RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100397 SEPARATION DATE: 20050421

BOARD DATE: 20120423

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SPC/E-4 (Combat Medic Student), medically separated for chronic left hip pain. Left greater than right hip pain began in basic without attribution to any specific trauma aside from training. The left hip pain interfered with completion of AIT and performance of duty. 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). Left hip 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 PEB adjudicated the left hip condition as unfitting, rated 10% with specified application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Initial complaints of Lower Back Pain and conditions causing the Low Back Pain and disability that rendered the member unfit were ignored even though there is numerous documents that reported Low Back Pain in combination with hip, leg and pelvic pain. The reasons for the pain and limitations were not fully examined or acknowledged. These other conditions include left ilioinguinal strain (claimed as left hip pain), meralgia paresthetica, lumbar radiculopathy, synovial herniated pit (left) as documented by VA, and other sources, as well as pubic synthesis dysfunction, lumbargo, symptoms of all began during Basic, AIT, yet ignored, never diagnosed, or fully examined, just discharged from Army. Original “hip pain rated as slight and frequent 10/10 and 9/10 is not slight, frequent, sharp & throbbing.” Remarks section continues with “I have had consistent symptoms since injury in Basic and its progression through AIT and throughout the last 6 years. The cause of my low back pain, pelvic pressure, tingling and numbness in legs were never appropriately addressed. I repeatedly asked and made reports, yet was ignored. I was on crutches for 6 months, in pain, and exhausted and didn’t advocate for myself like I knew I should have done. After the VA also refused to recognize these conditions, no one wanted to diagnose me, just give me medication. All of these conditions affect one another and continue to this day. My back and these conditions are due to my Service in the Army and need to be acknowledged and recognized and no longer ignored.”

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20050301** | **VA (9 Mo. After Separation) – All Effective Date 20050422** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Lt Hip Pain | 5099-5003 | 10% | Lt Hip Calcific Tendonitis | 5099-5024 | 10% | 20060109 |
| ↓No Additional MEB/PEB Entries↓ | Rt Ilioinguinal Strain | 5299-5253 | 10% | 20060109 |
| Tilted Pelvis | 5236 | NSC | 20060109 |
| Lumbar Spine Condition | 5299-5237 | NSC | 20060109 |
| Lt Femur Condition | 5255 | NSC | 20060109 |
| Rt Femur Condition | 5255 | NSC | 20060109 |
| Combined: 10% | Combined: 20% |

NSC=Not Service Connected

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation, some of which were evaluated and not individually included in the formal service fitness determination. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the DES operates. The 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 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 Board is empowered to evaluate the fairness of fitness determinations, and to make recommendations for rating of conditions which it concludes would have independently prevented the performance of required duties (at the time of separation). The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. The Board also acknowledges the CI’s opinion that the service did not appropriately evaluate all of her medical conditions. It must be noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to allegations regarding suspected service improprieties. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB disability ratings and fitness determinations as elaborated above. Redress in excess of the Board’s scope of recommendations must be addressed by the Army Board for Correction of Military Records (ABCMR) and/or the United States judiciary system.

Left Hip Condition. The CI’s left hip pain was diagnosed as left hip calcific tendonitis and included an MRI documenting a synovial pit and some calcification of the tendon. The CI was not taking pain medications due to adverse side effects. There was no history of fracture or surgery and no incapacitating episodes. The left hip pain included the groin and pelvis issues and the CI used a heating pad. There were two range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| ROM –Left Hip (Thigh) | MEB ~ 5 Mo. Pre-Sep(20041124) | VA C&P ~ 9 Mo. After-Sep(20060109) |
| Flexion (0-125) | 120⁰ | 125⁰ |
| Extension (10-20) | 20⁰ | 30⁰ |
| Abduction (0-45) | 45⁰ | 45⁰ |
| Adduction (0-45) | 45⁰ | 25⁰ |
| Comment | Tenderness; pain with motion | “pain through these motions” |
| §4.71a Rating | 10% | 10% |

The Board carefully examined all evidentiary information available. The Army PEB and the VA used different coding options for the left hip condition, but both assigned the same rating percentage. Even though left hip ROM was not decreased at the VA exam, there was evidence of painful motion. All exams in evidence indicated painful left hip motion which met the §4.59 (painful motion) criteria for a 10% rating. The MEB exam also documented pain-limited motion of the hip joint that was noncompensable under the appropriate diagnostic codes for the hip, but met the 10% rating criteria under VASRD code 5003 or the codes that use the criteria for 5003, such as the VA rated 5099-5024 (tenosynovitis) analogous coding. There was no evidence of fracture, ankylosis, flail joint or greater limitation of flexion, extension or abduction to warrant rating higher than the 10%.

For a higher rating under code 5252 or 5253, there would need to be greater limitation of motion. There was not sufficient evidence in the treatment record to support that degree of left hip disability. After due deliberation, and careful consideration of all the evidence, the Board agreed that the preponderance of the evidence supported a disability rating of 10%. There was not reasonable doubt in the CI’s favor to justify a Board recommendation for greater than 10% for the left hip condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for lower back pain (LBP), lumbago; lumbar radiculopathy and meralgia paresthetica; left Ilioinguinal strain, synovial herniated pit (left), pubic synthesis dysfunction, and pelvic pain. Right hip pain was also considered as implied. The CI’s profile was L3 for left hip pain only, but may have provided shelter for the other contended conditions as they overlap on pain with walking, standing and sitting. The commander’s comment was not specific for diagnoses limiting the CI’s patient lifting and fitness training testing limitations. The synovial herniated pit (left) was considered in the left hip condition above. Regarding the lumbar radiculopathy and meralgia paresthetica conditions, there was no fixed peripheral nerve impairment that interfered with duty performance. There was no identified diagnosis for the right hip pain and no significant right hip pathology on imaging. The LBP and lumbago conditions were not to the level of being unfitting and the VA examiner opined “left hip calcific tendinitis with chronic pain. This tendinitis more likely than not accounts for her left-sided low back pain and femur pain as well.” There was no pelvic pathology identified and any contribution of the pelvis or symphysis to ambulation is considered under the unfitting left hip rating above.

All of these conditions were reviewed by the action officer and considered by the Board. There was not a preponderance of evidence in the CI’s favor 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. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere 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 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the left hip condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left hip condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the LBP, lumbago; lumbar radiculopathy and meralgia paresthetica; left Ilioinguinal strain, synovial herniated pit (left), pubic synthesis dysfunction, and pelvic 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 disability rating.

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 Left Hip Pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110520, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 XXXXXXXXXX

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXX, AR20120008201 (PD201100397)

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 XXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA