RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101059 SEPARATION DATE: 20030423

BOARD DATE: 20120822

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92Y10, Unit Supply Specialist), medically separated for chronic low back pain. The CI presented with low back pain in August 2001 during the post-operative period immediately following a hysterectomy. Despite physical therapy, 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 L4 profile and underwent a Medical Evaluation Board (MEB). Mechanical low back pain secondary to chronic sprain at the L5-S1 interspinous ligament 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 chronic low back pain condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD) and likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I was declared 100% service connected by the VA. Please see attached documents.”

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 chronic low back pain condition meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. The remaining conditions rated by the VA at separation and listed on the DA Form 294 application 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 Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20030106** | | | **VA (>5 Yr. Post-Separation) – All Effective Date 20080619** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5299-5295 | 10% | DDD of the Lumbar Spine | 5242-5243 | 10% | 20090706 |
| ↓No Additional MEB/PEB Entries↓ | | | Total Hysterectomy | 7617 | 50% | 20090114 |
| MDD | 9434 | 50%\* | 20090123 |
| Hypertension | 7101 | 10%\* | 20090706 |
| 0% x 2/Not Service Connected x 3 | | | |
| **Combined: 10%** | | | **Combined: 80%\*** | | | |

\* MDD changed to bipolar disorder at 100% from 20090309, and then 70% effective 20090801 (combined 90%)

ANALYSIS SUMMARY: The 2003 Veterans’ Administration Schedule for Rating Disabilities (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 26 September 2003. The 2001 standards for rating based on range-of-motion (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. The VA exam was over 5 years remote from separation and applied the current VASRD criteria. For the reader’s convenience, the 2003 rating codes under discussion in this case are excerpted below.

5292 Spine, limitation of motion of, lumbar:

Severe........................................................ 40

Moderate...................................................... 20

Slight........................................................ 10

*5293 Intervertebral disc syndrome:*

*Evaluate intervertebral disc syndrome (preoperatively or*

*postoperatively) either on the total duration of*

*incapacitating episodes over the past 12 months or by*

*combining under Sec. 4.25 separate evaluations of its*

*chronic orthopedic and neurologic manifestations along with*

*evaluations for all other disabilities, whichever method*

*results in the higher evaluation.*

*With incapacitating episodes having a total duration of at*

*least six weeks during the past 12 months.................... 60*

*With incapacitating episodes having a total duration of at*

*least four weeks but less than six weeks during the past 12*

*months....................................................... 40*

*With incapacitating episodes having a total duration of at*

*least two weeks but less than four weeks during the past 12*

*months....................................................... 20*

*With incapacitating episodes having a total duration of at*

*least one week but less than two weeks during the past 12*

*months....................................................... 10*

*Note (1): For purposes of evaluations under 5293, an*

*incapacitating episode is a period of acute signs and*

*symptoms due to intervertebral disc syndrome that requires*

*bed rest prescribed by a physician and treatment by a*

*physician. ``Chronic orthopedic and neurologic*

*manifestations'' means orthopedic and neurologic signs and*

*symptoms resulting from intervertebral disc syndrome that are*

*present constantly, or nearly so.............................*

5294 Sacro-iliac injury and weakness:

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 osteoarthritic

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

Chronic Low Back Pain. There were three goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |  |  |
| --- | --- | --- | --- |
| Thoracolumbar ROM | PM&R ~8 Mos. Pre-Sep | MEB ~6.5 Mos. Pre-Sep | VA C&P >5 Yrs. Post-Sep |
| Flexion (90⁰ Normal) | 40⁰ | 40⁰ | 90⁰ (95⁰) |
| Ext (0-30) | 30⁰ | 30⁰ | 20⁰ (22⁰) |
| R Lat Flex (0-30) | 30⁰ (35⁰) | 30⁰ (35⁰) | 30⁰ (32⁰) |
| L Lat Flex 0-30) | 30⁰ (35⁰) | 30⁰ (35⁰) | 30⁰ |
| R Rotation (0-30) | - | - | 15⁰ |
| L Rotation (0-30) | - | - | 15⁰ |
| Combined (240⁰) | Min 130⁰, Max 190⁰ | Min 130⁰, Max 190⁰ | 200⁰ |
| Comment | Spinal contours wnl; TTP L5-S1; SLR neg; FABERE Neg; Neuro wnl, Strength 5/5; X-ray wnl | TTP; no Waddell signs present; Neg SLR;. Faber neg; Gaenslen neg; DTR normal; neuro and motor wnl; X-rays unremarkable | Tender; no spasm; painful motion; +R SLR; motor 5/5; knee reflexes 2+ with “right appears to be sl decreased”; gait normal |
| §4.71a Rating | 20% | 20% (PEB 10%) | 10% |

The narrative summary (NARSUM) related the onset of significant low back pain complaints and extended profile restrictions following general anesthesia for a hysterectomy. The NARSUM indicated the CI reported severe (9/10) lower back pain described as constant, sharp, and non radiating located in the L5-S1 area. Pain was exacerbated with lifting over five pounds, running or marching, or wearing load bearing equipment. Local heat and transcutaneous electrical nerve stimulation (TENS) were the only alleviating activities. Medication did not provide effective relief and there was the CI denied sensation loss, weakness, bowel or bladder incontinence, night sweats, fevers, or unexplained weight loss. The physical exam is charted above. In addition, the undated exam from the MEB DD Form 2808 documented tenderness to palpation (TTP) with “full ROM.” The Physical Medicine and Rehab (PM&R) exam and NARSUM as charted above were from a physiatrist (a physician who specializes in physical medicine and rehabilitation).

The VA Compensation and Pension (C&P) exams were over 5 years after separation. There were two back exams with the spine C&P charted above and described below. The gynecological C&P indicated painful ROM to the VA normal limits and was otherwise normal for the back exam with no motor or sensory deficit noted. At the spine C&P exam, the CI reported continued low back pain and radiating pain to the right buttock and leg. Magnetic resonance imaging (MRI), 12 September 2008, indicated degenerative disease of the lumbar spine limited to the L5-S1 level, where annular fissure and desiccated disk shows circumferential protrusion of remnants. Electromyogram (EMG) and nerve conduction studies (28 Apr 2009) showed right L5-S1 nerve root irritation with no clear evidence of radiculopathy. Exam findings are summarized above. Diagnosis was degenerative disc disease L5-S1 with right L5-S1 nerve root irritation with no clear evidence of radiculopathy, and the VA rated this exam at 10%.

The Board directs attention to its rating recommendation based on the above evidence. Proximate to separation, there was no indication of radicular complaints and there were few incapacitating episodes as defined by the VASRD (acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician) that would not support a higher rating level. The PEB rated the lower back pain condition under code 5295 (lumbosacral strain for pain with movement). The PEB’s comment that “the physical exam is non-contributory” likely reflected the USAPDA pain policy and use of mechanically limited ROMs versus consideration of rating pain-limited ROMs. The Board placed decreased probitive value on the very remote VA exams (which showed improved ROMs with some sciatic symptoms) for rating at separation. The NARSUM exam was adjudged to have the highest probitive value for rating at separation. The Board deliberated concerning the NARSUM ROM limitations and discussion focused on the determination of rating IAW code 5292 lumbar spine limitation of motion as slight (10%); moderate (20%); or severe (30%). The repeated documentation of loss of over 50% of forward flexion (40⁰ of normal 90⁰) supported the moderate (20%) level of lumbar spine limitation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the low back pain condition, coded 5299-5292.

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 the low back pain condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the low back pain condition, the Board unanimously recommends a disability rating of 20%, coded 5299-5292 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 her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5299-5292 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110401, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXXXX

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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20120016388 (PD201101059)

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 20% 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 XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA