RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1100547 SEPARATION DATE: 20080825

BOARD DATE: 20120509

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty A1C/E-3 (2A33B/Tactical Aircraft Maintenance Apprentice), medically separated for chronic thoracic back pain. She was injured in Iraq in May 2007 when she was struck with the metal arm of a FOD Boss that pulled her legs from under her. She landed on her back and suffered back pain since that time. She achieved a good level of pain control with conservative management, but her job required her to perform functions that would exacerbate her pain. Her medical condition did not allow her to perform all primary military duties of her Air Force Specialty (AFS) without restrictions, limitations or work-a-round; therefore, she underwent a Medical Evaluation Board (MEB). “Mid back pain” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. The PEB adjudicated the thoracic back pain condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI initially appealed to Formal Physical Evaluation Board (FPEB), but subsequently withdrew her appeal, and was then medically separated with a 10% disability rating.

CI CONTENTION: “Member was medically discharged for injuries sustained while deployed to Balad AB, Iraq. She was hit by a military operated vehicle. MRI showed rotation of T9 and T10 vertebrae rendering her unable to lift over 15lbs. Air Force deemed her unfit for combat and she medically separated at Macdill (sic) AFB in Tampa, FL. Veteran has constant medical issues pertaining to injuries sustained.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The conditions T9 and T10 (thoracic spine/thoracolumbar spine) as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below as a review of the service ratings for the unfitting condition. The general statement of “injuries sustained” may allude to other conditions, but other injuries are not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Air Force Board for the Correction of Military Records (AFBCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20080428** | | | **VA (3 Mos. After Separation) – All Effective 20080826** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Thoracic Back Pain | 5237 | 10% | Thoracic, Lumbar and Left Sacroiliac Joint Strain | 5237 | 10% | 20081106 |
| ↓No Additional MEB/PEB Entries↓ | | | Cervical Strain | 5237 | 10% | 20081106 |
| Major Depression | 9434 | 40% | 20081027 |
| Tinnitus | 6260 | 10% | 20081027 |
| Residuals of Traumatic Brain Injury/Chronic Headaches | 8045 | 10% | 20081030 |
| 0% x 1/Not Service-Connected x 3 | | | 20081106 |
| **Combined: 10%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: In opening, the Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) 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 conditions “identified but not determined to be unfitting by the PEB.” Any condition which is not requested in this application or otherwise within the Board’s defined scope of review remains eligible for future consideration by the AFBCMR. The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition 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 potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). 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 6040.44, 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.

Chronic Thoracic Back Pain Condition. The CI traumatically injured her back while deployed to Iraq. Initial back spasms were treated with non-narcotic pain medication (NSAIDs), muscle relaxants, physical therapy, electrical stimulation and manipulation. MRI of the thoracic spine and spine radiographs showed normal alignment and indicated a bulging cervical disk at C5-6 with some impingement on the dural sac which did not correspond to the location of her pain. The CI was profile restricted from running, lifting in excess of 5 pounds, push-ups, sit-ups, bending, squatting, and impact exercises. She was unable to perform tasks to maintain her aircraft, but was fully working at administrative tasks. Pain control was considered good with “NSAIDs, physical therapy and a fairly restrictive profile.” There was no complaint of radicular symptoms. There were three back exams with one complete goniometric range-of-motion (ROM) evaluation in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Thoracolumbar ROM | MEB ~6 Mo. Pre-Sep | PT ~4 Mo. Pre-Sep | VA C&P ~3 Mo. After-Sep |
| Flexion (90⁰ Normal) | Full ROM w/flexion, ext, rotation in both directions | 80⁰-90⁰ | 70⁰ |
| Combined (240⁰) | Incomplete, but >145⁰ and <225⁰\* | 200⁰ |
| Comment | Non-tender; no deformity, scoliosis or muscular swelling; normal strength and reflexes | (\* missing rotation measurements);  Pain on palpation; normal motor, reflexes and straight leg test | Pain on extension; tender; posture and gait normal; no deformity or muscle spasm; motor and sensory normal; negative DeLuca; audible/palpable click in left SI region with sit-ups on exam |
| §4.71a Rating | 0% | 10% | 10% |

The narrative summary (NARSUM), completed 6 months prior to separation, indicated good pain control when restricted as profiled and an unmeasured full ROM with no pain, tenderness, spasm, or sensory or motor abnormality. Formal ROM testing requested by the PEB indicated limited thoracolumbar ROM with pain on rotation, tenderness, and as specific rotation measurements were absent, a range of combined thoracolumbar ROM between 150-230⁰ calculated with 0⁰ rotations or 30⁰ rotations for each side (normal 240⁰). The VA exam performed 3 months after separation documented comparable findings of tenderness, painful motion and limited ROM as charted above.

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s 10% rating was consistent with the VASRD §4.71a general rating formula for the spine. The spine is rated “with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease” and the thoracic and lumbar spine are considered as one spine segment thoracolumbar IAW Note (6). All evidence is consistent with no greater than a 10% rating IAW §4.71a., for either tenderness, forward flexion of the thoracolumbar spine greater than 60⁰ but not greater than 85⁰; or, combined range of motion of the thoracolumbar spine greater than 120⁰ but not greater than 235⁰. There was no evidence of ratable peripheral nerve impairment or documentation of incapacitating episodes in this case (aside from the initial injury timeframe) which would provide for additional or higher rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the back condition.

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 thoracic back condition, the Board unanimously recommends no change from the PEB determinations as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as unfitting for additional disability rating.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Thoracic Back Pain | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110729, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

X

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

X

DearX

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00547

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

X

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings