RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101023 SEPARATION DATE: 20060113

BOARD DATE: 20120724

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (92G, Cook), medically separated for chronic low back pain (LBP). The pain began in 2000 when she was loading equipment. The condition was not associated with a surgical indication. She 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 non-radicular lumbosacral pain 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 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: “Due to my back problems I was found unfit for duty. I fail to meet retention criteria. I cannot run do sit-ups or push-ups. It is hard for me to do any kind of exercise or stand for long periods of time. Pain is a part of my everyday life. I cannot find a job out here that do not require a lot of standing or walking. In order to support my family I have to work. I feel that I need this retirement to ease some of my pain and hardship that I deal with.”

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 Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20051013** | | | **VA (2 Mos. Post-Separation) – All Effective Date 20060114** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5237 | 10% | DDD of Lumbar Spine | 5243 | 20% | 20060303 |
| ↓No Additional MEB/PEB Entries↓ | | | Right Knee Patellofemoral Syndrome | 5099-5024 | 10% | 20060303 |
| Left Knee Patellofemoral Syndrome | 5099-5024 | 10% | 20060303 |
| Depressive Disorder | 9435 | 10% | 20060419 |
| Not Service-Connected x 2 | | | 20060303 |
| **Combined: 10%** | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that her service-incurred condition has had on her current earning ability and quality of life. 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 Department of Veterans’ Affairs.

Low Back Pain Condition. 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, as summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | PT ~5 Mo. Pre-Sep | VA C&P ~2 Mo. After Sep |
| Flexion (90⁰ normal) | 90⁰ (90⁰, 90⁰, 90⁰) | 55⁰ (pain at 55⁰) |
| Ext (0-30⁰) | 25⁰ (25⁰, 25⁰, 25⁰) | 20⁰ (pain at 20⁰) |
| R Lat Flex (0-30⁰) | 20⁰ (20⁰, 20⁰, 20⁰) | 20⁰ (pain at 20⁰) |
| L Lat Flex (0-30⁰) | 20⁰ (20⁰, 20⁰, 20⁰) | 20⁰ (no pain) |
| R Rotation (0-30⁰) | 25⁰ (25⁰, 25⁰, 25⁰) | 30⁰ (pain at 35⁰) |
| L Rotation (0-30⁰) | 30⁰ (50⁰, 50⁰, 50⁰) | 30⁰ (pain at 35⁰) |
| Combined (240⁰) | 210⁰ | 175⁰ |
| Comments | Right rotation limited by pain | Painful motion; mild spasm |
| §4.71a Rating | 10% | 20% |

The MEB physical examiner on 9 August 2005, 5 months prior to separation, observed a normal gait. Left lumbar tenderness was present and the straight leg raise (SLR) test was positive, although the affected side was not specified. Muscle strength, sensation and deep tendon reflexes (DTR) were all normal. The narrative summary (NARSUM) examiner, on 14 September 2005, 4 months prior to separation, reported left LBP lasting hours to days and aggravated by any type of exercise. Standing for extended periods of time caused the pain to become unbearable. She could complete mild exercise three times per week. Radiation of pain and numbness in the lower extremities occasionally occurred. The examiner noted tenderness of the left L5-S1 area and guarding. SLR was positive bilaterally. Gait and spinal contour were not mentioned, but strength, sensation and deep tendon reflexes (DTR) were normal. The NARSUM referenced a physical medicine note (not in evidence) that stated the CI was not affected by any symptoms between episodes of pain; that exam reportedly noted a normal gait and no lower extremity weakness. Magnetic resonance imaging (MRI) showed “very minimal” disc desiccation at the L5-S1 level; it was an otherwise normal study. At the VA Compensation and Pension (C&P) exam, performed on 3 March 2006, 2 months after separation, the CI reported constant LBP with radiation down the back of the left leg. On most days the pain was severe. She denied incapacitating episodes of pain requiring bed rest. She could walk up to one half mile and use an elliptical trainer, but she couldn’t run and found it difficult to play with her children. The CI complained of left leg weakness. Bending over to tie shoes was difficult. Examination revealed a normal gait, posture and spinal curvature. There was mild muscle spasm and tenderness in the lower thoracic and upper lumbar paraspinal area. SLR was not reported, but muscle strength and sensation were normal. There was no additional loss of motion due to pain with repetition. A VA outpatient clinic note on 16 June 2006, 5 months after separation, stated that the LBP was “controlled ok on current meds.” Another note on 22 September 2006 by a physiatrist, 8 months after separation, documented “trunk ROM is within normal limits with pain greater during left lateral flexion.”

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 the documented limitation of motion. The Board notes however that additional VASRD criteria possibly supporting a higher rating, namely muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour, was not included in the MEB or NARSUM exams, and therefore not considered by the PEB. However, these clinical findings were documented by the VA examiner to be absent. The ROM values reported by the VA examiner, 2 months after separation, were significantly worse than those reported by the MEB dated 5 months before separation. There is no record of recurrent injury or other development in explanation of the more marked impairment reflected by the VA measurements. The values reported were derived from reported pain threshold with motion and were performed in the context of expressly providing a basis for disability rating, thus subject to loss of objectivity.

Furthermore, the Board notes the ROM assessment by the VA physiatrist 8 months after separation as being consistent with the near normal values obtained for the MEB. The Board also considered whether a higher rating could be achieved under the formula for rating intervertebral disc disease based on incapacitating episodes. However, not even the minimum rating under that formula was met. The Board finally considered if additional disability was justified for the pain that radiated to the lower extremities and the complaint of left leg weakness. While the NARSUM examiner noted positive SLR testing bilaterally, all other neurologic findings were normal, and the MRI showed no evidence of neuroforaminal or spinal cord compromise. 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. While the CI may have suffered additional lower extremity symptoms related to her back condition, this is subsumed under the general spine rating criteria, which specifically states “with or without symptoms such as pain (whether or not it radiates).” There is no evidence in this case of functional impairment attributable to peripheral neuropathy. The Board therefore concludes that additional disability rating was not justified 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 for the chronic LBP 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 LBP 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 Low Back Pain | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110709, 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 XXXXXXXXXXXXXXXXXXXXX, AR20120013618 (PD201101023)

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 XXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA