RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1101032 SEPARATION DATE: 20040719

BOARD DATE: 20120724

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SrA/E-4 (4T051/Medical Laboratory Journeyman), medically separated for low back pain (LBP). The condition began in 2001 as a consequence of a motor vehicle accident and was not associated with a surgical indication. The CI did not improve adequately with treatment to meet the physical requirements of her Air Force Specialty (AFS) or satisfy physical fitness standards. She was issued a P4 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic LBP to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the LBP condition as unfitting, rated 10%. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Lumbosacral strain, migraines.”

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 lumbosacral strain condition, as requested for consideration, meets the criteria prescribed in DoDI 6040.44 for Board purview, and is addressed below. The requested migraine condition is 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 Air Force Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20040329** | **VA (1 Wk. Post-Separation) – All Effective Date 20040720** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain | 5237 | 10% | Lumbosacral Strain | 5237 | 10% | 20040727 |
| ↓No Additional MEB/PEB Entries↓ | Gastroesophageal Reflux Disease | 7346 | 10% | 20040727 |
| Chronic Migraines | 8100 | 30% | 20040727 |
| Depressive Disorder | 9434\* | 10% | 20041018 |
| 0% X 2 | 20040727 |
| **Combined: 10%** | **Combined: 50%** |

\*Depressive disorder deferred until 20050214 VARD

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. 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. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Low Back Pain Condition. The narrative summary (NARSUM) on 1 May 2003, 14 months prior to separation, notes that the LBP condition began after a motor vehicle accident (MVA) in May 2001, although the CI did not seek care for the condition until over a year later. The CI’s ongoing pain caused difficulty lifting anything greater than 15 pounds, including her son. Her pain was aggravated by prolonged sitting and standing, and she was unable to run. Examination was silent regarding gait, range-of-motion (ROM), spasm and spinal contour. Straight leg raise (SLR) testing was negative. Motor strength, sensation and deep tendon reflexes (DTR) were normal. Lumbosacral X-rays were normal. A magnetic resonance imaging (MRI) showed sacralization of L-5 and a mild disc bulge at L4-5, but without canal stenosis or neuroforaminal narrowing. The commander’s statement noted that the CI was able to work full shifts, but that she required frequent breaks. A civilian provider (13 July 2003) reported that the CI was in constant pain and periodically experienced pain radiating down the left leg. At the VA Compensation and Pension (C&P) exam performed on 27 July 2004, a week after separation, the CI reported that she had been to the emergency room for her back twice during the preceding calendar year. She complained of “right-sided radiculopathy” and occasionally used a brace. Weight-bearing activities, bending, lifting over 15 pounds or prolonged sitting or standing aggravated her pain. Gait and spinal curvatures were normal. There was no spinal tenderness. SLR was negative bilaterally, and strength and DTRs were normal. Flexion was 70⁰ (normal to 90⁰), and combined ROM was 210⁰ (normal to 240⁰) without pain or discomfort. The Board directs attention to its rating recommendation based on the above evidence. It is not clear why the PEB did not use ROM determinations in its rating, but its 10% determination was consistent with application of §4.59 (painful motion) or §4.40 (pain with use). The limitation of flexion reported on the C&P exam was compensable at 10%. The detailed VA exam furthermore showed no evidence of abnormal gait or spinal contour necessary to justify the next higher 20% rating. The Board further deliberated if additional disability was justified for radiculopathy in this case. Although the CI complained of pain radiating to the leg, and the VA examiner noted “right-sided radiculopathy,” there was no evidence on the NARSUM or C&P exams of clinically significant radiculopathy. SLR and neurologic testing was normal, and MRI showed no neuroforaminal impingement. The presence of functional impairment with a direct impact on fitness is the crucial factor in the Board’s decision to recommend any condition for rating as additionally unfitting. The lower extremity pain components in this case have no functional implications, and 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 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. 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** |
| Low Back Pain | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111108, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

XXXXXXX

Dear XXXXXXXXXX:

 Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §1554a), PDBR Case Number PD-2011-01032

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

 Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings