RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101130 SEPARATION DATE: 20060331

BOARD DATE: 20120911

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (88N30/Transportation Management Coordinator), medically separated for chronic mid-thoracic back pain. The CI developed a chronic mid-thoracic back pain condition of uncertain etiology which could not be adequately rehabilitated. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Seven other conditions, identified in the rating chart below, were also identified as meeting retention standards and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the chronic mid-thoracic back pain condition as unfitting, rated 10%, with application of Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting and not ratable. The CI appealed to the Formal PEB (FPEB), withdrew the appeal after administration correction and was medically separated with a 10% disability rating.

CI CONTENTION: “I was rated by the VA at 80%.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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. In this case obesity is not a ratable physical disability IAW DoDI 1332.28 and will be discussed no further. The polycystic ovary syndrome with associated hirsutism and irregular menses (PCOS), generalized anxiety disorder/ panic disorder without agoraphobia (GAD), chronic insomnia, chronic headaches/possible migraines versus tension headaches (HA), gastro-esophageal reflux disease (GERD), and bilateral pes planus conditions requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The remaining conditions rated by the Department of Veterans Affairs (DVA) 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.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB (Admin Correction)–Dated 20060307** | | | **VA (12 Mos. Post-Separation\*) – All Effective Date 20060401** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic mid-thoracic back pain. . | 5237 | 10% | DDD T-Spine | 5242-5243 | 10% | 20070410 |
| PCOS | Not Unfitting | | PCOS | 7615 | 30% | 20070403 |
| Obesity | Not Unfitting | | NO VA ENTRY | | | |
| GAD/Panic D/O . . . . . | Not Unfitting | | GAD, Depressive D/O NOS . . . | 9412-9400 | 30% | 20070403 |
| Chronic Insomnia | Not Unfitting | | Insomnia | 8199-8108 | NSC | 20070403 |
| HAs | Not Unfitting | | Migraine HAs | 8100 | 10% | 20070410 |
| GERD | Not Unfitting | | GERD | 7399-7346 | 10% | 20070410 |
| Bilateral Pes Planus | Not Unfitting | | B/L Pes Planus . . . . . . | 5020-5276 | 10% | 20070410 |
| ↓No Additional MEB/PEB Entries↓ | | | C-Spine Strain w/ Degen Chgs | 5242-5237 | 10% | 20070410 |
| Tinnitus | 6260 | 10% | 20070403 |
| 0% X 0 / Not Service-Connected x 4 (Includes Above) | | | 20070410 |
| **Combined: 10%** | | | **Combined: 70%** | | | |

\*The VA initially rated each condition at 0% and gave a combined rating of 0% (VARD 20061204) based on the STR due to the CI failing to report to her C&P examination scheduled for 20060614. The VA rating decision of 20070607 gave the separate and combined ratings reflected above in the chart effective back to the day after separation based on a C&P examination on 20070410.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 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 nor for conditions determined to be service-connected by the VA but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Chronic Mid-Thoracic Back Pain Condition. The CI had a long history of mid back pain attributed to slipping on ice in 2004. Multiple routine X-rays demonstrated mild degenerate joint disease (DJD). MRI and spine bone scan were normal for bone or disc pathology. 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 Degrees | MEB ~10 Mo. Pre-Sep  (20050613) | VA C&P ~12 Mo. Post-Sep  (20070410) |
| Flexion (90 Normal) | 90 | 90 |
| Extension (30) | 25 | 30 |
| Combined (240 ) | 220 | 240 |
| Comment | All ROM with pain; reflexes symmetric | No tenderness; burning  sensation on bending |
| §4.71a Rating | 10% | 10% |

At the MEB/narrative summary (NARSUM) evaluation performed June 2005, 10 months before separation, the CI reported baseline back pain of 4/10 increasing to 7/10 with activity or inclement weather. She noted inability to lift, bend or climb, but denied symptoms of radiation of pain and paresthesias. Physical exam findings are noted above. During an orthopedic evaluation in September 2005, 8 months before separation, the CI reported constant pain, localized in a small area near the left shoulder blade. Upper extremity numbness, weakness and tingling were denied. On physical examination gait and coordination were normal and the CI was noted to move “easily in the room without difficulty.” No significant pain with flexion/extension but slight discomfort with rotation was reported. Reflexes, sensation and motor strength were normal. At the VA Compensation and Pension (C&P) exam, performed April 2007, 12 months after separation, the CI reported burning pain aggravated by walking, driving and prolonged sitting, and muscle spasms occurring 2/3 times a month. Narcotic medication was required 1 to 4 times monthly. Findings on physical exam are noted above. Weakened movement, incoordination or fatigability and associated worsening pain or ROM on repetition were not reported. The Board directs attention to its rating recommendation based on the above evidence. The IPEB coded the back condition 5237, lumbosacral strain, rated at 10% citing normal ROM, absence of spasm but painful motion. The initial VARD of December 2006 coded the back condition 5009-5010, analogous to arthritis, rated at 0% citing noncompensible X-ray findings and failure of the CI to appear at the C&P evaluation. The CI requested the VA reopen her claim and 6 months later, the VA rated the back condition at 10% under code 5242-5243 for pain, retroactive to date of separation. A higher rating was not warranted as ROM was normal and there was no incapacitation noted in the record. The Board unanimously agreed that the back condition was compensable under §4.59 at 10% given documented painful ROM. The Board agreed that the painful back condition was noncompensable under §4.71 (Range of Motion) given normal ROM, absence of spasm and normal gait on the C&P examination. No higher rating was achievable under §4.45 (DeLuca) or §4.40 (Functional loss). No neuropathy was present for rating. The Board considered a rating based under Incapacitating Episodes/Intervertebral Disc Syndrome. An incapacitating episode is defined as 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. The Board notes two performance statements from co-workers describing the CI lying on an office floor for relief of pain. The Board finds no evidence in the record that the CI was placed on quarters, assigned bed rest by a health professional, or any reference to incapacitating episodes in the commander’s statement or performance evaluations. 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 midback condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were polycystic ovary syndrome with associated hirsutism and irregular menses, generalized anxiety disorder/panic disorder without agoraphobia, chronic insomnia, chronic headaches/ possible migraines versus tension headaches, gastroesophageal reflux disease, and bilateral pes planus. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard.

Polycystic Ovary Syndrome (PCOS): the CI developed polycystic ovary syndrome manifested by increased weight, facial hair and irregular menses. A full endocrine evaluation identified no complications of PCOS- malignancy, diabetes, and severe facial acne. Clinical findings were medically treated and the CI reported weight loss by walking two to three miles a few times a week.

Generalized Panic Disorder: the CI first developed anxiety attacks 3 years before separation manifested by waking from sleep with light-headedness and agitation. She denied any increased stressors and was unsure of the etiology at the time. Symptoms occurred every 3 to 4 months. CI sought no medical evaluation until the MEB for the back condition. The CI was evaluated and treated by mental health. GAF was 70 and no agoraphobia was noted. At the NARSUM, the CI reported no panic attacks since beginning treatment.

Chronic Insomnia: the CI reported intermittent difficulty sleeping since 1998. She begun medication during psychiatric evaluation for panic disorder which resulted in immediate relief.

Chronic Headaches: the CI had a long history of frontal headaches of uncertain etiology. She had been treated with varying medications during ER visits but had never undergone a formal evaluation by neurology. Headaches occurred once every 2 months but, with more frequency and less intensity since 2004. There was no history of hospital admission or prostrating episodes. The headaches had also responded favorably to medications prescribed for the back condition.

Gastroesophageal Reflux Disease: the CI had symptoms of heartburn and esophageal reflux was documented on gastrointestinal X-rays. Symptoms were intermittent and controlled with acid blocking medication. The CI was free of symptoms at the time of the NARSUM examination.

Bilateral Pes Planus: the CI was diagnosed with pes planus and calcaneal spurs in 1995. She did well with treatment until 2000. A temporary L2 profile was issued for bilateral pes planus requiring use of orthotic supports. At the NARSUM, the CI reported continued use of these inserts without significant foot pain. None of these conditions, except pes planus as noted above, were profiled; none were implicated in the commander’s statement; and, none were judged to fail retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended conditions; and, therefore, no additional disability ratings can be recommended.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the chronic midback pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended polycystic ovary syndrome with associated hirsutism and irregular menses, generalized anxiety disorder/panic disorder without agoraphobia, chronic insomnia, chronic headaches/possible migraines versus tension headaches, gastroesophageal reflux disease, and bilateral pes planus conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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** |
| Chronic Mid Thoracic Back Pain Condition | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111107, 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 XXXXXXXXXXXXXXXXXXXXXXXXX, AR20120016882 (PD201101130)

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 XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA