RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1100398 SEPARATION DATE: 20090913

BOARD DATE: 20120410

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (42A, Human Resource Specialist) medically separated for a narcolepsy condition that was diagnosed in 2008. 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/L3 profile and underwent a Medical Evaluation Board (MEB). Narcolepsy without cataplexy and chronic lower back pain were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Nine other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the narcolepsy without cataplexy condition unfitting, rated 20% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). It was determined that the remaining conditions were not unfitting. The CI made no appeals and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “I was only rated for Narcolepsy. I also have other medical conditions that were identified by the physician, but he felt were not reasonable or service connected. They hindered me from performing as a Soldier. These conditions were not considered during my Physical Evaluation Board (PEB). These are valid ongoing medical conditions that I have to deal with on a daily basis. I gave over 15 years of dedicated service to the Army and had set a goal to be a retired Army Veteran, but my medical conditions prevented me from being able to perform fully as a Noncommissioned Officer. Request that I am granted a medical retirement based on my medical conditions and my meritorious service while serving as a Soldier.” She additionally lists all of her VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20090605** | **VA (5 Mo. After Separation) – All Effective 20090914** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Narcolepsy | 8108 | 20% | Narcolepsy | 8911-8108 | 10% | 20100226 |
| Chronic Low Back Pain | Not Unfitting | Lumbar Strain | 5237 | 20% | 20100226 |
| Bilateral Knee Pain | Not Unfitting | R. Knee Patellofemoral Synd. | 5261 | 10% | 20100226 |
| L. Knee Patellofemoral Synd. | 5261 | 10% | 20100226 |
| Carpal Tunnel Syndrome | Not Unfitting | Left Carpal Tunnel Syndrome | 8515 | 10% | 20100226 |
| Right Carpal Tunnel Synd. | 8512 | NSC | 20100226 |
| Tension Headaches | Not Unfitting | Migraine Headaches | 8100 | 30% | 20100226 |
| Arrhythmia | Not Unfitting | No VA Entry |
| Cervical Dysplasia | Not Unfitting | No VA Entry |
| Bilateral Bunions | Not Unfitting | Left Hallux Valgus | 5280 | 0% | 20100226 |
| Right Hallux Valgus | 5280 | 0% | 20100226 |
| Left Ankle Pain | Not Unfitting | Left Ankle Strain | 5271 | 10% | 20100226 |
| Dizziness | Not Unfitting | Vertigo | 6299-6205 | NSC | 20100226 |
| Iron Deficiency Anemia | Not Unfitting | Anemia | 7700\* | 0% | 20101213 |
| ↓No Additional MEB Entries↓ | 0% x 1 / Not Service Connected x 2 | 20100226 |
| **Combined: 20%** | **Combined: 70%** |

\*Effective 5 October 2010

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions 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. 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 reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed 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.

Narcolepsy Without Cataplexy Condition. For a few years prior to the diagnosis of narcolepsy, the CI experienced excessive daytime sleepiness. Worsening of symptoms led to a sleep study in September 2008 which discovered the narcolepsy condition. The evaluation also noted the occurrence of other manifestations characteristic of narcolepsy including sleep paralysis (awakening but unable to move) and vivid nightmares while trying to fall asleep (hypnogogic hallucinations). Obstructive sleep apnea (OSA) was ruled out. The use of medication improved her symptoms, but not sufficiently to prevent daytime sleepiness. The neurologist on 24 February 2009 noted that an Epworth sleepiness scale was 11 after she started medication, which was reportedly significantly improved from prior readings (0-9 is normal). The narrative summary (NARSUM) examiner (6 May 2009) noted that although her profile prevented her from driving or participating in live fire activities, she never received counseling statements or poor performance appraisals because of her condition. She reported that while she felt tired she did not nap at work and sleep attacks were not reported. The VA Compensation and Pension (C&P) examiner (performed on 26 February 2010, 5 months after separation) noted that the narcolepsy condition was controlled on medication. Her Air Force occupation and her activities of daily living were unaffected by her condition. The PEB and VA appropriately applied the VASRD directive to rate narcolepsy as epilepsy: petit mal, under the general rating formula for minor seizures. Although sleep attacks were not reported and the CI did not experience episodes of cataplexy which are recognized as equivalent to minor seizure episodes under the 8108 code, the PEB assigned a 20% rating (which assumes two minor seizure episodes in the last 6 months). In assigning a 10% rating under the same VASRD code, the VA acknowledged that symptoms were controlled by medication. There is no evidence to support a higher 40% rating which requires five to eight minor seizures per week. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the narcolepsy without cataplexy condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were chronic low back pain (LBP), chronic bilateral knee pain, bilateral carpal tunnel syndrome, tension headaches, arrhythmia, cervical dysplasia, bilateral bunions (hallux valgus), left ankle pain, dizziness and iron deficiency anemia. LBP first presented as a lumbar strain in 1999. After another lumbar strain episode in 2000, the record was silent regarding back issues until January 2009 when she experienced muscle spasm as a result of turning to reach for something. She was treated with pain medication at that time. In April 2009 she was referred to a chiropractor although a record of that visit is not in evidence. The NARSUM examiner in May 2009 reported that activities did not cause flare ups and that she had not experienced pain recently. Examination noted a normal gait, non-painful movements and essentially normal range of motion. Lumbar radiographs were unremarkable. Orthopedic evaluation and magnetic resonance imaging were not required. At the time of the MEB she was placed on an L3 profile. The C&P examiner (5 months after separation) stated the back condition did not affect her job or her activities of daily living. The Board considered the history of infrequent back strain over 10 years of service and noted the most recent episode was a minor strain triggered by non-strenuous movement. X-rays and physical examinations were unremarkable. The evidence indicated that the most recent back strain was consistent with a common minor back strain from which recovery was expected. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the low back pain condition.

Bilateral knee pain began in about 1997 at which time a diagnosis of patellofemoral pain syndrome was made. In 2001 the CI was profiled for walking at her own pace and distance, with unlimited cycling and swimming. There are no clinic visits in evidence for knee pain after 2001. The NARSUM examiner noted a permanent P2 profile for the condition. Walking for prolonged periods caused flare ups but she was able to take an alternate PT test in 2008 despite the condition. This condition was not implicated in the commander’s statement or noted as failing retention standards. Bilateral carpal tunnel syndrome was diagnosed in 2008 on the basis of pain and numbness in hands (left worse than right) that was present for years. The NARSUM examiner stated that her symptoms had resolved although she still wore splints at night. An examiner on 3 April 2009, also stated the condition was resolved. This condition was not profiled, implicated in the commander’s statement or noted as failing retention standards. Tension headaches and migraine headaches were comingled in the clinical record. Migraines were diagnosed in 1999. The record shows that the CI received prescriptions for abortive treatment, but did not take prophylactic medications. During an outpatient visit in January 2009 the CI stated her headache was related to the stress of Chapter 18 (administrative separation) proceedings for being overweight. At an MEB follow up exam on 18 March 2009, she reported migraine or tension headaches occurred twice per week and she stated that quarters were required five times during the last 6 months. In the NARSUM exam; however, it was noted that the medical records noted only one requirement for quarters in the last 6 months. The NARSUM examiner also indicated that medication usually relieved the CI’s headaches and that she never saw a specialist for the condition. The C&P examiner stated that the CI was able to perform normal activity during a headache. This condition was not profiled, implicated in the commander’s statement or noted as failing retention standards. None of the remaining conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All of the above conditions 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 MOS 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 asserts that compensable ratings should be considered for fibrocystic breast disease. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that the condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the fibrocystic breast disease condition was not subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were left sided numbness and weight gain. Neither of these conditions was significantly clinically or occupationally active during the MEB period, neither carried attached profiles and neither was 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. Additionally vertigo, right ankle condition and sinusitis were noted in the VA rating decision proximal to separation, but 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.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the narcolepsy without cataplexy condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the chronic low back pain, chronic bilateral knee pain, bilateral carpal tunnel syndrome, tension headaches, arrhythmia, cervical dysplasia, bilateral bunions (hallux valgus), left ankle pain, dizziness and iron deficiency anemia conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the fibrocystic breast disease condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the left sided numbness and weight gain 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. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Narcolepsy Without Cataplexy | 8108 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110506, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 XXXXXXXXX

 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, AR20120007700 (PD201100398)

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 XXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA