RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD1100427 SEPARATION DATE: 20021219

BOARD DATE: 20120216

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SPC/E-4 (76J, Medical Supply Technician) medically separated for chronic back pain*.* Her back pain began in October 2000 with lifting, and was exacerbated the following year when she was involved in a motor vehicle accident. She did not respond adequately to treatment to fully perform within her Military Occupational Specialty (MOS) or meet physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Chronic back pain and scoliosis were forwarded to the Physical Evaluation Board (PEB) as separate 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 are addressed below. The PEB adjudicated chronic back pain as unfitting, rated 10%, citing criteria from the Veterans Administration Schedule for Rating Disabilities (VASRD). The submitted scoliosis condition was separately adjudicated as existing prior to service (EPTS) without permanent service aggravation and therefore not ratable. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Mechanical back pain more severe & limiting than 10% given.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20020904** | **VA (13 Mo. After Separation) – All Effective 20021220** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Back Pain | 5295 | 10% | Mechanical Low Back Pain with Scoliosis | 5010 | 10% | 20040120 |
| Scoliosis | EPTS | ---% |
| ↓No Additional MEB/PEB Entries↓ | Radiculopathy Right Lower Extremity  | 8526 | 10% | 20040120 |
| 0% x 2 / Not Service Connected x 7 | 20040120 |
| **Combined: 10%** | **Combined: 20%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment implied in the CI’s application regarding the significant impairment with which her service-aggravated condition continues to burden her. It is a fact, however, that 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. 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. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

The 2002 VASRD coding and rating standards for the spine, which were in effect at the CI’s separation, were updated 23 September 2002 for code 5293 (rating based on incapacitating episodes) and changed to the current §4.71a rating standards on 26 September 2003. The 2002 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. The Board reconciles (to the extent possible) its opinion regarding degree of severity under the older qualitative ratings with the quantitative ratings specified in the current §4.71a general rating formula for the spine.

Lumbar Spine Condition. There are numerous entries in the service treatment record (STR) regarding the CI’s back condition from the time of injury until her final separation. There are no medical entries documenting complaints of bowel or bladder symptoms, weakness or paresthesia of the lower extremities, and no documentation that the CI was ever confined to quarters for treatment. Radiographs were normal except for mild scoliosis and mild disc space narrowing at L5/S1. The orthopedic consultant recommended conservative management; and, she failed a trial of physical therapy and medications. The narrative summary (NARSUM) included the history that the CI had difficulty performing her duties, and had been issued a permanent profile that was sufficiently restrictive as to preclude her from performing her duties in a deployed environment. There were two goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM  | MEB ~6 Mo. Pre-Sep | VA C&P ~13 Mo. Post-Sep |
| Flex (90⁰ Normal) | 80⁰ | >90⁰ |
| Combined (240⁰) | Incomplete | Incomplete |
| Comment | Normal gait. | Palpable spasm; painful motion. |
| §4.71a Rating | 10% | 10% |

The MEB physician documented painful, but minimally limited, ROM of the lumbar spine. The gait was noted to be normal, as were the neurological findings. At the VA Compensation & Pension (C&P) evaluation, the CI related a history of her injury and symptoms that conflicted with those recorded in the NARSUM and STR; and, included new symptoms of a radiculopathy. The VA examiner noted a “slight axial, forward guarding” gait with “no obvious limp” and left paraspinal muscle spasm. ROM was full, but elicited pain. The lower extremity motor exam and reflexes were normal. The examiner diagnosed mechanical low back pain, radiculopathy of the right lower extremity, and scoliosis. He opined that the scoliosis was likely congenital, but could not give a definitive opinion regarding service connection.

The Board must correlate the above clinical data with the VA rating schedule in effect at the time of the CI’s separation. For convenience the applicable codes are excerpted below:

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

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

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

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

**5293** Intervertebral disc syndrome:

With incapacitating episodes having a total duration of at

least six weeks during the past 12 months............................................................... 60

With incapacitating episodes having a total duration of at least

four weeks but less than six weeks during the past 12 months………………...…..40

With incapacitating episodes having a total duration of at least

two weeks but less than four weeks during the past 12 months……………………20

With incapacitating episodes having a total duration of at least

one week but less than two weeks during the past 12 months………………….….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 Board notes that the MEB exam was sufficiently well documented in terms of ratable data for the VASRD in effect. The VA exam falls outside the DoDI 6040.44 prescribed interval from separation, and thus is marginally probative; but, was similar to the MEB exam in terms of ratable data. The PEB and VA chose different coding options, but this did not bear on rating. The PEB’s DA Form 199 quoted the 10% criteria under 5295 as cited above in support of its rating decision. The 20% rating for 5295 is fairly specifically defined as noted above; and, neither the MEB nor the VA evidence supported criteria for a rating higher than 10% under this code. The Board readily agreed that the 5293 code (intervertebral disc syndrome) was not applicable in this case since no data in evidence suggested that the CI suffered incapacitating episodes per the amended VASRD definition in effect (as elaborated above), “a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician.” Finally, the Board considered a rating under the 5292 code for limitation of spine motion; but, the minimally impaired ROM documented by both the MEB and VA examiners would only justify a “slight” 10% rating via that route. It is also noted that application of the current VASRD §4.71a criteria for rating of the spine, which went into effect nine months after the CI’s separation, would also yield a 10% rating based on ROM. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s adjudication of the lumbar spine condition.

The Board considered additional rating under a peripheral nerve code as conferred by the VA. It is noted that there were no documented radicular symptoms in the DES file or STR, and no objective or electrodiagnostic confirmation of peripheral nerve impairment. The Board must establish a functional impairment linked to fitness in order to recommend a separate service rating for radiculopathy associated with unfitting spine conditions; a threshold clearly not reached by the evidence in this case.

Other PEB Conditions. The only other condition adjudicated by the PEB was scoliosis, which was determined to be EPTS; although, it was specified in the DA Form 199 that the EPTS contribution was indeterminate (stated as “not clear” in the NARSUM), and therefore no rating deduction was applied. The action officer opines that, to a reasonable degree of certainty, the scoliosis was neither acquired from nor affected by service activities. Furthermore it should be noted that the 2002 VASRD (unlike the current standards which permit a 20% rating for abnormal contour) makes no provision for additional rating based on scoliosis, even if eligibility for service rating were conceded. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change in the PEB adjudication of the scoliosis condition.

Remaining Conditions. Other conditions identified in the DES file were sensorineural hearing loss, knee pain, asthma and frequent headaches. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically 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 twelve 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. 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 chronic back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the scoliosis condition, the Board unanimously recommends no change from the PEB adjudication as EPTS without service aggravation. 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, as follows:

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

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 2010511, 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)