RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1100412 SEPARATION DATE: 20030317

BOARD DATE: 20120706

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPT/O3 (88A, Transportation Officer), medically separated for a lumbar spine condition. She experienced an insidious onset of back pain early in her career which worsened over time. She was diagnosed with spondylolysis (degenerative disease of the articular facets) and non-surgical disc disease. The condition could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The lumbar spine condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated the lumbar spine condition as unfitting, rated 10%, citing criteria of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with that disability rating.

CI CONTENTION: “My back pain has steadily worsened and requires weekly treatment/therapy. Spinal cortisone and surgery recommended by orthopedists and neurologists. Continue seeking alternative treatments for managing pain. Recently tested positive for rheumatoid arthritis. VA recognized bursitis in hip and rhinitis as chronic conditions. I also struggle with chronic cervical pain. Thank you for taking the time to review my file.” She additionally states that she was “advised by my commander to fight the rating....that in his opinion it was too low.” She believes that the proceedings were rushed by the war tempo of the time; and, states that she felt “embarrassed for what I considered a career failure;” therefore not wanting to incur the perceived stigma of submitting an appeal. She concludes with, “However, I do feel that the process was rushed and my personal situation was not evaluated well due to the fact that I have several other major issues (mainly the chronic hip pain and immune issues (rhinitis, inflammation issues) that I believe were caused by my exposure to DS2 and CS tablets [for which she included evidence of toxicity].”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (Enclosure 3, paragraph 5.e.2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The rating for the unfitting lumbar spine condition is addressed below; but, all of the additional conditions noted in the contention (rheumatoid arthritis, hip bursitis, rhinitis, cervical pain, and “immune issues”) were not PEB adjudicated for fitness; and, are therefore not covered by the DoDI 6040.44 defined scope. The above conditions, or any contention not requested in this application, remain eligible for future consideration by the Army Board for Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20021218** | **VA (2 Mo. Post-Separation) – All Effective Date 20030318** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5299-5295 | 10% | Low Back Pain … Spondylolisthesis | 5293-5292 | 20% | 20030506 |
| No Additional MEB/PEB Entries | Chronic Tonsillitis | 6599-6516 | 10% | 20030506 |
| Bilateral Trochanteric Bursitis | 5019-5252 | 10% | 20030618 |
| 0% x 3/Not Service-Connected x 13 | 20030506 |
| **Combined: 10%** | **Combined: 40%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service related conditions continues to burden her. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or complications of conditions resulting in medical separation; or, for conditions caused by service and subsequently identified. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), 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; and, for compensating service-connected conditions which arise after separation. The Board further acknowledges the CI’s assertions that her medical separation proceedings were rushed; but, must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to such allegations. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of rating and fitness determinations at separation, as elaborated above.

Lumbar Spine Condition. The CI suffered progressive field and operational limitations with her back condition, and the record reflects that she was very motivated to push through the pain and physical impositions. She underwent a protracted trial of conservative measures which included physical therapy, various medication regimens, and activity limitations; but, her symptoms progressed. Imaging demonstrated bilateral spondylosis and mild spondylolisthesis (vertebral slippage) at the L5 level, with disc disease at L5/S1 (degenerative changes, mild herniation without nerve encroachment). Surgical options were discussed, but not recommended. The narrative summary (NARSUM) noted pain exacerbated by prolonged sitting and standing, minimal load bearing, and any running. Radicular symptoms were not noted, and all neurologic examinations in the record were normal. The MEB examiner documented normal gait, mild spinal tenderness, and “some” range-of-motion (ROM) limitations “secondary to pain in all axes.” There are no formal ROM measurements identified in the service file. The VA Compensation and Pension (C&P) evaluation, 2 months after separation, documented only a cursory history, and noted a complaint of back pain dating to 1995/96. The physical examination documented a normal gait and paraspinal pain in all ROMs. The recorded ROM measurements were flexion of 50⁰ (normal 90⁰) and combined ROM of 125⁰ (normal 240⁰).

The Board directs attention to its rating recommendation based on the above evidence. 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, were changed to the current §4.71a rating standards in 2004. The 2003 standards for rating 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. IAW VASRD §4.7 (higher of two evaluations), if non-ROM rating criteria under any of the other codes is favorable, the Board will premise its recommendation accordingly. For the reader’s convenience, the 2003 rating codes under discussion in this case are excerpted below.

**5292** Spine, limitation of motion of, lumbar:

Severe ………………………………………………………..……….…………..... 40

Moderate …………………………………….……………….…….…………...…. 20

Slight ………………………………………………………..……………….…..….10

**5295** Lumbosacral strain:

Severe; with listing of whole' spine to opposite side, positive

Goldthwaite's sign, marked limitation of forward bending in

standing position, loss of lateral motion with osteo-arthritic

changes, or narrowing or irregularity of joint space, or some

 of the above with abnormal mobility on forced motion ………………........... 40

With muscle spasm on extreme forward bending, loss of lateral spine

motion, unilateral, in standing' position ...……………...……..………….….. 20

With characteristic pain on motion ………………………………..……....………. 10

With slight subjective symptoms only …………..…………...………………....….. 0

The PEB’s 10% rating under 5295 is supported by the application of that code, since the specific criteria for the higher ratings were not in evidence. The 5293 (intervertebral disc syndrome) code available at the time is not applicable to this case, since there were no radicular findings or ratable “attacks.” A rating >10% could therefore be entertained only under the 5292 limitation of motion code, as applied by the VA. Since the CI’s ROM limitations were on the basis of pain only, the PEB’s application of the USAPDA pain policy precluded a higher rating on that basis. Furthermore no ROM measurements were provided by the MEB, thus the Board finds the VA evaluation significantly more probative for potential rating under 5292. The VA ROM limitations cited above (50% of normal) are reasonably characterized as “moderate;” an opinion shared by the VA rater. It is also noted that the standardization of rating for ROM limitation under the contemporary VASRD general rating formula would assign a 20% rating for a flexion of 50⁰. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the lumbar spine condition under code 5292.

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 lumbar spine condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the lumbar spine condition, the Board unanimously recommends a disability rating of 20%, coded 5292 IAW VASRD §4.71a. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lumbar Degenerative Disc Disease with Spondylosis | 5292 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110522, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs’ Treatment Record

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 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 XXXXXXXXXXXXX, AR20120012294 (PD201100412)

1. 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 to modify the individual’s disability rating 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA