RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100421 SEPARATION DATE: 20061120

BOARD DATE: 20120217

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92Y, Unit Supply Specialist), medically separated for right hip and bilateral wrist conditions*.* She developed right hip pain during initial entry training (IET) which initially responded to conservative treatment and temporary profiles. In 2002 the CI was diagnosed with bilateral ganglion cysts; and, in 2003 underwent surgical intervention for the left wrist. She experienced post-operative resolution for the left wrist; but, eventually the cyst returned; and, persistent pain from both wrists; along with recurrent right hip pain, were refractory to further treatment. The CI was unable to fully perform within her Military Occupational Specialty (MOS) or meet physical fitness standards; was placed on permanent L3 and U3 profiles; and, referred for a Medical Evaluation Board (MEB). Right hip bursitis and bilateral wrist pain were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable conditions IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The PEB adjudicated the right hip pain and bilateral wrist pain conditions as unfitting, rated 0% each, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 0% combined disability rating.

CI CONTENTION: “In 2006 the condition was diagnosed as bursitis of the right hip; after years of attempting to treat the pain and then the condition itself, unsuccessfully, it was decided that the only option left was a medical discharge. In July 2010, Dr. [Name Redacted], a private Rheumatologist, began evaluating the condition and running the necessary tests and was able to diagnose the condition as ankylosing spondylitis based on symptoms and MRI’s showing deterioration of the right hip joint conducive of ankylosing spondylitis. The VA reviewed all medical records and as of September 2010, made a determination of service connection for ankylosing spondylitis as directly related to military service. The determination was made due to the reported symptoms related to this condition, being the same symptoms reported during military service that were labeled as bilateral hip pain as being the initial manifestation of the current ankylosing spondylitis.” She mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20060912** | **VA (3 Mo. After Separation) – All Effective 20061121** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Hip Pain | 5019 | 0% | Right Hip Osteoarthritis | 5003-5252 | 10% | 20070216 |
| Bilateral Wrist Pain | 5099-5003 | 0% | Right Wrist Strain | 5215 | 0% | 20070216 |
| Left Wrist Strain | 5215 | 0% | 20070216 |
| ↓No Additional MEB/PEB Entries↓ | Lower Back Pain | 5237 | 10%\* | 20070216 |
| Mood Disorder | 9435 | 30% | 20070216 |
| 0% x 2 | 20070216 |
| **Combined: 0%** | **Combined: 40%** |

\* Code changed to 5237-5240 to reflect associated ankylosing spondylitis (without rating change) effective 20100924.

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertion that her service hip condition was later opined to be an early manifestation of ankylosing spondylitis, as subsequently diagnosed and currently rated by the Department of Veterans’ Affairs (DVA); but, notes that the scope of its recommendations does not extend to conditions which were not diagnosed at the time of medical separation. The Board furthermore has neither the jurisdiction nor authority to scrutinize or render opinions in reference to a possibly implied assertion that the lack of this diagnosis reflected a failure of service medical care. 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. In this endeavor the Board 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 DVA, operating under a different set of laws (Title 38, United States Code). The Board’s operative instruction, DoDI 6040.44, specifies a 12 month interval for special consideration to VA findings. This does not mean that later VA evidence is disregarded, but the Board’s recommendations are directed to the implications of the evidence which are referable to the clinical circumstances at separation.

The PEB rated the left wrist and right wrist under the single analogous 5003 (degenerative arthritis) code. This coding approach is countenanced by AR 635-40, but IAW DoDI 6040.44 the Board must apply only VASRD guidance to its recommendation. The Board must therefore apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. Since §4.71a criteria are met for separate joint ratings in this case, the Board is pursuing separate rating and fitness evaluations as follows.

Right Hip Condition. Over the four years of her military service the CI underwent extensive evaluation of her persistent right hip pain. She had profiles limiting aggravating activities for most of this period, principally due to pregnancies. Serial imaging and radionuclide (scan) studies, and specialty consultations, ruled out stress fracture or other bony pathology of the hip; and, the ultimate diagnosis was trochanteric bursitis. There was no suggestion of spondylitis or other inflammatory arthritis based on this comprehensive diagnostic evidence. There were two goniometric range-of-motion (ROM) evaluations and one non-goniometric ROM evaluation in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. These are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Right Hip ROM | PT ~4 Mo. Pre-Sep | MEB ~4 Mo. Pre-Sep | VA C&P ~3 Mo. Post-Sep |
| Flexion (Normal 125⁰) | 31⁰ | Full | 125⁰ |
| Extension (20⁰) | 9⁰ | Lacks 10-15⁰ | 30⁰ |
| Abduction (45⁰) | 20⁰ | --- | 25⁰ |
| Adduction (45⁰) | 28⁰ | --- | 45⁰ |
| Comment | ROM limited by pain; full passive ROM. | Lacks 10-15⁰ in internal and external rotation. | Normal gait. DeLuca negative |
| §4.71a Rating | 20% | 10%\* | 10%\* |

 \* Conceding §4.59 (painful motion) as below.

Orthopedic clinic notes over a period of several months leading up to the MEB consistently showed a full ROM in flexion, abduction, and internal/external rotation, with mild pain on abduction. The MEB general physical exam (seven months pre-separation) also noted a full ROM of the right hip. In the narrative summary (NARSUM) the examiner noted point tenderness over the right greater trochanter (hip prominence). Hip ROM lacked 10-15⁰ of complete internal rotation, external rotation and extension, but was apparently full to flexion. A physical therapy ROM exam recorded full passive ROM, but markedly restricted active ROM measured to the onset of pain. The post-separation VA Compensation & Pension (C&P) exam recorded a normal gait and a normal motor exam of the lower extremities without muscle atrophy. ROM was normal in all planes except abduction (where motion was restricted to 25⁰) with pain noted on palpation of the trochanteric bursa. There was no additional loss of motion with repetitions. Additional imaging and radionuclide studies were performed by the VA soon after separation, which also revealed no abnormalities of the bones or joint; but, were suggestive of mild trochanteric bursitis of the right hip.

The Board first considered the probative value of the data presented above. The physical therapy exam data was the clear outlier. These ROM measurements were markedly worse than any other data in evidence, and quite inconsistent with the minimal underlying pathology. The PT exam technique of recording motion only to the onset of pain is not VASRD compliant. The Board therefore placed little probative value on this exam. The VA C&P exam was the only complete, fully VASRD compliant exam in evidence. This exam was also most proximate to separation, and reflected findings consistent with the totality of evidence. This exam, therefore, weighed heavily in the Board’s rating recommendation. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB’s DA Form 199 reflected application of the USAPDA pain policy for rating, and its 0% determination was not consistent with §4.71a standards. Following a detailed discussion of the evidence, the Board concluded that the bursitis condition (which was the appropriate diagnosis at separation) caused a modest, non-compensable loss of ROM of the CI’s right hip; but, that there was ample evidence to support application of §4.59 (painful motion) to achieve a minimal compensable rating under the 5019 (bursitis) code. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the right hip condition.

Bilateral Wrist Conditions: The CI developed bilateral ganglion cysts in 2002. The left cyst was considerably more symptomatic and was resected in 2003, with resolution of symptoms until about six months prior to initiation of the MEB. At that time, the CI reported that both wrists hurt about three days per week; with predominantly right wrist symptoms. A ganglion cyst was identified in the right wrist, and in October 2006 (one month after the PEB) the CI underwent surgical resection of the right cyst. Post-operative notes indicated resolution of symptoms. There was one goniometric and one non-goniometric ROM evaluation in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. These are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Wrist ROM | MEB ~4 Mo. Pre-Sep | VA C&P ~ 3 Mo. Post-Sep |
| Left | Right | Left | Right |
| Dorsiflexion/Extension (0-70⁰) | Full AROM | Full AROM | 70⁰ | 70⁰ |
| Palmar Flexion (0-80⁰) | 80⁰ | 80⁰ |
| Ulnar Deviation (0-45⁰) | 45⁰ | 45⁰ |
| Radial Deviation (0-20⁰) | 20⁰ | 20⁰ |
| Comments | Before right wrist surgery. | After right wrist surgery |
| §4.71a Rating | 10%\* | 0% |

 \* Conceding §4.40 (functional loss) as below.

The MEB examiner reported a full ROM of both wrists with normal grip strength and sensory findings. He could not identify a ganglion cyst at the time of examination, but quoted an orthopedic clinic note from one week earlier which did identify a tender mass. An orthopedic clinic note after the MEB, but prior to surgery, also recorded a full ROM (with pain at the extremes of motion). Following the MEB proceedings, a highly restrictive profile was issued to the CI. At the post-separation VA C&P exam the CI reported intermittent right wrist symptoms that occurred primarily with heavy activity, but did not cause her to lose time from work. Regarding the left wrist, the CI reported that “it only bothers her now if she is doing a lot of heavy lifting.” The VA examiner recorded a positive Tinel’s sign on the right, a negative Tinel’s sign on the left and a negative Phalen’s maneuver bilaterally. The motor exam was also normal bilaterally. ROM was normal and the CI had “no additional loss of range motion for painful motion, lack of endurance, instability, weakness, fatigue, flare ups or with swelling or pain on palpation.” VA radiographs of both wrists were normal. In considering the probative value of this data, the Board noted that the VA C&P exam was the only complete and VASRD compliant exam in evidence; and, was also more proximate to the date of separation. This exam, therefore, was assigned predominant probative value in the Board’s deliberations.

Regarding the right wrist condition, the Board concedes that the condition was unfitting at the time of the PEB based on the PEB’s judgment and profile restrictions (that included carrying and firing a weapon). The functional impairment of the right wrist (as reflected in the physical profile) and the minimal objective findings warrant at most a 10% rating under the analogous 5099-5024 (tenosynovitis) code, which defaults to 5003 (degenerative arthritis) rating criteria. No other coding or rating option for a higher rating can be supported by the evidence. The Board further notes that subsequent to the PEB, but prior to separation, the CI underwent surgery of her right wrist ganglion cyst with good results (noting, however, some residual mild ROM impairment documented in a post-operative note soon after surgery). It may be safely concluded that the VA C&P exam findings (reflecting the response to surgery) were more probative to the impairment at separation than was the pre-operative MEB exam; and, that the intermittent symptoms and normal findings recorded in that exam were correctly rated 0% by the VA. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 0% for the right wrist condition, coded 5099-5024.

As previously elaborated, the Board next considered whether the left wrist condition remains separately unfitting, having de-coupled it from a combined PEB adjudication. In analyzing the intrinsic impairment for appropriately coding and rating the left wrist condition, the Board is left with a questionable basis for arguing that left wrist pain was indeed independently unfitting. The left wrist was scantly mentioned in the service treatment record (STR) after the 2003 corrective surgery, was minimally symptomatic by the CI’s own assessment, and had no identifiable pathology in evidence beyond a minimally tender surgical scar. After due deliberation, the Board agreed that evidence does not support a conclusion that left wrist pain, as an isolated condition, would have rendered the CI incapable of continued service within her MOS; and, accordingly cannot recommend a separate service rating for it.

Remaining Conditions. Other conditions identified in the DES file were daytime sleepiness, depressive disorder, irritable bowel syndrome, urine incontinence, back pain, bilateral knee pain, chest pains of undetermined nature, shortness of breath, and headaches. Several additional non-acute conditions or medical complaints were also documented. A sleep study ruled out sleep apnea, and a psychiatric evaluation determined that the depressive disorder did not warrant disposition through medical or administrative channels; and did not warrant a psychiatric addendum to the NARSUM. None of the other conditions were significantly clinically or occupationally active 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 12 months of separation or contended by the CI. 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 hip and wrist conditions was operant in this case and those conditions were adjudicated independently of that policy by the Board. In the matter of the right hip condition, the Board unanimously recommends a rating of 10% coded 5019 IAW VASRD §4.71a. In the matter of the bilateral wrist condition, the Board unanimously recommends that each joint be separately adjudicated as follows: an unfitting right wrist condition coded 5099-5024 and rated 0% IAW VASRD §4.71a; and, a determination that the left wrist condition was not unfitting and ratable at separation. In the matter of the sleep disorder and depressive disorder 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bursitis, Right Hip  | 5019 | 10% |
| Ganglion Cyst and Surgical Residuals, Right Wrist | 5099-5024 | 0% |
| Ganglion Cyst and Surgical Residuals, Left Wrist  | Not Unfitting |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110523, 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

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 to 10% 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

 Deputy Assistant Secretary

 (Army Review Boards)