RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100395 SEPARATION DATE: 20030307

BOARD DATE: 20120316

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Army, Specialist / E4 (71L10, Administrative Clerk), medically separated for chronic low back pain (LBP) without neurologic abnormality. The CI initially became symptomatic in 1997, after “lifting furniture.” 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). LBP 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 PEB adjudicated the LBP condition as unfitting, rated 10%, with application of the Department of Defense Instruction (DoDI) 1332.39 and Army Regulations (AR) 635-40. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “I had degenerative back disease, scoliosis and bursitis on both hips. (Supporting documentation is attached). I believed I should have received at least 20% or more and placed on the retired list”. The CI cites post separation worsening of her back condition. She also lists hypertension, migraines, left ankle stress fracture, right ankle strain, and hemorrhoids.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated** | | | **VA (2 Mo. After Separation) – All Effective 20030308** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain | 5299-5295 | 10% | Low Back Strain | 5295 | 10%\* | 20030507 |
| ↓No Additional MEB Entries↓ | | | Hypertension | 7101 | 10% | 20030507 |
| Acne with Scarring | 7828-7800 | 10% | 20030507 |
| 0% x 4 / NSC x 3 | | | 20030507 |
| **Combined: 10%** | | | **Combined: 30%** | | | |

\*Increased Low Back Strain 5295 to 20% (combined 40%) effective 20040407; Bilateral hips added 20050630.

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. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the 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 VA 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. 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.

The 2003 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, had been modified on 23 September 2002 to add incapacitating episodes (5293 intervertebral disc syndrome), and then changed to the current §4.71a rating standards on 26 September 2003, after the CI was separated. The 2003 standards for rating based on range-of-motion (ROM) impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. When older cases have goniometric measurements in evidence, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation.

Low Back Pain: There were two goniometric ROM evaluations in evidence proximate to separation which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT ~ 5 Mo. Pre-Sep  20021018 | VA C&P ~ 2 Mo. After-Sep  20030507 |
| Flex (0-90) | 40⁰ | 90⁰ |
| Ext (0-30) | 20⁰ | 35⁰ |
| R Lat Flex (0-30) | 30⁰ | 40⁰ |
| L Lat Flex 0-30) | 30⁰ | 40⁰ |
| R Rotation (0-30) | Not recorded | 34⁰ |
| L Rotation (0-30) | Not recorded | 34⁰ |
| COMBINED (240) |  | 240⁰ |
| Comment | Pain in lumbar region with flexion and extension.  No symptoms with lateral bending.  Normal gait, normal spinal contour, normal strength and reflexes. | Pain with movement, Mild tenderness  Normal posture, Normal gait. |
| §4.71a Rating\* | 20%\*\* | 10%\*\*\* |

\*VASRD rules in effect at the time; \*\*diagnostic code 5292; \*\*\* diagnostic code 5295

The CI first noted LBP in June 1997 after moving furniture. She was managed conservatively, but continued to have pain although she missed no work because of it. Plain films of the lumbar spine in 1999 were normal. While she could meet the requirements of her administrative duties, she could not perform basic soldiering tasks including physical fitness training and wearing protective gear and was non-deployable. The MEB physical exam was performed on 30 September 2002, over five months prior to separation. She had no radicular symptoms, bowel or bladder dysfunction or muscle atrophy. Motor, deep tendon reflex (DTR) and gait exams were normal. Lumbar spine was noted to have a normal curve and normal paravertebral fullness. Scoliosis was reported to have been shown on X-rays in service by an examining physician in July 2002; however, there was no muscle spasm present and the abnormality was more likely an incidental developmental finding (the x-ray report is not in evidence of the file) and not due to muscle spasm. ROM examination was performed by physical therapy two weeks after the narrative summary (NARSUM) and results are recorded in the table. The VA Compensation and Pension (C&P) exam was performed 7 May 2003, two months after separation. The history was similar to that of the MEB examiner. It noted that the LBP did not affect her activities of daily living. She was noted to have normal posture and gait on exam. Mild tenderness was noted over the lower thoracic and lumbo-sacral spine. Minimal increase in pain was noted with flexion. Neurological exam was noted to be normal and straight leg raise negative to 90 degrees. ROM was normal (the actual movement range was greater than normal in all planes except flexion which was normal). Imaging showed minimal spondylosis and some spurring of the thoracic spine and a normal lumbar spine. The C&P examiner concluded there was mild functional loss due to pain. The PEB and VA rated the back condition 10% using the code 5295, lumbosacral strain, a code no longer used. The Board notes that the initial VA exam was more proximate to the date of separation and more complete than the MEB exam. All Board members agreed that the preponderance of evidence most nearly approximated the 10% rating using VASRD code 5295 in effect at the time. The Board noted the physical therapy ROM results and considered whether a higher rating was supported by rating under diagnostic code 5292, limitation of motion of the lumbar spine, also in effect at that time. While the 40 degrees of flexion recorded at the time of the physical therapy examination supports consideration of a 20% rating, moderate limitation, under this code (as well as current rating criteria), the Board also noted that the VA C&P examination documented fully normal ROM, was closer to the time of separation, and was consistent with the anticipated severity suggested by the clinical pathology. The Board noted that the VA raised the rating to 20% using the VASRD criteria that became effective (23 August 2003) after the CI was separated from service; however, it was based on an examination dated 6 November 2004, 20 months after separation (which documented decreased flexion on exam and scoliosis on imaging). As previously noted, the PEB rating is not based on future potential worsening. After due deliberation in consideration of the totality of the evidence, the Board does not find adequate reasonable doubt in the CI’s favor for recommending a change from the PEB adjudication for the LBP condition.

Other Contended Conditions: The CI’s application asserts that compensable ratings should also be considered for bilateral hip bursitis, hypertension, migraines, left ankle stress fracture, right ankle strain, and hemorrhoids. The MEB NARSUM specifically noted that neck pain, hip pain, right ankle pain high blood pressure did not fail retention standards (were medically acceptable). The left ankle stress fracture had resolved years prior to separation. There is no evidence of duty impairment from migraine headaches and the CI did not check yes for headaches on dental questionnaires one year prior to separation. 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.

Remaining Conditions: Other conditions identified in the DES file included sinus pain, wrist pain, cysts, and acne. Several additional non-acute conditions or medical complaints were also documented. While the bilateral hip condition was mention in the commander’s statements, the remaining conditions were not. None of these conditions were clinically or occupationally significant during the MEB period or carried attached profiles at the time of separation. 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 additional conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. 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 chronic low back pain condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the bilateral hip bursitis, hypertension, migraines, left ankle stress fracture, right ankle strain, hemorrhoids, sinus pain, wrist pain, cysts and acne 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 re-characterization of the CI’s disability and separation determination, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5299-5295 | 10% |
| COMBINED | 10% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110429 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

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

Deputy Assistant Secretary

(Army Review Boards)