RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100454 SEPARATION DATE: 20081227

BOARD DATE: 20120112

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (68D, Operating Room Specialist), medically separated for cervical spine and left foot conditions. The CI suffered a gradual onset of neck pain in 2008, manifested as dull pain and right hand weakness while typing. The neck pain worsened with standing, prolonged driving, and wearing Kevlar or body armor; and, she reported dropping surgical instruments due to the hand numbness. The CI’s foot pain began in 2006 when she was diagnosed with plantar fasciitis. In June 2007 she underwent a left bunionectomy, but developed postoperative pain. She did not respond adequately to treatment to fully perform within her Military Occupational Specialty (MOS) or meet physical fitness standards for either of the conditions; was issued permanent U3 and L3 profiles; and, was referred for a Medical Evaluation Board (MEB). Cervicalgia, hallux valgus and plantar fasciitis were forwarded to the Informal Physical Evaluation Board (IPEB) as separate medically unacceptable conditions IAW AR 40-501. Four other conditions, as identified in the rating chart below, were evaluated and forwarded by the MEB as medically acceptable conditions. A fifth condition, obesity, was also forwarded; but, is not a ratable condition IAW both DoD and VA regulations, and will not be discussed further. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. An IPEB adjudicated the cervical and foot conditions (appropriately combining the interdependent podiatric conditions submitted by the MEB) as unfitting, rated 10% each, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “Applicant has become unemployable. See attached MED [*viz*] Board Documents, Departments of Veterans Affairs initial rating, and Department of Veterans Affairs unemployable rating.” 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:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20081021** | | | **VA (1 Mo. After Separation) – All Effective 20081228** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Cervicalgia | 5242 | 10% | Cervical Spine DDD | 5243 | 10%\* | 20081124 |
| Left Foot Hallux Valgus … Associated With Plantar Fasciitis | 5280 | 10% | Left Hallux Valgus | 5280 | 0% | 20081124 |
| Left Plantar Fasciitis | 5284 | 0% | 20081124 |
| Bunionectomy Scar | 7805 | 0% | 20081124 |
| Carpal Tunnel Syndrome | Not Unfitting | | Left Carpal Tunnel Syndrome | 8515 | 10% | 20081124 |
| Right Carpal Tunnel Syndrome | 8515 | 10% | 20081124 |
| Pes Planus | Not Unfitting | | Bilateral Pes Planus | 5276 | 0% | 20081124 |
| Allergic Rhinitis | Not Unfitting | | Allergic Rhinitis | 6599-6510 | NSC | 20081124 |
| Palpitation | Not Unfitting | | Heart Condition | 7099-7005 | NSC | VARD |
| Obesity | Not Ratable | | Obesity | 7999-7913 | NSC | 20081224 |
| ↓No Additional MEB/PEB Entries↓ | | | Hysterectomy | 7617 | 50% | 20100309 |
| Mood Disorder With Dysthymia | 9434 | 30% | 20081126 |
| Left Knee Condition | 5257-5010 | 10% | 20100511 |
| Right Calcaneal Spur | 5284-5010 | 10% | 20100511 |
| Right Knee Condition | 5257-5010 | 10% | 20100511 |
| Stress Fracture, Right Shin | 5299-5262 | 10% | 20100511 |
| Stress Fracture, Left Shin | 5299-5262 | 10% | 20100511 |
| Sesamoidosis Of The Left Foot | 8521 | 10% | 20100115 |
| 0% x 9 / Not Service Connected x 1 | | | 20081124 |
| **Combined: 20%** | | | **Combined: 90%** | | | |

\* Cervical rating erroneous, given the referenced C&P flexion of 30⁰ available to the VA. Should have been rated 20%, and was

subsequently raised to 20%; but, based on 30⁰ flexion from a later exam (20100511, 22 mo. post-sep).

ANALYSIS SUMMARY: The Board acknowledges the sentiment in the CI’s application regarding the significant impact and unemployability incurred from her service-incurred conditions. The Board wishes to clarify that it 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 Department of Veterans' Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s implied contention for Service ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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. The DVA, however, 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 her degree of impairment vary over time.

Cervical Spine Condition. The CI’s neck pain developed in the absence of any trauma or clear precipitating events, and was exacerbated by numerous activities required of her MOS. Imaging confirmed mild two level disc disease at C3/4 and C4/5 without neurologic impingement or surgical indications. Associated left upper extremity (LUE) neurological symptoms were later confirmed by nerve conduction studies to be a result of carpal tunnel syndrome (CTS). Any disability attendant to LUE impairment, therefore, is not considered as a sequela of the cervical spine condition, and is addressed in the ensuing CTS discussion. Orthopedic evaluation obtained five months prior to separation recorded some tenderness on palpation of the C5 area, no cervical muscle spasm, and normal motion of the cervical spine without pain. Motor examination of the arms, wrists, hands and fingers was normal. There were three goniometric range of motion (ROM) evaluations, with documentation of all ratable evidence, in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Cervical ROM | PT~ 5 Mo. Pre-Sep | PT ~ 3 Mo. Pre-Sep | VA C&P ~ 1 Mo. Pre-Sep |
| Flex (0-45⁰) | 45⁰ | 35⁰ | 30⁰ |
| Ext (0-45⁰) | 40⁰ | 25⁰ | 20⁰ |
| Combined (340⁰) | 265⁰ | 185⁰ | 185⁰ |
| Comment | Normal gait, contour. | Normal gait, contour. | No DeLuca decrement. |
| §4.71a Rating | 10% | 10% | 20% |

At the MEB narrative summary (NARSUM) examination, the neck was extremely sensitive to light touch. At the pre-separation VA Compensation and Pension (C&P) evaluation, no evidence of incapacitation relative to the neck condition was documented.

The Board directs its attention to its rating recommendation based on the evidence presented. The IPEB coded the neck condition under 5242 (degenerative arthritis of the spine), and the VA coded under 5243 (intervertebral disc syndrome). It is possible that the VA applied the ‘incapacitating episodes’ formula under 5243 for supporting its 10% rating; but, as footnoted on the rating comparison chart and highlighted in the above ROM comparison chart, a 20% rating was achievable based on application of the general spine formula to the ROM evidence available to the VA. Nevertheless, it is obvious that the disparity between VA and MEB measured flexion ROMs has significant implications regarding the Board's rating recommendation; since 30% is the threshold cut-off between 10% and 20% ratings under the VASRD general spine formula. The Board thus carefully deliberated its probative value assignment to these conflicting evaluations and carefully reviewed the Service file for corroborating evidence in the 12-month period prior to separation. It is noted that the Service provided two separate formal goniometric evaluations which did not meet the 30⁰ flexion threshold. Review of the Service file also identified non-goniometric cervical ROM entries, including one by an orthopedist five months prior to separation, which were congruent with the MEB’s formal measurements. The Board further noted that there was no interval history to explain the diminished cervical ROM measured at the C&P exam, and that the degree of restricted motion documented at that time was not consistent with the minimal underlying pathology. After deliberation, the Board concluded that the preponderance of the evidence supported assignment of the greatest probative value to the MEB ROM evaluations; from which a 10% rating is derived IAW VASRD §4.71a. There is no pathway to a higher rating under the general formula, as findings of muscle spasm and/or guarding severe enough to cause abnormal gait or spinal contour, required for the 20% rating, were not documented in the Service or VA record. The Board considered the option of rating for incapacitating episodes under 5243; but, no such episodes were documented in the Service file; and, the absence of any incapacitating episodes was specifically documented in the pre-separation VA C&P exam. All evidence considered, there is not adequate reasonable doubt in the CI’s favor supporting a change from the IPEB’s adjudication of the cervical spine condition.

Left Foot Hallux Valgus. The CI had a history of left foot pain dating to 2005, diagnosed as hallux valgus with mild plantar fasciitis. The condition initially responded well to physical therapy and orthotics; but, in 2007 the CI underwent a bunionectomy (surgical removal of a portion of the metatarsal head) for increasing forefoot pain. Postoperatively; however, the CI had increasing foot pain which was determined to be a result of irritation from the previous hardware (screw) insertion. The screw was removed surgically in February 2008. The CI’s foot pain continued, although gait and ambulation had returned to normal at the time of separation. Further surgery (removal of a painful hypertrophied sesamoid bone) was under discussion, but not performed prior to separation. At the NARSUM examination, tenderness over the metatarsal heads of the left foot increased by movement of the great toe was noted. At the pre-separation C&P exam, no pain in the left foot at rest and a normal gait were recorded. The IPEB coded the foot condition under 5280 (hallux valgus, unilateral), for which a 10% criteria is “operated with resection of metatarsal head.” This is an accurate description of the surgical pathology and an applicable code. The VA conversely applied multiple codes for hallux valgus, plantar fasciitis and surgical scars; but, arrived at non-compensable ratings for each (clearly at odds with the VASRD, however, for the 5280 code). No rating higher than 10% is offered under 5280; and, the Board considered additional or higher ratings either directly or analogously under all applicable alternative codes. Mindful of VARD §4.14 (avoidance of pyramiding), the Board concluded that there was no VASRD concordant route to a rating higher than 10% for the left foot disability. All evidence considered, there is not adequate reasonable doubt in the CI’s favor supporting a change from the IPEB’s adjudication of the left foot condition.

Carpel Tunnel Syndrome. Another condition forwarded by the MEB and adjudicated as not unfitting by the IPEB was carpal tunnel syndrome. As noted above, initial symptoms temporally associated with the CI’s cervical pain were numbness and tingling in both hands, and right hand weakness; the latter associated with her report that she could not hold surgical instruments requisite to her MOS demands. As noted above, the action officer is satisfied that this disability was attributable to the separately adjudicated CTS condition. The Board’s main charge in respect to this condition is an assessment of the appropriateness of the IPEB’s fitness adjudication. 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. In the MEB and C&P examinations, strength and sensation were recorded as normal in both upper extremities. A detailed orthopedic evaluation (six months pre-separation) documented normal strength in the hands, wrists, and fingers; specifically those which would be affected by clinically significant CTS. A nerve conduction study (eight months post-separation) documented CTS in the left hand, but not in the right hand. This evaluation concluded that even the left hand CTS “would have no significant effects on occupation or usual daily activities.” The commander’s statement reported that the CI was unable to perform the duties of her MOS because “her job requires that she stand for long periods of time, which she is unable to do;” remaining silent regarding any upper extremity limitations. Additionally, the permanent U profile was clearly labeled for, and prescribed limitations only for, the cervical spine condition. The MEB specifically judged that the left CTS condition met retention standards. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change in the IPEB fitness adjudication for the carpel tunnel syndrome condition.

Other IPEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the IPEB were pes planus, allergic rhinitis, and palpitations. None of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All 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 duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the IPEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were heart murmur, dyspnea, back and knee pain, insomnia, weight gain, and hysterectomy. Several additional non-acute conditions or medical complaints were also documented. None of these 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. Additionally mood disorder, right heel spur, bilateral shin stress fractures and several other non-acute conditions 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. 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 IPEB 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 IPEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the cervical spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the IPEB adjudication. In the matter of the left foot condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the IPEB adjudication. In the matters of the carpel tunnel syndrome, pes planus, allergic rhinitis and palpitation conditions, the Board unanimously recommends no change from the IPEB adjudications as not unfitting. 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 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** |
| Cervicalgia | 5242 | 10% |
| Left Foot Hallux Valgus Associated with Plantar Fasciitis | 5280 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110604, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

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