RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100213 SEPARATION DATE: 20060119

BOARD DATE: 20120109

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SGT/E-5, (27D, Paralegal Specialist), medically separated for fibromyalgia, right shoulder pain, and left foot plantar fasciitis. The CI developed diffuse pain, flu-like symptoms, fatigue, and depression beginning in approximately August 2004. Rheumatologic evaluation confirmed the diagnosis of fibromyalgia, and her treatment included medications, physical therapy (PT), chiropractic manipulation and acupuncture, with good response to the medications and chiropractic manipulation. The CI developed right shoulder pain after heavy lifting in November 2004. Orthopedic evaluation and magnetic resonance imaging (MRI) diagnosed a partial rotator cuff tendon tear, and she was treated with medications, PT, and subacromial injection. The CI developed bilateral foot pain, left greater than right, after a fall in August 2004. Podiatry and MRI diagnosed plantar fasciitis. Her treatment included medications, orthotic inserts, heel injections and nerve blocks, with some improvement in her symptoms. 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 P3/U3/L3 profile and underwent a Medical Evaluation Board (MEB). Fibromyalgia, right shoulder pain secondary to partial rotator cuff tendon tear, and left foot plantar fasciitis were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. One other condition, as identified in the rating chart below, was forwarded on the MEB submission as medically acceptable. The Informal PEB (IPEB) adjudicated the fibromyalgia, right shoulder pain, and left foot plantar fasciitis as unfitting, rated 10%, 10% and 0% respectively, with application of the US Army Physical Disability Agency (USAPDA) pain policy (for the shoulder condition and possibly plantar fasciitis) and the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI did not appeal for a Formal PEB, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “Did not include depression rating; did not include the severity of Fibromyalgia; did not include the severity of plantar fasciitis; does not include the severity of right shoulder rotator cup [sic] tear; does not include the severity of muscle pain in back (muscle running from right shoulder all the way down the middle of back, just had recent medical treatment for it in December 2010 and January /February 2011; Doctor/Nurse Practitioner at Sonny Montgomery VA in Meridian, Mississippi stated that this should have been evaluated since it had been all in my records for treatment and the severity of it.)” She additionally lists “arthritis in knees” and “fibromyalgia with headaches.” A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20051220** | | | **VA (~2 Mo. Pre- & ~5 Mo. Post-Separation) –Effective 20060120** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Fibromyalgia | 5025 | 10% | Fibromyalgia | 5025 | 10%\* | 20051122 |
| Right Shoulder Pain | 5099-5003 | 10% | R. Shoulder Rotator Cuff Tear … | 5024-5203 | 10% | 20051122 |
| Left Foot Plantar Fasciitis | 5399-5310 | 0% | Plantar Fasciitis | 5299-5276 | 0% | 20051122 |
| Left Knee Pain | Not Unfitting | | Left Knee Condition | 5260 | NSC | 20051122 |
| ↓No Additional MEB/PEB Entries↓ | | | Mood Disorder… due to Musculoskeletal Condition | 9435 | 10% | 20060619 |
| 0% x 4/Not Service Connected x 17 | | | 20051122 |
| **Combined: 20%** | | | **Combined: 30%** | | | |

\* Fibromyalgia 5025 increased to 40% [added “with headaches”] (combined 50%) effective 20080425

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention for Service ratings for other conditions (depression, back pain) documented at the time of separation. 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. 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 Department of Veterans’ Affairs (DVA), however, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all Service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should his degree of impairment vary over time.

Fibromyalgia Condition. Both the Service and the VA coded and rated the CIs’ fibromyalgia condition as 5025 at 10%, indicating symptoms that require continuous medications for control. (Of special note, the VA additionally rated the CI for mood disorder due to musculoskeletal condition at 10%.) A higher evaluation of 20% requires symptoms that are episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but that are present more than one-third of the time. The CI’s fibromyalgia diagnosis was well established, with 14/18 tender points on her rheumatologic evaluation five months pre-separation, and multiple outpatient notes indicating pain on both the left and right sides of the body, both above and below the waist, and affecting both the axial skeleton and the extremities. Other documented symptoms likely related to her fibromyalgia included neck pain, low back pain, Raynaud’s phenomenon, intermittent foot numbness, irritable bowel syndrome, headaches, fatigue, and depression. These conditions are included with the rating for fibromyalgia, since IAW VASRD 4.81a, fibromyalgia is rated “with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud’s-like symptoms.” The criteria, for rating the condition depend upon frequency of symptoms and need for/response to therapy: constant or nearly constant symptoms, refractory to therapy rates 40%, while episodic symptoms present more than one-third of the time rates 20%, and symptoms with lesser frequency, but requiring continuous medications for control rates 10%.

Two rheumatology consultations five months pre-separation reported the CI’s diffuse pain responded to medications. The first one stated her pain “improves with naproxen but not completely.” The rheumatologist prescribed low dose antidepressant, and after three weeks reported, “She still has very mild dull aching pain from fibromyalgia, it is better with Fluoxetine, and it is gradually improving.” The narrative summary (NARSUM), two months pre-separation reported a rheumatology consultation that indicated, “The patient’s fibromyalgia symptoms are well controlled at this point,” and also stated, “The patient still has good days and bad days for her joint aching.” There was no specification of frequency of “bad days.”

The VA exam, two months pre-separation, noted weekly pain flare-ups of three-day duration, alleviating factors being rest and heat, and a notable absence of tenderness on exam, except in the shoulders. A physical medicine outpatient entry one month pre-separation noted, “Pain can be controlled with heat, stretch, ice, modified activities, meds.” A VA primary care initial evaluation note, four month post-separation stated flare-ups occurred weekly and lasted three days. The Board considered other rating options for the fibromyalgia-associated conditions, but did not find evidence to support adding 9434 (major depression) or individual joint impairment ratings (except as discussed below), based on joint pathology with range of motion limitation or other impairment as separately, or in combination as unfitting and ratable at separation. The most specific reference to flares and frequency of symptoms proximate to separation was in the two-month pre-separation VA exam (and four month post-separation VA primary care initial evaluation note), which stated flare-ups occurred weekly and lasted three days; this could be considered to be having symptoms “more than one-third of the time.” However, the NARSUM and other pre- and post-separation evidence showed good response to therapy, and relatively minor functional impact of the condition. The VA mental disorder exam, five months post-separation, indicated a diagnosis of mood disorder due to musculoskeletal condition, and indicated the CI “works from 8 AM until 5 PM. … She has no difficulty carrying out her activities of daily living.” The remote VA exam in June 2008 documented significant worsening of headaches associated with fibromyalgia and was considered post-separation worsening, not indicative of the CI’s condition at separation.

The Board’s recommendation must incorporate a probative value judgment between the disparate evidence of flares from the Service file and the VA’s Compensation and Pension (C&P) examination. The probative value judgment has to acknowledge a normal tendency to maximize symptoms in the context of VA rating evaluations with their attendant secondary gain pressure, but the Board concedes the validity of all evidence unless contradicting evidence can be cited. The preponderance of evidence indicates the CI’s fibromyalgia symptoms responded well to medications and flares were not present more than one-third of the time proximate to separation. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the fibromyalgia condition.

Right Shoulder Pain. There were three shoulder examinations proximate to separation, including two goniometric range-of-motion (ROM) evaluation, in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM –Right Shoulder | MEB ~ 10 Mo. Pre-Sep | VA C&P ~ 2 Mo. After-Sep | VA PT ~ 11 Mo. Post-Sep |
| Flexion (0-180) | “good ROM” | 160⁰ | 140⁰ |
| Abduction (0-180) | 180⁰ | 121⁰ |
| Comment | Painful internal & external rotation | TTP; muscle strength 5/5 | Extension 50⁰, IR to L4, ER 90⁰; Pain w/ abduction |
| §4.71a Rating | 10% (pain) | 10% | 10% |

The NARSUM, reporting exam data from 10 months pre-separation, stated the right shoulder had “good range of motion,” with painful internal and external rotation. Muscle strength was normal (5/5). MRI demonstrated a partial rotator cuff (supraspinatus tendon) tear or degeneration and osteoarthritis at the acromioclavicular joint. Outpatient notes proximate to separation confirm full or nearly full ROM (particularly flexion and abduction), with pain at extremes. One orthopedic exam at seven months pre-separation described weakness (4/5) of external rotation and supraspinatus resistance, however, on follow-up exam one month later, normal muscle strength was noted. The VA exam, two months pre-separation, revealed slightly reduced ROM (noncompensible absent painful motion) and tenderness of the right shoulder pectoral muscles. The VA assigned a 10% evaluation for this exam. A subsequent VA PT exam 11 months post-separation, showed greater ROM decrements and painful motion, and would also rate 10% for painful motion, IAW VASRD §4.59 (painful motion) and §4.71a. All exams proximate to separation rated 10% with application of §4.59. 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 shoulder condition.

Left Foot Plantar Fasciitis. The NARSUM exam, 10 months pre-separation, described tenderness on the plantar surfaces of both feet, with no swelling or erythema. MRI reportedly revealed plantar fasciitis (x-rays showed heel spur on right side only). At a podiatry exam nine months pre-separation the CI reported intermittent foot numbness with prolonged weight bearing, and the examiner documented normal findings on the left side, including full ankle ROMs and normal neurological evaluation. The CI reported noticeable pain relief with orthotic inserts and bilateral heel steroid injections. Follow-up examination, five months pre-separation, noted the CI was undergoing MEB for “unassociated pathology.” Nerve conduction studies (19 May 2005) to evaluate possible right tarsal tunnel syndrome (see “Remaining Conditions,” below) were normal, and the associated exam reported a normal gait. The VA exam, two months pre-separation, also reported plantar tenderness (unspecified side, presumably bilateral) as the only significant finding; normal results were recorded for muscle strength testing, heel- and toe-walking, foot x-rays, and ankle ROMs. Both the Service and the VA assigned a 0% evaluation to the plantar fasciitis condition; each used different coding options, but that did not bear on the rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the left foot plantar fasciitis condition.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was left knee pain. This condition was not profiled, was not implicated in the commander’s statement or noted as failing retention standards. It was reviewed by the action officer and considered by the Board. The STR revealed a history of locking and signs of meniscal pathology at orthopedic evaluation five months pre-separation; these signs resolved on follow-up evaluation (later that same month). MRI (19 August 2005) showed a small effusion but no meniscal pathology. The NARSUM noted mild swelling of the left knee and “pain induced by motion of the knee.” The remainder of the knee exam was normal, with no instability or signs of meniscal abnormalities. The VA exam, two months pre-separation, documented a normal knee exam, and the VA adjudicated the condition as not Service connected (NSC). Although it is possible that impairment from the left knee condition was overshadowed by the plantar fasciitis condition, that possibility is unduly speculative as the basis for a Board fitness recommendation. There was no indication from the record that this condition significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the state condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for depression (VA 10% for mood disorder due to musculoskeletal condition, with depressive features), muscle pain in back (VA 0% for lumbago), headaches (VA included with fibromyalgia rating), and arthritis in knees (VA NSC for right knee; left knee also NSC, addressed above). On the MEB history form, the CI indicated a history of treatment for “battle fatigue,” and the STR confirms mental health counseling and medications for adjustment disorder and depression, not otherwise specified. These notes, at five months pre-separation, document a normal mental status exam with Global Assessment of Functioning (GAF) of 60-70 (mild to moderate range). A VA psychiatric exam five months post-separation noted a mood disorder (CI endorsed “some depression, despair, irritability, anxiety, and emptiness;” examiner also noted alexithymia (a deficiency of understanding, processing, or describing ones emotions) and a history of occasional suicidal thought, with a GAF of 70 (some mild symptoms or some difficulty in social or occupational functioning, but generally functioning pretty well, has some meaningful interpersonal relationships). 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. The Board determined therefore that none of the stated conditions were subject to Service disability rating. The CI’s unfitting fibromyalgia considered the impact of all musculoskeletal pain symptoms and conditions associated with fibromyalgia as noted above.

Remaining Conditions. Other conditions identified in the DES file were right foot plantar fasciitis; right tarsal tunnel syndrome; hyperlipidemia; precancerous skin lesions on face; intermittent numbness in feet, hands, and right upper arm; hemorrhoids; a history of irritable bowel syndrome; and hysterectomy. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant 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. No other 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. The CI’s unfitting fibromyalgia considered the impact of all musculoskeletal pain symptoms and conditions associated with fibromyalgia as noted above.

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 right shoulder pain and possibly for the left plantar fasciitis condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the fibromyalgia condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right shoulder pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the left foot plantar fasciitis condition and IAW VASRD §4.73, the Board unanimously recommends no change in the PEB adjudication. In the matter of the left knee pain condition, the Board unanimously recommends no change from the PEB adjudication as not unfitting. In the matter of the depression, back pain, headaches, and right knee pain/arthritis 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, 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** |
| Fibromyalgia | 5025 | 10% |
| Right Shoulder Pain | 5099-5003 | 10% |
| Left Foot Plantar Fasciitis | 5399-5310 | 0% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110401, 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 (PD201100213)

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