI incapable of continued service within her MOS, and accordingly cannot recommend a separate Service rating for it. The Board again notes that even if separate unfitting conditions could be supported, these would rate no higher than 0% and provide no advantage to the CI. Although the CI was noted to have femoral retroversion, a developmental condition that may predispose to hip pain, there was no evidence in the record to support permanent Service aggravation of condition. After due deliberation, in consideration of the totality of the evidence, and IAW §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the left and right hip pain conditions combined with the knee pain condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress syndrome (PTSD). This was reviewed by the action officer and considered by the Board. The Board noted that on the post deployment health assessment 25 June 2003, the CI checked “no” in response to questions regarding anyone wounded killed or dead, engaged in direct combat, feel in great danger of being killed, nightmares, intrusive thoughts, avoidance, irritability, hypervigilance, emotional numbing. On the MEB exam, the CI only noted that she had had insomnia for four months treated with medications and checked no for excessive worry or depression. The commander wrote that since the CI arrived in his unit, her performance had been substandard. The Board noted that this was her first duty assignment and that the statement encompasses her performance prior to her first deployment. PTSD was not found in the DES file nor was there evidence for concluding that it was even present while on active duty. 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 PTSD as an additional unfitting condition for separation rating.

Remaining Conditions. Other conditions identified in the DES file were back pain, left foot pain, dysuria, dizziness, headaches, heartburn, and a sleep disturbance. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically significant during the MEB period and none carried attached profiles. The commander’s statement noted several, but specifically noted a strong correlation with mandatory formations and training. 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. No conditions were Service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. 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 bilateral knee and hip pain condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the back pain, left foot pain, dysuria, dizziness, headaches, heartburn, and a sleep disturbance, PTSD or any other condition 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 Bilateral Hip and Knee Pain | 5099-5003 | 0% |
| **COMBINED (Incorporating BLF)** | **0%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110328, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for (PD201100190)

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 and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

CF:

( ) DoD PDBR

( ) DVA