RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101072 DATE OF PLACEMENT ON TDRL: 20020626

BOARD DATE: 20120824 Date of Permanent SEPARATION: 20060120

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (77F20, Petroleum Supply Specialist), medically separated with a final diagnosis of status post total abdominal hysterectomy with bilateral salpingo-oopherectomy (TAH/BSO) in treatment of endometriosis, with intermittent cramping, pelvic pain occurring 1-2 times/week, lasting 15-30 minutes. The CI was diagnosed with endometriosis in 1998. 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 P3/L3/S2 profile and underwent a Medical Evaluation Board (MEB). Endometriosis, chronic pelvic pain, chronic low back pain, depressive disorder NOS (not otherwise specified), migraine headaches, and bilateral shin splints were forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW AR 40-501. The IPEB adjudicated the endometriosis, chronic low back pain, and retropatellar pain syndrome, right knee; as unfitting and rated 30%, 0%, and 0% respectively, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). Additionally, the depressive disorder NOS condition was adjudicated as meeting medical retention standards, and the migraine headaches condition and bilateral shin splints condition were determined to be not unfitting and not rated. The IPEB also determined the endometriosis condition had not been stabilized to the point where a permanent degree of disability could be determined and the CI was placed on Temporary Disability Retired List (TDRL) with ratings as reflected in the chart below. At her first TDRL periodic evaluation, the CI’s endometriosis not controlled by treatment condition was found not sufficiently stabilized to permit final adjudication, while her back and knee pain were changed to not unfitting at that time. The CI was continued on the TDRL with a 30% rating for endometriosis. After her subsequent and final TDRL periodic evaluation, the IPEB determined the CI’s status post TAH/BSO in treatment of endometriosis, with intermittent cramping, pelvic pain occurring 1-2 times per week, lasting 15-30 minutes condition was unfitting and rated at 0%. It also determined the back and knee pain conditions were not unfitting and were not rated. The CI appealed to the Formal PEB (FPEB) and it determined no change in the IPEB adjudication was warranted. The CI rebutted the FPEB adjudication and the US Army Physical Disability Agency (USAPDA) determined her case was properly adjudicated by the FPEB and no change was implemented. She was then medically separated with a 0% combined disability rating.

CI CONTENTION: “Reference PDBR, DODI6040.44”

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 IPEB 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 IPEB.” The ratings for unfitting conditions will be reviewed in all cases. The two conditions adjudicated by the final FPEB as not unfitting have not been specifically requested. Nor have the three conditions adjudicated by the initial IPEB as not unfitting. Therefore these and the remaining conditions rated by the VA at separation 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 (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service FPEB – Dated 20060105** | | | | **All Effective Date 20050901 (or earlier)** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20021109** |  | **TDRL** | **Separation** |
| Endometriosis | 7629 | 30% | -- | Endometriosis | 7629 | 0%\* | 20050923 |
| Status post TAH/BSO to treat Endometriosis | 7629 | -- | 0% | TAH with BSO and Lyses of Adhesions | 7617 | 50% | Records |
| Chronic Low Back Pain | 5299-5295 | 0% | Not Unfitting | Lumbosacral Strain | 5237 | 10% | 20040629 |
| Right Knee Retropatellar Pain Syndrome | 5099-5003 | 0% | Not Unfitting | Osteoarthritis, Right Knee | 5257 | 10% | 20040629 |
| Migraine Headaches | Not Unfitting | | | Tension Headaches | 8199-8100 | 30% | 20050720 |
| Bilateral Shin Splints | Not Unfitting | | | Shin Splints, Right Leg | 5099-5020 | 10% | 20050923 |
| Shin Splints, Left Leg | 5099-5020 | 10% | 20050923 |
| Depressive Disorder NOS | Not Unfitting | | | Depression, secondary to Endometriosis | 9499-9434 | NSC | 20030428 |
| No Additional MEB/PEB Entries | | | | Right Ankle Strain | 5271 | 10% | 20040629 |
| Left Ankle Strain | 5271 | 10% | 20040629 |
| Sinusitis | 6514 | 10% | 20050720 |
| Hypertension | 7101 | 10% | 20030320 |
| Cold Injury, Right Foot | 7122 | 10% | 20040629 |
| Cold Injury, Left Hand | 7122 | 10% | 20040629 |
| Residuals, Cold Injury, Right Hand | 7122 | 10% | 20040629 |
| Cold Injury, Left Foot | 7122 | 10% | 20040629 |
| Scarring, status post Laparoscopy | 7804 | 10% | 20030320 |
| 0% x 1 Other/Not Service Connected x 8 | | | |
| Combined: 0% | | | | Combined: 90% | | | |

\*Initially rated 30% but decreased to 0% when surgery (TAH/BSO) done to treat endometriosis and 7617 added. 7617 increased to 100% effective 20050512 at time of surgery, decreased to 50% from 20050901.

ANALYSIS SUMMARY: 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. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Status Post Total Abdominal Hysterectomy/Bilateral Salpingo-Oophorectomy (TAH/BSO) in Treatment of Endometriosis, with Intermittent Cramping, Pelvic Pain Condition. The CI first reported chronic pelvic pain in 1995 and was initially treated with mild narcotics and nonsteroidal anti-inflammatory (NSAID) medications. A diagnostic laparoscopy in 1998 found endometriomas and multiple endometrial implants. After treatment with medications failed, she underwent an exploratory laparotomy in 1998 for excision of large endometrioma and lysis of adhesions. Her symptoms continued and worsened. In May 2001 another diagnostic laparoscopy found Stage 4 endometriosis, severe pelvic adhesive disease, and an enlarged uterus. She was then treated with Lupron but had no resolution of her pain and she continued to have severe chronic pelvic pain, dyspareunia, and dysmenorrhea constantly.

The initial MEB narrative summary was completed 22 March 2002, approximately 3 months prior to TDRL entry and it included an Addendum from gynecology completed 5 September 2001. The CI had been diagnosed with endometriosis with chronic pelvic pain. Physical examination noted tenderness throughout the abdomen, greater in the lower abdominal area, cervical motion tenderness, and bilateral adenexal masses. A VA Compensation and Pension (C&P) examination completed on 20 March 2003, approximately 9 months after TDRL entry, noted poor response to treatment with Lupron and Tylenol #3. The CI denied any functional impairment but stated she had lost approximately 2.5 months worth of work time because of endometriosis. Functional activities evaluation noted the CI could not garden due to pressure on her hands and joints. Abdominal examination demonstrated slight tenderness to palpation in the lower pelvic area from previous scarring due to previous surgical procedures. Pelvic examination noted a retroverted, irregularly shaped uterus with decreased mobility signifying adhesions. Adnexae were not palpable bilaterally. Both the IPEB and the VA applied a 30% disability rating for pelvic pain or heavy or irregular bleeding not controlled by treatment. Additionally, the IPEB determined that this condition had not stabilized to the point that a permanent degree of severity could be determined and she was placed on the TDRL. The IPEB also determined that back and neck pain conditions were unfitting and rated at 0% each and that the following conditions were not unfitting: migraine headaches, bilateral shin splints, and depression. The Board directs attention to its rating recommendation based on the above evidence. 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 endometriosis condition at the time of TDRL entry.

A periodic TDRL evaluation was completed 29 January 2004, approximately 18 months after TDRL entry. This examination noted some improvement of her abdominal cramping and dysmenorrhea with the Lupron until the summer of 2003. At that time her abdominal pain worsened and remained at the increased level through the time of this examination. The pain was described as cramping and it occurred approximately four to five times per week, lasting from several hours to all day. She also reported a sharp right sided pain that occurred approximately three times per week and lasted five to ten minutes. She had been referred to gynecology for possible surgical treatment but had not yet been seen. Abdominal examination noted generalized diffuse tenderness to deep palpation in the lower abdominal area. No pelvic examination was completed. The CI was working full time at the adjutant general’s office on post and attending classes at lunchtime. She reported difficulty with yard work and lawn work and she no longer played sports. IPEB met on 5 March 2004 and determined the endometriosis condition had not sufficiently stabilized to permit final adjudication and the CI was retained on the TDRL. The IPEB also determined the CI’s back and knee pain were no longer considered unfitting and were no longer rated at 0%.

Another periodic TDRL evaluation was completed 31 October 2005, approximately 19 months after the previous TDRL evaluation and 3 months prior to TDRL exit. The CI had undergone a TAH/BSO in May 2005. She reported she had significant improvement but she still had intermittent cramping that occurred once or twice a week and lasted 15-30 minutes. Abdominal examination noted the absence of tenderness. Functional status evaluation noted the CI was working full time as a human resource assistant and was taking night classes in pursuit of a bachelor's degree in criminal justice. She was able to perform the basic activities of daily living without difficulty. A VA C&P examination was completed 23 September 2005, approximately 4 months prior to TDRL exit, and noted the CI was not receiving any treatment for endometriosis and had no functional impairment due to this condition. However, it also noted the condition resulted in 40 times lost from work per year. Abdominal examination noted the absence of tenderness. Pelvic examination noted tenderness with deep palpation of the vaginal vault.

On 17 November 2005, an IPEB determined the endometriosis condition remained unfitting but after TAH/BSO it was now appropriately rated at 0%. It also determined the knee and back pain conditions were not unfitting and were not rated. The VA also determined that after the surgery, the endometriosis condition was appropriately rated at 0%. The VA then applied a 50% rating for loss of a procreative organ. The CI appealed the IPEB findings and a FPEB was held 5 January 2006. The FPEB did not change the IPEB findings. The CI submitted a memorandum in rebuttal to the FPEB findings but the USAPDA determined her case was properly adjudicated by the FPEB and no change was implemented. The CI also appealed the VA rating and requested that both her pre-surgery rating be increased to 50% and her post-surgery rating be increased to 30% after the surgery. On 14 June 2007 the Board of Veterans’ Appeals (BVA) determined that the criteria for a rating greater than 30% prior to surgery had not been met and that the reduction in the disability rating from 30% to 0% effective after the surgery was proper. Since 12 May 2005, her endometriosis had not been manifested by pelvic pain or heavy or irregular bleeding, requiring treatment for control.

The Board directs attention to its rating recommendation based on the above evidence. While the final TDRL evaluation does not mention the presence or absence of treatment for endometriosis a primary care outpatient visit on 29 June 2005 shows no evidence of any treatment for endometriosis. A history of continued chronic pain after hysterectomy is noted but no medications for endometriosis were prescribed and none were shown in the electronic record listing of active medications. There is no evidence the CI requested any treatment and none was prescribed. Mild, right sided abdominal tenderness was noted on examination. Prior to the BVA ruling in 2007, a VA Statement of the case dated 20 October 2005 noted the VA C&P examination of 23 September 2005 documented the absence of pelvic pain. Additionally the CI’s medical records from the VA Medical Center did not show any treatment for bleeding or pelvic pain since her hysterectomy. It concluded she did not meet the 10% rating criteria because she had no pelvic pain or heavy or irregular bleeding requiring continuous treatment for control. The 50% rating for loss of a procreative organ is the result of an entitlement to a special monthly compensation and is not a disability rating. Therefore, it is not applied to the unfitting condition of endometriosis. 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 IPEB adjudication for the endometriosis condition at the time of exit from the TDRL.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the IPEB 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 IPEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the endometriosis condition and IAW VASRD §4.116, the Board unanimously recommends no change in the IPEB adjudication at either the time of entry onto or exit from the TDRL. 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** |
| **PERMANENT** |
| Status Post TAH/BSO to treat Endometriosis | 7629 | 0% |
| **COMBINED** | **0%** |

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 XXXXXXXXXXXXXXXXXXXXX, AR20120016301 (PD201101072)

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 XXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA