RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100752 SEPARATION DATE: 20030819

BOARD DATE: 20120320

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SSgt/E-5 (3A071, Information Management), medically separated for mechanical upper and lower back pain associated with anxiety disorder. The CI reported the onset of chronic low to upper back pain after the birth of her child which did not respond adequately to physical therapy (PT) or medication treatment rendering her unable to fufill the physical demands within her Air Force Specialty (AFS) or meet physical fitness standards. She was issued a permanent U4L3 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded “mechanical upper and lower back pain associated with normal x-rays and anxiety disorder” on the AF Form 618 to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated “mechanical upper and lower back pain associated with anxiety disorder” as unfitting, rated 10%, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI sent a memorandum to the PEB requesting placement on the Temporary Disability Retired List (TDRL); however, she signed the Form 1180 accepting the findings and recommended disposition of the PEB. The CI was thus medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “Rheumatoid arthritis and chronic back pain.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20030611** | | | **VA (Separation Exam Waived) – All Effective Date 20030820** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Mechanical Upper And Lower Back Pain Associated With Anxiety Disorder | 5295 | 10% | Anxiety Disorder With Panic Attacks | 9400 | 10% | STR\* |
| Mechanical Low Back Pain | 5295 | 10% | STR\* |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 5/Not Service Connected x 2 | | | STR\* |
| **Combined: 10%** | | | **Combined: 20%** | | | |

\*Service Treatment Record

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for rheumatoid arthritis and other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Mechanical Upper and Lower Back Pain Associated with Anxiety Disorder: The PEB combined mechanical upper and lower back pain, and anxiety disorder as a single unfitting condition, coded 5295 and rated 10%. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD. 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. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting, and that there was no need for separate fitness adjudications, not a judgment that each condition was independently unfitting. Thus the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. As previously elaborated, the Board must first consider whether anxiety disorder remains separately unfitting, having de-coupled it from a combined PEB adjudication. In analyzing the intrinsic impairment for appropriately coding and rating the anxiety disorder condition, the Board is left with a questionable basis for arguing that anxiety disorder was indeed independently unfitting. The MEB mental health examination 4 months prior to separation indicated recurrent panic attacks were induced by the back pain for the last 7 years. “Her back pain induces the attacks…I know that it is 100% related to my back pain. I do not have anxiety attacks without back pain.” The CI endorsed symptoms of diaphoresis, dyspnea, tachycardia, chest pain, dizziness, an impending sense of doom and an urge to flee/escape; all of which symptoms are directly related to the back pain. The anxiety attacks were reduced to once weekly with Celexa. The Global Assessment of Functioning (GAF) was 70 with some mild symptoms and some difficulty in social, occupational, or school functioning, but generally functioning pretty well and has some meaningful interpersonal relationships. The psychiatrist further opined that the CI did not require further clinic follow-up and noted that the case was closed. The commander’s statement did not mention any psychiatric disorder nor was the anxiety disorder profiled. The Board agreed the evidence supports that the back pain and anxiety disorder were intertwined and manifested together rather than separately. After due deliberation, the Board agreed that anxiety disorder, as an isolated condition, would not have rendered the CI incapable of continued service within her AFS and accordingly cannot recommend a separate service rating for it.

Mechanical Upper and Lower Back Pain: The CI suffered low back pain after the birth of her child. The pain increased with movement and limited her ability to work a full schedule, perform household duties and childcare. Breast reduction surgery did not help alleviate her pain but she did find some relief with physical therapy, pool therapy, non steriodals, muscle relaxants, and Celexa. Recurrent spasms caused her to seek emergent and urgent medical treatment resulting in bed rest and quarters at least twice a year. Her commander’s statement documented back pain that shortened her duty day to six hours, prevented her from lifting greater than 10 lbs and disqualified her from worldwide deployment. Her profile corroborated her duty limitations and additionally noted her inability to wear her military professional gear. There were no specific goniometric exams in evidence for review. The narrative summary (NARSUM) exam completed 4 months prior to separation documented historically that the CI was unable to perform 100% at work or at home, “essentially a full work schedule requires her to go straight to bed after work.” Her sleep was poor due to pain. Her exam demonstrated a slightly antalgic gain, tenderness of the lumbar paraspinal muscles with spasms and a straight spine with decrease in lumbar lordosis. Her hamstrings were very tight, no gluteal triggers and 4+/5 motor strength of the hip flexors, abductors and adductors due to pain. She had a negative FABER, and normal distal lower extremity motor and neurologic exams. Goniometric exams were not completed. A physical therapy exam and an orthopedic exam completed 8 and 12 months prior to separation respectively corroborated the NARSUM exam and in addition documented full ranges-of-motion (ROM). The NARSUM examiner opined her functional capacity for manual labor is poor and only 75% for sedentary work. “She has exhausted medical treatment and is not a surgical candidate.” A rheumatology consult was requested but was not in evidence for review. The CI waived her right to a VA examination; therefore the VA based its rating determination on the STRs.

The 2002 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were modified on 23 September 2002 to add incapacitating episodes (5293, Intervertebral disc syndrome), and then changed to the current §4.71a rating standards on 26 September 2003. The 2002 standards for rating based on 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. For the reader’s convenience, the 2002 rating codes under discussion in this case are excerpted below.

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 osteoarthritic 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 PEB and the VA chose the same disability code 5295 (Lumbosacral strain) and both rated at 10%. The Board looked for avenues to achieve a higher rating for the back condition and considered the spasms that were infrequently incapacitating to her at work and home. There was no evidence for intervertebral disc syndrome. The Board carefully looked for evidence regarding upper back pain and based on the preponderance of the evidence, even thought some of her pain was in the lower thoracic region, the Board determined that the most appropriate code was 5295. 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 mechanical upper and low back pain condition.

Other Contended and Remaining Conditions. The CI’s application asserts that a compensable rating should be considered for rheumatoid arthritis. This condition was not in the DES nor documented in the STRs. Additionally, this was corroborated by the VA which denied rheumatoid arthritis of multiple joints (claimed as rheumatoid arthritis to include joints of both hands, arms and legs and symptoms of headaches, stomach pain and abnormal sleeping habits) because there was no record of rheumatoid arthritis in service or to a disabling degree within one year of her military discharge. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical, or found elsewhere in the DES file. Additionally, bilateral carpal tunnel syndrome, migraines and fractured left great toe 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 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. In the matter of the mechanical upper and lower back pain associated with anxiety disorder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of anxiety condition, as combined in the PEB adjudication, the Board unanimously agrees that it could not be satisfactorily established as independently unfitting; and, therefore, is not ratable for service disability. The Board unanimously agrees that there were no other conditions, including the contended condition rheumatoid arthritis, 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Mechanical Upper and Lower Back Pain Associated with Anxiety Disorder | 5295 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110906, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

MICHAEL F. LoGRANDE, DAF

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-2011-00752

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,

XXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings