RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1101104 SEPARATION DATE: 20090330

BOARD DATE: 20120410

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPL/E-4 (3043, Supply Administration), medically separated for fibromyalgia. 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 placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Fibromyalgia was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the fibromyalgia condition as unfitting, rated 20% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). Additionally polyarthralgias condition was classified as a category II condition that contributed to the primary unfitting condition but was not separately unfitting or ratable. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “Fibromyalgia with chronic daily pain, headaches, fatigue, and depression. I have been in chronic pain daily, since before my PEB took place.” She additionally lists all of her VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20081230** | | | **VA (11 Mo. After Separation) – All Effective Date 20090331** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Fibromyalgia | 5025 | 20% | Fibromyalgia | 5025 | 40%\* | 20091124 |
| Polyarthralgias | CAT II | | Depression assoc with Fibromyalgia | 9434 | 0% | 20091124 |
| Cervical Strain assoc with Fibromyalgia | 5237 | 0% | 20091124 |
| Headaches assoc with Fibromyalgia | 8100 | 0% | 20091124 |
| ↓No Additional MEB/PEB Entries↓ | | | Left Hip Strain | 5250-5010 | 10% | 20091124 |
| 0% x 1/Not Service Connected x 5 | | | 20091124 |
| **Combined: 20%** | | | **Combined: 50%** | | | |

\* VA rating based on exam most proximate to date of permanent separation.

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. It is a fact, however, that the 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 (DVA). 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 6044.40, 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.

Fibromyalgia. The CI gradually developed diffuse chronic muscle and joint pain associated with fatigue over the course of a few years prior to separation. A history of a minor left ankle and left knee strain during training in May 2005 was cited as the beginning of her chronic problems leading to an MEB. Medications could not be prescribed from February 2006 to the time of separation 3 years later due to two successful pregnancies and breast feeding. Evaluation with laboratory testing, imaging and specialty evaluation concluded with a diagnosis of fibromyalgia. Fatigue was noted to begin after the delivery of her first child around December 2006. Musculoskeletal pain recurred in June 2007 upon return from maternity leave and resumption of military physical training. The CI was evaluated by two different rheumatologists during her second pregnancy (beginning January 2008). On 1 April 2008, the first rheumatologist did not render a diagnosis noting the CI was pregnant and manifested examination findings that did not support a diagnosis of fibromyalgia. He made recommendations for management and follow up. A second rheumatologist on 19 June 2008 concluded the CI had a diagnosis of fibromyalgia. The MEB was originially initiated prior to the CI’s second pregnancy but delayed until afterwards. The CI delivered her second child at the end of August 2008, and due to breast feeding was not able to be prescribed medication for fibromyalgia. The MEB narrative summary (NARSUM) dated 14 November 2008, recorded continued muscle and joint aches, fatigue and sleep problems with soft itssue tenderness. The commander’s non medical assessment (NMA) dated 7 November 2008, noted that the CI had difficulty with performance of the physical aspects of her military job and that she had lost work time due to medical appointments (physical therapy). Due to her physical limitations she was non-deployable and could not be utilized as a Marine. However, the commander noted that the CI performed her administrative duties well; “performance administratively is outstanding;” and “(her) medical condition has not prevented her from executing her duties of a 3043 supply administrative Marine. She continues to be a resource of information, effort and integrity in this field.” The PEB adjudicated a 20% rating coded 5025, fibromyalgia.

The VA Compensation and Pension (C&P) examination was performed 24 November 2009, 8 months after separation. In the clinic history, the examiner wrote the CI had continuous symptoms that were non-responsive to treatment, which the VA based its 40% evaluation upon. The CI reported continued symptoms that interfered with physical activity (although she was able to drive, walk and shop). She stated she could not get a part time job due to flares of symptoms for which she used occasional Tylenol to reduce symptoms to a moderately tolerable level. She was not on any other treatment for the condition, and the examiner stated that continuous treatment was not needed to control the condition. The examination noted the presence of tender points but an otherwise unremarkable joint examination. The Board considered whether the 20% rating adjudicated by the PEB was exceeded prior to the time of separation. The Board noted that the CI had continuous symptoms but that she was never treated with medication for the condition due to pregnancy and breast feeding. Following separation, she was also not on continuous medication and used over the counter Tylenol on an intermittent basis for flares.

The Board further noted that prior to separation, the CI was able to satisfactorily perform her administrative duties as well as care for her two children. The rating criteria are designed to compensate for average impairments in earning capacity resulting from service-connected disability in civilian occupations (not military). Board members agreed that a 40 percent rating is not warranted: the evidence in the service treatment records does not more nearly approximate a disability picture characterized by symptoms that are refractory or resistant to therapy and impaired non-military occupational functioning to a level warranting consideration of the higher rating was not present. The Board concluded that the CI’s overall symptomatology prior to separation more nearly approximated the criteria for the 20 percent rating under diagnostic code 5025. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the fibromyalgia condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for headaches, fatigue and depression. All of these conditions were reviewed by the action officer and considered by the Board under fibromyalgia. A psychiatry evaluation at the time of the MEB concluded there was not a separately unfitting depressive disorder. A VA psychiatry C&P examination 8 months after separation diagnosed depression due to fibromyalgia with mild impairment. Headaches were not clinically or occupationally significant during the MEB period. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as separately unfitting. The Board determined therefore that none of the stated conditions were subject to disability rating.

Remaining Conditions. Other conditions identified in the DES file were left hip strain, cervical strain, left knee strain, hives, groin pain, and allergies. Several additional non-acute conditions or medical complaints were also documented. The musculoskeletal pain complaints were considered under the discussion for fibromyalgia. Evaluation of individual joints by sports medicine, rheumatology, as well as a VA C&P examination in December 2007, did not yield evidence of joint or spine conditions that could be considered as separately unfitting conditions. The remaining conditions were not clinically or occupationally significant during the MEB period, none carried attached profiles, and none were implicated in the NMA. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating.

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 fibromyalgia condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation. In the matter of headaches, fatigue and depression, left hip strain, cervical strain, left knee strain, hives, groin pain, or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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** |
| Fibromyalgia | 5025 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111128, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB ltr dtd 23 Apr 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR the following individual’s records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

Assistant General Counsel

(Manpower & Reserve Affairs)