RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1100923 SEPARATION DATE: 20020615

BOARD DATE: 20120808

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Marine, SSGT/E-6(3043, Supply Administration & Operations Clerk), medically separated for fibromyalgia syndrome. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was placed on limited duty (LIMDU) for 6 months. A second LIMDU was denied and she was referred for a Medical Evaluation Board (MEB). The MEB forwarded fibromyalgia syndrome as medically unacceptable IAW SECNAVINST 1850.4. No other conditions were on the MEB submission. A subsequent mental health addendum added somatization disorder as an additional diagnosis. The Physical Evaluation Board (PEB) adjudicated the FMS as unfitting, rated 20%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The somatization disorder was rated as a Category II condition (one which contributes to the unfit condition, but it not separately unfitting). The CI initially requested a PEB, but then withdrew her appeal and was separated with a 20% disability rating.

CI CONTENTION: The CI states: “Member was granted 20% for fibromyalgia and there was no possibility of remaining on AD or Reserves. The severity of the condition was the reason for separation.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e. (2) 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 condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. 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 Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20020118** | | | **VA (8 & 10 Mos. Post-Separation) – All Effective Date 20020616** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Fibromyalgia Syndrome | 5025 | 20% | Fibromyalgia | 5025 | 20% | 20030225 |
| Somatization Disorder, Related to Fibromyalgia | Category II | | Somatization Disorder, Associated w/Fibromyalgia | 9421 | 0% | STRs |
| ↓No Additional MEB/PEB Entries↓ | | | Irritable Bowel Syndrome | 7319 | 10% | 20030225 |
| Endometriosis | 7629 | 10%\* | 20030403 |
| Residual Scar, S/P C-Section | 7801 | 10% | 20030403 |
| 0% X 3 / Not Service-Connected x 5 | | | 20030225 |
| **Combined: 20%** | | | **Combined: 40%** | | | |

\*Increased to 50% effective 20040901 after TAH/BSO

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 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 nor for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), 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 the degree of impairment vary over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. 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 Syndrome. The CI began an extensive evaluation in late 1999 for diverse symptoms including constipation, abdominal pain, dizziness, vision complaints, dyspnea, headaches, myalgias, arthralgias, dyspareunia, and sleep disturbance. Over the next two years, she was evaluated by specialists in gastroenterology, rheumatology, internal medicine, gynecology, pain management, mental health, and family practice including extensive diagnostic testing. Aside from mild chronic inflammation noted in the colon and endometriosis found and treated at laparoscopy, her work-up was unremarkable. She was diagnosed with fibromyalgia syndrome (FMS) and multiple medication regimes were tried; improvement was inadequate for duty requirements. She was also found to have a somatization disorder by psychiatric evaluation. A diagnosis of chronic fatigue syndrome was entertained, but not thought to be present, and the rheumatologist noted that the treatment is nearly identical for the overlapping conditions. Irritable bowel syndrome (IBS) and endometriosis were also noted, but not considered to significantly impair duty and were not forwarded to the MEB for consideration. At the MEB examination, 8 months prior to separation, the examiner noted that her symptoms had improved on treatment, but not sufficient for full duty. Her examination was unremarkable other than the presence of all FMS tender points. She was still able to work albeit on a reduced schedule. At the VA Compensation and Pension (C&P) examination, 8 months after separation, the CI report headaches, numbness, pain in all four extremities, neck and face, constipation, dizziness and blurry vision. She stated that she was no longer able to work due to her symptoms, although a later C&P notes that she had worked in a call center for 3 months and then went back to college. She stated that she was tired all the time and normally stayed home. Her physical examination was unremarkable other than positive trigger points.

The Board notes that the PEB considered the somatization disorder to be a Category II condition (one which contributes to the unfit condition, but it not separately unfitting) and that the VA also associated it with the fibromyalgia condition and awarded it a 0% disability rating. The record was carefully reviewed. No evidence was found that this condition impaired duty apart from symptoms associated with the unfitting and rated FMS condition. The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the FMS at 20% and coded it 5025, fibromyalgia. The MEB examiner noted that she had intermittent periods when she was symptomatic, but then periods in which she had few complaints other than mild myalgias. She was noted to have improved on medications. The Board considered if the higher rating of 40% disability was met. It noted that the criteria for this rating include symptoms which are both refractory to treatment and constant or nearly so. The CI’s conditions did not meet this threshold. 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 FMS condition. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the somatization 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 FMS condition, the Board unanimously recommends a disability rating of 20%, coded 5025 IAW VASRD §4.71a. In the matter of the somatization condition and IAW VASRD §4.130, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board’s scope of review for consideration.

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 syndrome | 5025 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110926, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB ltr dtd 24 Aug 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR that the following individuals’ records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

- former USMC

- former USN

- former USN

- former USN

- former USMC

- former USMC

Assistant General Counsel

(Manpower & Reserve Affairs)