RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1100996 SEPARATION DATE: 20030406

BOARD DATE: 20120928

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (88M, Motor Transport Operator) medically separated for a lumbar spine condition. She experienced an onset of back pain during basic training, which was aggravated by a fall during advanced training. She was subsequently diagnosed with lumbar disc disease, for which surgery was not recommended; and, the condition could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The lumbar spine condition, characterized as herniated lumbar disc with S1 nerve root dysfunction, was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Six other conditions (as identified in the rating chart below) were identified by the MEB, and forwarded as meeting retention standards. The PEB [administrative correction from the US Army Physical Disability Agency (USPDA)] adjudicated the lumbar spine condition as unfitting, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The application states simply “see documents.” The accompanying documents were the line of duty authorization for the back condition, the PEB’s DA Form 199, and two clinical treatment notes referable to the back condition. She does not specify a request for Board consideration of any additional conditions.

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 rating for the unfitting lumbar spine condition is addressed below; but, since they were not requested for review, the conditions determined to be not unfitting by the PEB (migraine, irritable bowel, occupational problem, panic disorder, depression, and insomnia) are not within the DoDI 6040.44 defined purview of the Board. Those, and any other conditions or contention not requested in this application, remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB (USAPDA Correction) – Dated 20030210** | | | **VA (10 Days Pre-Separation) –Effective 20030407** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Back Pain, Herniated L5/S1 | 5293-5295 | 10% | Degenerative Disc, Lumbar | 5293-5292 | 40% | 20030327 |
| Migraine Headaches | Not Unfitting | | Migraine Headaches | 8100 | 30% | 20030327 |
| Irritable Bowel Syndrome | Not Unfitting | | Irritable Bowel Syndrome | 7319 | 10% | 20030327 |
| Occupational Problem | Not Unfitting | | No VA Entry. | | | 20030327 |
| Panic Disorder | Not Unfitting | | Post-Traumatic Stress Disorder [Marital Abuse] w/ Insomnia, Depression and Anxiety | 9411 | 30% | 20030327 |
| Major Depressive Disorder | Not Unfitting | |
| Insomnia | Not Unfitting | |
| No Additional MEB/PEB Entries. | | | Cervical | 5295-5290 | 20% | 20030505 |
| Left Knee | 5010 | 10% | 20030327 |
| Right Knee | 5099-5014 | 10% | 20030327 |
| Left Hip | 5019 | 10% | 20030327 |
| Right Hip | 5019 | 10% | 20030505 |
| Left Ankle | 5271 | 10% | 20030327 |
| Right Shoulder | 5010 | 10% | 20030327 |
| Bilateral Metatarsalgia | 5010-5279 | 10% | 20030327 |
| 0% x 2 / Not Service Connected x 2 | | | 20030327 |
| **Combined: 10%** | | | **Combined: 90%** | | | |

ANALYSIS SUMMARY:

Lumbar Spine Condition. With back pain already noted during basic training, the CI fell from the back of a truck in 1999 during advanced training. After the fall, there was an initial interplay of symptoms with a possible stress fracture of the pelvis. Spine x-rays noted scoliosis (presumptively congenital) without other abnormalities. Her pelvic pain resolved with time, but she required continuing conservative management and activity restrictions for the back pain. In October 2000, she was involved in a vehicular accident, after which her back pain escalated. The pain worsened in spite of physical therapy, chiropractic treatment and L2 profile restrictions; and, was occasionally associated with radicular pain. Magnetic resonance imaging in August 2002 revealed diffuse degenerative disc changes (including thoracic levels) and “central disc protrusion at L5-S1 which abuts and possibly mildly compresses the left S1 nerve root.” Specialty neurological exams remained normal, and in November 2002 the orthopedic consultant stated that surgery was not recommended and advised MEB proceedings. The narrative summary (NARSUM) noted “chronic low back pain aggravated by repeated bending, heavy lifting, and standing or walking for more than 20 minutes.” The severity was characterized as “more than mild.” The physical exam (5 months pre-separation) noted right paraspinal tenderness without spasm; and, documented range-of-motion (ROM) measurements for flexion of 80⁰ and combined ROM of 220⁰ (with pain). Recorded neurologic findings were diminished sensation in a right S1 distribution (contralateral to imaging findings), asymmetric reflexes (less brisk on *left*), but normal bilateral motor strength. The preceding orthopedic addendum to the NARSUM (9 months pre-separation) documented a normal gait, 90⁰ flexion (normal), and normal neurologic testing (including light touch sensation). The VA Compensation and Pension (C&P) exam on the eve of separation characterized the spine condition as “thoracic scoliosis,” noting a 10⁰ deviation of the thoracic spine to the right (anatomic, not ratable as a consequence of spasm). The VA examiner noted significant right thoracic myofascial pain (appearing in the VA rating nomenclature) which was not evidenced in the service file. Pain was exacerbated by “driving and lifting over 25 pounds.” The VA exam noted a normal gait; and “only mild paraspinal tenderness” with “no associated muscle spasm.” Conversely the ROM measurements recorded by the VA examiner were a flexion of 25⁰, extension 20⁰, right flexion 20⁰ and left flexion 15⁰ (no rotational measurements). VA neurologic findings were normal, with motor strength “5/5 in all muscle groups”.

The Board directs attention to its rating recommendation based on the above evidence. The 2003 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004. The 2003 standards for rating 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 2003 rating language for the codes applicable to this case is excerpted below.

**5292** Spine, limitation of motion of, lumbar:

Severe ………………………………………………………..……….………….... 40

Moderate …………………………………….……………….…….…………...…. 20

Slight ………………………………………………………..……………….…..….10

**5293** Intervertebral disc syndrome:

Pronounced; with persistent symptoms compatible with: sciatic

neuropathy with characteristic pain and demonstrable muscle

spasm, absent ankle jerk, or other neurological findings appropriate

to site of diseased disc, little intermittent relief ………………..….……….….. 60

Severe; recurring attacks, with intermittent relief ……………..…….………..….…40

Moderate; recurring attacks ……………………………………………............…...20

Mild ……………………………………………………………..…………….….…10

Postoperative, cured ……………………………………………..……………....…..0

**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 osteo-arthritic

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 initial PEB decision coded the case exclusively under 5295, citing painful motion for its 10% rating. The USAPDA administrative correction incorporated the 5293 code in recognition of the radicular features; but, specified that there was no separately ratable neuropathy and arrived at the same rating for painful motion. The VA rating decision for the 40% rating invoked ‘severe’ limitation of ROM under code 5292, which was supported by the marked ROM impairment documented on the C&P examination. IAW VASRD §4.7 (higher of two evaluations), the Board considered application of 5292 in support of a higher rating. When ROM evidence is available in older spine cases, which would support a more favorable rating under 5292; the Board (when appropriate) aligns its opinion regarding the degrees of severity specified in 5292 with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation. The Board must, however, make a probative value assessment between the markedly disparate MEB and VA ROM measurements. In that regard it is noted that normal to minimally limited ROM’s were corroborated by two separate MEB examiners; and, outpatient treatment notes also did not suggest such severe ROM impairment as recorded by the VA examiner. It is likewise noted that the objective findings of a normal gait and absence of spasm on the VA exam are incongruent with the marked ROM limitation suggested by the measurements. The Board must acknowledge that VA rating evaluations are vulnerable to secondary gain bias (in the case of ROM measurement, subjective pain thresholds explicitly linked to financial incentive); and, there is no corroborating evidence or clinical correlation adding sufficient probative weight to the VA evidence to justify a rating recommendation premised on those findings. The preponderance of the ROM evidence cannot be reasonably characterized as ‘severe’ limitation; and, if the specifically defined ROM rating thresholds from current VASRD §4.71a standards are ‘borrowed’ as working definitions for the prior 5292 discretional rating descriptions, then ‘slight’ (i.e., 10%) limitation is a fair representation. Members deliberated a 20% rating for ‘moderate’ limitation of ROM under 5292, given the latitude of the VASRD in effect and accounting for the significant ROM limitations recorded by the VA examiner; but, concluded that this option was not justified; and, that there was no advantage to abandoning the PEB’s 10% rating under the 5295 code.

The Board also considered whether additional rating could be recommended under a peripheral nerve code for the residual sciatic radiculopathy at separation. Firm Board precedence requires a functional impairment tied to fitness to support a recommendation for addition of a peripheral nerve rating to service disability in spine cases. The pain component of a radiculopathy is subsumed under the general spine rating. The sensory component in this case has no functional implications, and no motor weakness was in evidence. There is thus no evidence of a separately ratable functional impairment from the residual radiculopathy; and, the Board cannot support a recommendation for an additional service disability rating on this basis. 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 of the lumbar spine 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 lumbar spine 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain with Disc Herniation at L5/S1 | 5293-5295 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111005, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation XXXXXXXXXXXXXXXXXXXXX, AR20120018621 (PD201100996)

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 XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA