RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100758 SEPARATION DATE: 20051004

BOARD DATE: 20120517

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SSG/E-6 (88N30/Transportation Specialist), medically separated for chronic abdominal pain following multiple surgical procedures. Her abdominal pain began in August 1999. She underwent extensive evaluations, conservative management and multiple surgeries, but she continued to experience frequent pain. She did not respond adequately to treatment and was unable to perform within her Military Occupational Specialty (MOS) or meet physical fitness standards. She was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). “Chronic lower abdominal pain status post multiple abdominal surgeries” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the chronic abdominal pain condition as unfitting, rated 10% with probable application of the US Army Physical Disability Agency (USAPDA) Pain Policy. The CI made no appeals, and was medically separated with a 10% disability rating.

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CI CONTENTION: The CI states: “My 10% rating was based on lower abdominal pain only. I suffer on a daily basis and was suffering prior to discharge with lower back pain, depression, osteoarthritis in both knees, sublaxation, [sic] daily swelling and pain in the knees, urinary incontinence, constant UTI’s, weekly migraines with vertigo, kidney stones, left and right hearing loss, vaginitis, a hernia, sleep apnea, asthma, hyperthyroid, shoulder pain, neck pains, and a stress fracture to both left and right ankle. I currently still suffer from the above issues that have worsen [sic] over the years. I currently rated at 100% temporary.” She additionally lists all of her VA conditions and ratings as per the rating chart below.

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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.” Although the Board will review the ratings for the unfitting condition of chronic abdominal pain, none of the other conditions requested for consideration were identified by the PEB and therefore, none meet the criteria prescribed in DoDI 6040.44 for Board 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 Army Board for the Correction of Military Records (ABCMR).

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Service PEB – Dated 20050621 | | | VA (2 Mos. After Separation) – All Effective 20051005 | | | |
| Condition | Code | Rating | Condition | Code | Rating | Exam |
| Chronic Abdominal Pain Following Multiple Surgical Procedures | 5099-5003 | 10% | Abdominal Pain with Complaints for Stress Urinary Incontinence | 7629 | 10%\* | 20051208 |
| Total Hysterectomy resulting from Endometriosis and Dysmenorrhea | 7617 | 50% | STRs |
| ↓No Additional MEB/PEB Entries↓ | | | Lumbar Strain | 5237 | 20%\* | 20051215 |
| Right Knee Patellofemoral Syndrome with Mild Degenerative Changes | 5260-5003 | 10%\*\* | 20051115 |
| Mild Degenerative Changes, Left Knee | 5260-5003 | 10% | 20051115 |
| Left Ankle Stress Fracture | 5271 | 10% | 20060426 |
| Multiple Warts affecting Hands and Feet | 7806 | 10%\* | 20051115 |
| Migraine Headaches with Vertigo | 8100 | 10%\*\* | 20051115 |
| Adjustment Disorder with Depressed Mood | 9440 | 10%\*\*\* | 20051119 |
| Nephrolithiasis | 7508 | 0%\*\*\*\* | 20051115 |
| Atrophic Vaginitis | 7610 | 0%\*\*\*\* | 20051208 |
| Scar, C-Section | 7804 | 0%\*\*\*\* | 20071025 |
| 0% x 2 others/Not-Service Connected x 14 | | | |
| Combined: 10% | | | Combined: 80% (90% from 20070531; 100% from 20090916) | | | |

\*Both 7629 and 7806 reduced to 0% effective 20091009.

\*\*Decreased 5237 to 10% effective 20070716 and increased back to 20% effective 20090916. Both 5260-5003 Right Knee and 8100 increased to 30% and 5257 right Knee Instability added at 10%, all effective 20090916.

\*\*\*Increased 9440 to 50% effective 20070531 and code changed to 9434.

\*\*\*\*Increased 7508 to 10% effective 20061019; increased 7610 to 10% effective 20070531; increased 7804 to 10% effective 20070531.

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ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (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 also acknowledges the CI's contention suggesting that service ratings should have been conferred for other conditions documented at the time of separation. 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 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.

Chronic Abdominal Pain Following Multiple Surgical Procedures Condition. The CI was first evaluated for abdominal pain in August 1999 and was treated for pelvic inflammatory disease. A gynecology consult, including an ultrasound, revealed a uterine fibroid, ovarian cyst, and possible endometriosis. Her symptoms did not respond to treatment with Depo Lupron and a diagnostic laparoscopy was performed in January 2000. No pathologic findings were noted. The CI then became pregnant and delivered via C-section in December 2000. In February 2001 she underwent surgery for repair of a ventral hernia and a bilateral tubal ligation. Her abdominal pains persisted and a repeat gynecologic evaluation with ultrasound again noted a uterine fibroid, left ovarian cyst, and endometriosis. She was treated with birth control pills and when her symptoms did not resolve her treatment was changed to Depo Lupron. However, after 6 months her abdominal pain had worsened and she noted episodes of incontinence and difficulty with bowel movements. In February 2002 the CI underwent a hysterectomy with left salpingo-oophorectomy, right salpingectomy, culdoplasty, and urethropexy (bladder repair).

The CI initially did well after surgery but her pain persisted. In August 2002 both an ultrasound and an abdominal CT revealed a complex right adenexal mass and the CI underwent an exploratory laparotomy with right oophorectomy and appendectomy. The surgeon noted multiple adhesions which made the surgery difficult. The pathology report confirmed an ovarian cyst.The CI continued to have abdominal pain and was referred to surgery in January 2004 for a possible incisional hernia. An abdominal CT was normal. The CI continued to have abdominal pain and constipation. A repeat abdominal CT and pelvic CT in January 2005 revealed only a nonobstructive dilatation of the colon and small bowel and a calcification of the superior pole of the right kidney. Abdominal X-rays showed a mild adynamic ileus but also ruled out bowel obstruction. A barium enema was normal. In April 2005 it was determined that the CI’s pain was most likely due to adhesions and she was referred for a medical Board. The record does not contain evidence of any treatment other than non-steroidal anti-inflammatory (NSAID) medications.

The MEB narrative summary (NARSUM) examination was completed in May 2005. Physical examination revealed moderate tenderness to deep palpation in the mid-hypogastric region, no guarding, no hepatosplenomegaly, nondistended, no masses, and no rebound. Her pain was noted to be moderate and frequent as per AMA guidelines. A VA Compensation and Pension (C&P) examination completed in December 2005 noted generalized abdominal and lower abdominal pain that was intermittent as well as stress urinary incontinence. The physical examination noted the absence of gross organomegaly, rebound, and inguinal nodes. The vagina was well rugated and the cuff was healed. Bimanual examination revealed no masses but slight pelvic tenderness was present. The examiner opined her abdominal pain was likely due to adhesions and her weight gain had resulted in subsequent stress incontinence, possibly due to metabolic problems.

The MEB forwarded the single diagnosis of chronic abdominal pain status post multiple abdominal surgeries to the PEB, it determined this condition was unfitting. The PEB rated the condition as chronic abdominal pain, following multiple surgical procedures rated as slight—not requiring daily narcotic therapy/frequent, at 10% analogous to 5003, presumably applying the USAPDA Pain Policy. The VA also rated the condition at 10% but applied the 7629 Endometriosis code for pelvic pain or heavy or irregular bleeding requiring continuous treatment for control. The VA reduced the rating for this condition to 0% effective 9 October 2009, 4 years after separation. A VA C&P examination in October 2009 demonstrated the condition had improved with flare-ups of pain occurring about once every 2 months, lasting about 4 days, and without any incontinence.

Although the 7629 code more accurately describes the CI’s condition, use of this code offers no advantage to the CI. There is no route to a rating higher than 10% under any applicable code and no coexistent pathology which would merit additional rating for the chronic abdominal pain condition under a separate code. Thus, neither the PEB choice of VASRD code nor application of the USAPDA pain policy was detrimental to arriving at the highest achievable rating IAW VASRD §4.116. 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 chronic abdominal pain condition.

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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. As discussed above, PEB reliance on the USAPDA pain policy for rating the abdominal pain condition was operant in this case and the condition was adjudicated independently of that policy regulation by the Board. In the matter of the chronic abdominal pain condition and IAW VASRD §4.116, the Board unanimously recommends no change in the PEB adjudication at separation or permanently.

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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 Abdominal Pain, Following Multiple Surgical Procedures | 5099-5003 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110913, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

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President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXX, AR20120009652 (PD201100758)

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 XXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA