RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100980 SEPARATION DATE: 20040510

BOARD DATE: 20120501

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PV/E-2 (42L10 / Administrative Specialist), medically separated for low back pain (LBP) condition. She did not respond adequately to conservative, non-operative treatment and was unable to perform within her Military Occupational Specialty (MOS) or meet physical fitness standards. She was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). “Left sacroiliac joint dysfunction, posttraumatic” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. 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 the LBP condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “The rating for my disability conditions should be changed because my left SI joint is severely painful everyday. I have arthritis in my lower back and I can not stand or sit for a long period of time. My back is a constant throbbing pain that not even ibuprofen or naproxen heals the pain. When I got out of the Army the doctor (VA) told me that my joints are barely attached on and should not have been allowed to join. I also have severe shin splints that constantly hurt when walking. I have had anxiety and depression since the military and was on Prozac in the military. I also have TMJ.” She continues her remarks in block 15 of the application and additionally lists all of her VA conditions. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20040220** | | | **VA (2 Mos. Pre-Separation) – All Effective Date 20040511** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic low back pain | 5237 | 10% | Left SI Joint Dysfunction | 5299-5237 | 0% | 20040302 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 4/Not Service-Connected x 8 | | | 20040302 |
| **Combined: 10%** | | | **Combined: 0%** | | | |

\*increased to 10% effective 20080710

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 service disability entitlements as those under which the 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 ratings should have been conferred for conditions not diagnosed while in the service but later determined to be service-connected by the DVA. 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 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.

Low Back Condition. In March 2002 the CI had a traumatic fall on her left side while on duty causing her non radiating LBP. She experienced an increase in her back pain while wearing her flak vest on guard duty which prompted her to seek care. She was treated conservatively with physical therapy and non-steroidal anti-inflammatory medications with temporary improvement and was then placed on permanent duty restrictions. These limitations included;no sit-ups, flutterkicks, lifting greater than 10 lbs, marching, running, jumping,no load bearing equipment (LBE), flak vest, professional mask use, and weapon firing, and allowed weight lifting for toning and an alternate aerobic army physical fitness test (APFT). The commander’s statement documented that she was unable to perform in her MOS and could not meet worldwide deployment standards.There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT ~ 7 Mos. Pre-Sep  (20031018) | VA C&P ~ 2 Mo. Pre-Sep  (20040302) |
| Flex (0-90) | 70⁰ | 90⁰ |
| COMBINED (240) | 175⁰ | 190⁰ |
| Comment | Gait slight antalgic to left, mild decrease in lumbar lordosis, mild- moderate muscle spasms of lumbar paraspinals | Posture and gait normal, Lordosis present. No paraspinal muscle spasms present. |
| §4.71a Rating | 20% | 10% |

The narrative summary (NARSUM) completed for the MEB physical documented the following back symptoms; sharp stabbing, throbbing pain 3/10 with 10 being the worst, radiating pain to central back, worse with activity and the wearing of her professional gear and relieved with rest, sitting, and sacro-iliac exercises. The physical exam demonstrated normal neuromuscular testing, negative FABER exam (not suggestive of a sacroiliac or hip disorder) and positive Gaenslen’s with reproduction of pain (suggesting a lumbar vertebra and sacroiliac disorder). Radiologic studies performed showed normal lumbar spine series, and bone scan showed no evidence of a reactive bone abnormality involving the thoracolumbar or sacral spine. The VA Compensation Pension (C&P) exam documented similar back symptoms with an exam demonstrating lordosis yet a normal gait and no muscle spasm. While the goniometric exam completed for the VA exam did document a limitation in the combined ROMs the VA examiner documented a normal full ROM of the spine with his particular exam.

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB and VA chose the same coding options for the condition and both ruled IAW the VASRD §4.71a general rating formula for diseases and injuries of the spine. The PEB ruled 10% based on limited flexion and the VA ruled 0% based on normal full ROM. The Board acknowledges likely this was an erroneous error on behalf of the VA rating decision as the combined ROM supported a 10% criteria. The 20% criteria for the spine allows for rating based on limitation of motion or evidence of muscle spasm that results in an abnormal gait and or abnormal spine contour. The Board recognized the PEB ruling documented muscle spasm, the NARSUM documented an abnormal gait and spine contour and the VA documented an abnormal spine contour yet these findings were not considered in either decision. The Board carefully reviewed the service file for corroborating evidence in the 12-month period prior to separation and found an exam similar to the NARSUM/MEB meeting the 20% spine criteria. The Board considered VASRD §4.7 (higher of two evaluations) during its deliberation which directs the evaluator to assign the higher of two valid ratings if the disability picture more nearly approximates the criteria. Board members agreed the condition most nearly approximated the 20% rating based on the preponderance of evidence of all examinations considered in their totality. Neither the PEB nor the VA had evidence which suggested functional loss due to pain or flare-ups which would provide for additional or higher rating. There was no evidence of ratable peripheral nerve impairment in this case. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the LBP condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for severe shin splints; depression, anxiety and TMJ with associated migraine headaches. All of these conditions were reviewed by the action officer and considered by the Board. Shin splints were diagnosed while in service and resulted in temporary running limitations but were not permanently profiled, mentioned in the commander’s statement, forwarded by the MEB, nor clinically active during the MEB period. The Board makes note that the shin splints and TMJ are derived from VA evaluations performed after separation, diagnosing conditions which were not addressed by the PEB and additionally the VA ruled depression was not service-connected. Therefore, none of these conditions were in the core 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

Remaining Conditions. Other conditions identified in the DES file were pes planus; laparoscopy scars; and bilateral ovarian cysts. Several additional non-acute conditions or medical complaints were also documented. Of these conditions, pelvic pain from the ovarian cyst was permanently profiled. None of these conditions were significantly clinically or occupationally active during the MEB period 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 LBP condition, the Board unanimously recommends a rating of 20% coded 5237 IAW VASRD §4.71a. In the matter of the pes planus; laparoscopy scars; and bilateral ovarian cysts 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. The Board unanimously agrees that there were no other conditions, specifically the contended shin splints, anxiety, depression and TMJ, eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic low back pain | 5237 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110929, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans’ Affairs Treatment Record.

XXXXXXXXXXXXX

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 XXXXXXXXXXX, AR20120008889 (PD201100980)

1. 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 to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA