RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1200013 SEPARATION DATE: 20050809

BOARD DATE: 20120712

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PV2/E-2 (25U10/Signal Support Specialist), medically separated for a bilateral hip condition. 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 L3 profile and underwent a Medical Evaluation Board (MEB). Bilateral femoral neck stress fractures was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. 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 bilateral hip condition as unfitting, rated 10% with 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: “After separation form the military I still have flare-ups where my legs and hips gives me problems. Swelling of both legs. Flare-ups come from sitting or standing longer than 30 mins to an hour.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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. 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 the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20050722** | **VA (2 Mo. After Separation) – All Effective Date 20050810** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Femoral Neck Fractures | 5099-5022 | 10% | Stress Fracture Bilateral Hips | 5255 | 0%\* | 20051020 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 1/Not Service-Connected x 3 | 20051020 |
| **Combined: 10%** | **Combined: 0%** |

\*Rating Decision Denied service-connection 20051214 and granted it 20051222 and a Decision Review Officer upheld this decision in 20070814.

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. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the DES operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation.

Bilateral Hip Condition. The CI developed bilateral hip pain while in basic training. She was evaluated and treated for bilateral hip stress fractures yet continued to have pain and was not returned to active duty. 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.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM – | MEB ~ 1 Mo. Pre-Sep(20050713) | VA C&P ~ 2 Mo. After-Sep(20051020) |
| L/R Hip (Thigh) | L Hip | R Hip | L Hip | R Hip |
| Flexion (0-125) | 55⁰ | 45⁰ | 125⁰ | 125⁰ |
| Extension (10-20) | 20⁰ | 20⁰ | 20⁰ | 20⁰ |
| Abduction (0-45) |  |  | 45⁰ | 45⁰ |
| Adduction (0-45) |  |  | 25⁰ | 25⁰ |
| External Rotation (0-45⁰) | 45⁰ | 45⁰ | 45⁰ | 45⁰ |
| Internal Rotation (0-35⁰) | 30⁰ | 30⁰ | 40⁰ | 40⁰ |
| Comment |  |  | Painful motion | Painful motion |
| §4.71a Rating\* | 10% | 10% | 10% | 10% |

\*§4.59 Painful motion

At the MEB exam, the CI reported her legs hurt. The MEB physical exam demonstrated tender lower limbs, normal neuromuscular findings and an unassisted gait with a limp. The bone scan in May 2005 demonstrated resolution of the stress abnormalities noted on the prior February 2005 scan. At the VA Compensation and Pension (C&P) exam, 2 months after separation, the CI reported constant pain without incapacitation, worsened with standing or walking for prolong periods of time and relieved with anti-inflammatory medication or rest. The C&P physical exam demonstrated normal unassisted gait, and painful flexion of the hips bilaterally, otherwise normal anatomic and neuromuscular findings. The radiograph of each hip was normal.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were, well documented, and similar in terms of ratable data; however the VA exam was more complete and compliant with VASRD §4.46 (accurate measurement) and therefore the Board assigns the VA exam more probative value. The PEB and VA chose different coding options for the condition and this had significant implications on the rating for the Board to consider. The PEB assigned a 10% rating coded analogous to 5022 (periostitis) which defaults to the 5003 code and based this on pain limited motion and a gait with a noticeable limp. This was inconsistent with the criteria of this code, which specifies, “when however, the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10 pct is for application for each such major joint” and VASRD §4.45 defines each hip as a major joint. The VA originally denied service-connection due to normal radiographs and normal ROM’s therefore there was no pathology to render a diagnosis. The VA reconsidered their decision and assigned a rating of 0% with the 5255 code (malunion of the femur) for no residuals of malunion or limitation of motion for either hip. The Board agreed that the VA was consistent with the criteria of the 5255 code; however, IAW §4.7 the higher of two evaluations, the Board agreed there was still evidence of non compensable pain limited motion with adduction and pain with flexion demonstrated by the VA exam which allows a 10% minimum rating for each hip. There was no evidence of documentation of incapacitating episodes which would provide for additional or higher rating. There was no other viable approach to a higher rating for either hip which was countenanced by the VASRD. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a combined disability rating of 20% for the bilateral hip 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. As discussed above, PEB reliance on the USAPDA pain policy for rating bilateral hip condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the bilateral hip condition, the Board unanimously recommends a combined disability rating of 20%, coded 5099-5022 for each hip 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** |
| Right Femoral Neck Fractures | 5099-5022 | 10% |
| Left Femoral Neck Fractures | 5099-5022 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111227, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXX

 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, AR20120013398 (PD201200013)

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 XXXXXXXXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA