RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100731 SEPARATION DATE: 20091127

BOARD DATE: 20120117

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSgt/E-5 (1C072, Aviation Resource Mgt Craftsman), medically separated for fibromyalgia. The CI was first diagnosed with fibromyalgia in August 2008 by a civilian rheumatologist in the United Kingdom. She was issued a limited duty condition report and underwent a Medical Evaluation Board (MEB). Diabetes, fibromyalgia, and chronic pelvic pain were addressed in the narrative summary (NARSUM) and considered by the MEB, with a recommendation of return to duty (RTD). No other conditions appeared on the MEB’s submission. Upon review, the Medical Standards branch overturned the RTD finding and forwarded the conditions to the Physical Evaluation Board (PEB) for their review. The PEB adjudicated the fibromyalgia condition as unfitting, rated 20% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). Diabetes mellitus and chronic pelvic pain were adjudicated as Category II conditions (conditions that can be unfitting but are not currently compensable or ratable). The CI made no appeals and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: ‘The veterans administration has acknolodged [*sic*] my condition of "Fibromyalgia" as a "Gulf War Syndrom."[*sic*] I believe that I obtained this illness as a direct result of deployments to the CENTCOM AOR. Because of this illness, my life has been forever impacted. I fully believe had I not been discharged for Fibromyalgia, I would have completed 20 years (or more) of service to my country.’ 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 20090825** | | | **VA (2 Mo. After Separation) – All Effective 20091128** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Fibromyalgia | 5025 | 20% | Fibromyalgia | 5025 | 0% | 20100204 |
| Diabetes Mellitus Type II | Cat II | | Diabetes Mellitus | 7913 | 20% | 20100204 |
| Chronic Pelvic Pain | Cat II | | No VA Entry |  |  | 20100204 |
| ↓No Additional MEB/PEB Entries↓ | | | Major Affective Disorder | 9499-9435 | 30% | 20100125 |
| Temporomandibular Articulation | 9905 | 20% | 20100204 |
| 0% x 2 / Not Service Connected x 2 | | | 20100204 |
| **Combined: 20%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that her service-aggravated condition continues to have on her life. 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.

Fibromyalgia. The CI’s symptoms began in June 2007 and were initially diagnosed as patellofemoral syndrome. As her symptoms progressed a thorough evaluation ensued leading to consultation with a civilian rheumatologist in England who diagnosed fibromyalgia. This examiner evaluated the CI over a six month period prior to the initiation of the MEB and documented symptoms of diffuse pains in the CI’s arms, elbows, hips and knees which were worse in the evening and exacerbated by use, a disrupted sleep pattern, lack of energy, and worsening of symptoms as the day progressed. Examination findings were significant for full function of all joints with no evidence of synovitis, and multiple fibromyalgic tender points on palpation. The rheumatologist opined that the “outlook is reasonably optimistic and I would be very hopeful that her professional capacity will not be impaired by her fibromyalgia.” The MEB examiner noted only the additional history of cold intolerance, and the CI’s report of “anxiety regarding the medical evaluation board processing.” The MEB NARSUM recorded CI report that her condition “….does not cause significant impairment when she fulfills her duties. She feels the pain mostly when getting out of bed in the morning in her knees and hips.” The commander’s statement indicated that the CI was able to perform all duties in garrison, had no lost time due to medical conditions, was not on a modified duty schedule, and, although not currently subject to deployment, could function in an expeditionary tasking with minimal limitation. He recommended retention. Following the MEB’s initial finding of fit for duty, the MEB proceedings were reviewed by the Medical Standards branch and referred to the PEB with the judgment that the CI was potentially unfit for retention due to the presence of an assignment limitation code and the inability to complete weapons qualifications due to her medication. At the VA Compensation & Pension (C&P) exam performed in England two months after separation the CI reported continued symptoms as above with minimal functional impact on usual daily activities. The physical examination was notable for a normal gait, full motion of all joints, and the absence of tenderness at all points tested. Radiographs were interpreted as normal. At a psychiatric C&P exam around the same time the CI stated that she had had no prior psychiatric evaluation (although the service treatment record indicates that the CI received counseling for adjustment disorder approximately five years prior to separation), that the anti-depressant medication she was taking was prescribed as treatment for fibromyalgia rather than for depression, but that she was having some difficulty adjusting to the loss of her Air Force career. The examiner noted that the CI “walked into the interview with some obvious difficulty and pain.” The PEB and VA chose the same coding option for the condition. The PEB’s 20% rating under the 5025 code is consistent with the rheumatologist’s diagnosis of fibromyalgia, and reflects the PEB’s judgment that the CI’s symptoms were “episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but that are present more than one-third of the time”. The next higher rating (40%) requires ‘the symptoms to be constant, or nearly so and refractory to treatment’ conditions clearly not supported by the service medical record. The VA decision to service-connect the fibromyalgia condition without a compensable rating is consistent with the minimal findings documented at the C&P exam and their assessment that “symptoms complained of do not meet the European Criteria of Fibromyalgia.” In considering the rating, the Board readily agreed that there was no evidence to support a rating higher than the PEB’s rating of 20% for the fibromyalgia condition, and that there we no viable alternative coding/rating choices to consider. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the fibromyalgia condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated Category II by the PEB were diabetes mellitus and chronic pelvic pain. Neither of these conditions was profiled. Diabetes was mentioned in the commander’s statement as requiring minimal limitations to the CI’s duty performance in a deployed environment, but the chronic pelvic pain was not implicated by the commander. Neither of these conditions was noted as failing retention standards. Both were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory performance of duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for either of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were adjustment disorder and temporomandibular joint dysfunction with a history of jaw surgery in March 2007 for dentofacial deformity. 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 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. 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 fibromyalgia condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the diabetes mellitus and chronic pelvic pain conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the adjustment disorder, temporomandibular joint dysfunction 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, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Fibromyalgia | 5025 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110828, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §1554a), PDBR Case Number PD-2011-00731.

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 recharacterization 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 recharacterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

XXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings