RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101028 SEPARATION DATE: 20061016

BOARD DATE: 20120523

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SPC/E-4, (25B/Information Systems Operator), medically separated for chronic low back pain (LBP). The CI had two falls onto her tailbone/buttocks that led to LBP. She did not respond adequately to 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). LBP was forwarded 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 low back condition as unfitting, rated 0% with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “Chronic depression was due to PTSD and rated unfairly chronic migraines and back problems are incapacitating on more than one occasion every month and makes it difficult, if not impossible to work. Chronic Bursitis, Pirifimus Syndrome (*sic*), and PTSD were not rated. Chronic depression has only gotten worse since my separation from service. I suffer insomnia due to fear of nightmares and have a hard time grocery shopping due to anxiety of further harassment therefore avoiding shopping as much as possible.”

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 back problems and related Piriformis syndrome and chronic bursitis (of the left posterior iliac spine) conditions as requested for consideration met the criteria prescribed in DoDI 6040.44 for Board purview; and are addressed below as a review of the rating for the unfitting low back pain condition. The other requested conditions of posttraumatic stress disorder (PTSD), chronic depression and anxiety; and chronic migraines 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 (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060714** | | | **VA (1 Mo. Pre Separation) – All Effective Date 20061017** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5237 | 0% | Lumbar Spine w/ DDD | 5242 | 10% | 20060912 |
| ↓No Additional MEB/PEB Entries↓ | | | Major Depressive Disorder | 9434 | 10% | 20060914 |
| 0% x 2/Not Service Connected x 3 | | | 20060912 |
| **Combined: 0%** | | | **Combined: 20%** | | | |

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 disability entitlements as those under which the Disability Evaluation System (DES) operates. The MDES 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 VA 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 further acknowledges the CI’s contention for ratings for other conditions documented at the time of separation; however as noted in the scope section above, non-PEB conditions are outside the scope of the Board. The Piriformis syndrome and chronic bursitis (left posterior iliac spine …) were considered part of the back pain condition. 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 service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time.

Low Back Pain Condition (Including Piriformis Syndrome and Chronic Bursitis (left posterior iliac spine Conditions). The narrative summary (NARSUM) notes two falls which led to back pain. Therapy including physical therapy, epidural steroid injections and chiropractic were not successful and the CI was not a surgical candidate. The low back pain also radiated to the left buttock, hip and the upper anterior left thigh including “left sacroiliac joint pain, which is thought to be related to the low back pain.” X-rays of the lumbar spine and sacroiliac joints were normal; MRI of the lumbar spine noted mild degenerative disk desiccation at L1-2 and L4-5. Nerve conduction studies of the left lower extremity were within normal limits.

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 | MEB ~5 Mo. Pre-Sep | VA C&P ~1 Mo. Pre-Sep |
| Flexion (90⁰ Normal) | 90⁰ | 90⁰ |
| Ext (0-30) | 30⁰ | 30⁰ |
| R Lat Flex (0-30) | 30⁰ | 30⁰ |
| L Lat Flex 0-30) | 30⁰ | 30⁰ |
| R Rotation (0-30) | 30⁰ | 30⁰ |
| L Rotation (0-30) | 30⁰ | 30⁰ |
| Combined (240⁰) | 240⁰ | 240⁰ |
| Comment | No LS tenderness; gait, motor, sensory, reflexes normal; tender L hip area; neg SLR; c/o radiating pain (see text) | Tenderness; pain at 90⁰; normal sensory, motor, reflexes, contour and gait; no spasm; neg. SLR |
| §4.71a Rating | 10% | 10% |

The MEB physical exam noted normal, pain-free full lumbosacral ROMs as charted above. There was no clinical evidence of radiculitis or radiculopathy in the left lower extremity. There was tenderness to palpation of the left hip (greater trochanteric area) and the MEB DD Form 2808 indicated muscle spasm about the left SI joint area. The addended orthopedic consult and MEB forms indicated diagnoses of Piriformis syndrome and chronic bursitis (left posterior iliac spine …) that were related to the back pain and pain clinic treatment included sacroiliac injections.

At the VA Compensation and Pension (C&P) exam performed prior to separation, the CI reported low back pain with radiation down the left leg into the foot. There was no incapacitation. Exam showed tenderness with painful ROM to the full VA normal ROM limits and no objective evidence of radiating pain on exam. Lumbar spine X-ray showed bilateral L5 spondylolytic defects.

The Board directs attention to its rating recommendation based on the above evidence. There was no evidence of muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour. The Piriformis syndrome and left posterior sacroiliac spine bursitis conditions are considered part of the CI’s sacroiliac (5236) and thoracolumbar injury. IAW the General Rating Formula for Diseases and Injuries of the Spine, criteria for rating diseases and injuries of the spine apply with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease. The sacroiliac and thoracolumbar spine are considered a single spine segment for rating IAW VASRD §4.71a.

Coding from the PEB was 5237 (Lumbosacral strain) and from the VA was 5242 (Degenerative arthritis of the spine). The Board also considered the 5236 (Sacroiliac injury and weakness) code to be potentially applicable. No coding choice is predominate and all use the criteria from the general spine formula. The Board prefers 5236-5237 to indicate the sacroiliac spine was a major component of the CI’s disability picture. Both exams indicate tenderness of the sacroiliac and/or thoracolumbar spine. The VA exam also indicated painful motion and the commander’s comments indicated functional limitations of “unable to bend, squat …” There was no evidence of incapacitating episodes. There was no evidence of fixed motor or sensory deficit, and therefore, no indication of an additionally unfitting radiculopathy (peripheral nerve condition). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the low back pain 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. As discussed above, PEB reliance on the USAPDA pain policy for rating low back pain was likely operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the LBP condition, the Board unanimously recommends a disability rating of 10%, coded 5236-5237 IAW VASRD §4.71a. There were no other conditions within the Board’s scope of review for consideration.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5236-5237 | 10% |
| COMBINED | 10% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111111, 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 XXXXXXXXXXXXX, AR20120010153 (PD201101028)

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 10% 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 XXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA