RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100988 SEPARATION DATE: 20040401

BOARD DATE: 20120829

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92A, Prescribed Load List Clerk), medically separated for chronic back pain with left leg paresthesias. Her condition began in 2001 and was not associated with a surgical indication. 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 issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded the two conditions of chronic mechanical low back pain (LBP) and left leg paresthesias 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 single condition of chronic back pain with left leg paresthesias condition as unfitting, rated 10% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Since my ETS I have been treated by the VARO at American Lake, WA and they have found and diagnosed me to be progressively severe. They in turn have increased my rating from 10% to 40%.”

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. The unfitting chronic back pain with left leg paresthesias condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and listed on the DD Form 294 are not within the Board’s 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 (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20031006** | | | **VA (2 Mos. Post-Separation) – All Effective Date 20040402** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Back Pain with Left Leg Paresthesias | 5299-5237 | 10% | Mild Lumbar Spondylosis | 5242 | 10% | 20040621 |
| Left Leg Paresthesias (Stress Fx) | 5262 | NSC\* | 20040621 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% X 0 | | | 20040621 |
| **Combined: 10%** | | | **Combined: 10%\*** | | | |

\*Rating decision 20100923 added peripheral neuropathy left leg 8520, 20% effective 20100224; combined 40% including non-PEB conditions

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment and worsening severity with which her service-incurred condition continues to burden her. It is a fact, however, that the Disability Evaluation System (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 DVA. 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.

Chronic Back Pain with Left Leg Paresthesias Condition. The CI first presented for low back pain (LBP) in May 2001. Episodes became more frequent over the ensuing months, often resulted from strenuous activity and were associated with left leg tingling and numbness. There were three range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Thoracolumbar ROM | MEB ~9 Mo. Pre-Sep | Ortho ~6 Mo. Pre-Sep | VA C&P ~2 Mo. Post-Sep |
| Flexion (90⁰ Normal) | 90⁰ (105⁰) | Fingers to ankles | 65⁰ |
| Ext (0-30) | Not reported | 15⁰ | 25⁰ |
| R Lat Flex (0-30) | To the knee | 25⁰ |
| L Lat Flex 0-30) | To the knee | 25⁰ |
| R Rotation (0-30) | Not reported | 20⁰ |
| L Rotation (0-30) | 20⁰ |
| Combined (240⁰) | 180⁰ |
| Comment | + Tenderness; neurologic findings (see text) | Neurologic findings (see text) | Painful motion; scoliosis; no spasm; “repetition too painful” |
| §4.71a Rating | 10% | 10% | 10% |

The narrative summary NARSUM examiner reported that steroid injections were temporarily helpful. The CI enjoyed walking and bicycling but could not run due to back pain and shin splints. The physical examination revealed tenderness of the left lumbar and sacral area. Sensory loss of the medial and lateral left foot was noted, while sensation of the lateral calf was intact. Heel and toe walking was normal and straight leg raise testing (SLR) was “good.” The examination was silent regarding gait, spinal contour, spasm, guarding and range of motion (ROM) except for flexion. Magnetic resonance imaging (MRI) performed 19 months prior to separation was normal and electro-diagnostic studies (EMG) 11 months prior to separation showed no evidence of peripheral neuropathy. An orthopedic examiner 6 months prior to separation reported that the CI experienced LBP associated with left lower extremity weakness and pain. Examination revealed active range of motion of the trunk that was “good in all planes.” Left thigh and left great toe flexion strength was 4/5. SLR was positive on the left. At the VA Compensation and Pension (C&P) exam performed 5 months after separation, the CI reported that her back condition was aggravated by lifting, bending, pulling walking, sitting, mopping and sweeping. She also reported three incapacitating episodes during the prior year that lasted one day. She denied use of a cane or brace. She could walk a mile. Examination revealed a normal posture and gait. A “mild curvature deformity” of the spine was reported. There was no muscle spasm. Deep tendon reflexes, muscle strength and sensation of the lower extremities were normal. ROM measurements recorded in the above table were “approximate” and pain was the limiting factor. ROM could not be repeated due to pain. X-ray showed mild lumbosacral spondylosis and mild scoliosis. At a VA outpatient clinic visit performed 7 months after separation the CI stated pregnancy was affecting her back, but she reported no pain that day. The examiner’s assessment was “back pain, intermittent.” Three annual lumbar X-rays by the VA from 2005 to 2007 showed mild scoliosis.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The 10% rating by the PEB was based on normal ROM and tenderness. The Board notes; however, that additional VASRD criteria possibly supporting a higher rating were not included in the MEB exam, and therefore not considered by the PEB. Compensable limitation of motion was the basis for the VA’s 10% rating. The Board debated if the mild lumbar scoliosis documented on the C&P examination warranted a 20% rating, but noted that the subsequent serial X-rays confirmed this as a chronic, stable finding and therefore was not secondary to spasm or guarding required for that higher rating. The Board also considered whether a higher rating could be achieved under the formula for rating intervertebral disc disease based on incapacitating episodes. However, the minimum rating under that formula was not met. 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 back pain condition.

The Board deliberated if additional disability rating was justified for peripheral nerve impairment in this case. The PEB’s DA Form 199 characterized this as “left leg paresthesias without neurologic or electrodiagnostic abnormality.” Although it was not identified and rated by the VA until 6 years after separation, there is clinical evidence in the service record documenting findings consistent with left lower extremity radiculopathy. The CI complained of intermittent numbness, tingling and weakness, although subsequent MRI and EMG studies were normal. A few months after these studies; however, the NARSUM examiner found sensory deficits of the left foot while the orthopedic examiner noted mild muscle weakness and a positive left SLR. But by the time of the VA exam, there were no abnormal neurologic findings. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. Undeniably the CI suffered additional pain from the nerve involvement, but this is subsumed under the general spine rating criteria, which specifically states “with or without symptoms such as pain (whether or not it radiates).” The sensory impairment in evidence did not bear on fitness and therefore the critical decision is whether or not there was a significant motor weakness which would impact MOS-specific activities. The functional limitations elaborated in NARSUM, noted on the profile and described by the commander were independent of the presence or absence of leg weakness. The Board concluded therefore that this condition could not be recommended for additional disability 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 chronic back pain with left leg paresthesias condition and IAW VASRD §4.71a, 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Back Pain with Left Leg Paresthesias | 5299-5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111025, 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 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120016306 (PD201100988)

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 XXXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA