RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200072 SEPARATION DATE: 20060526

BOARD DATE: 20120906

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SGT/E-5, 91W, Health Care Specialist, medically separated for low back pain (LBP). The mechanical LBP began insidiously 8 years prior to separation. Although she initially responded to conservative treatment, the pain persisted and she was unable to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent P3U3L3 profile and referred for a Medical Evaluation Board (MEB) for spondylosis of the lumbar spine. Bilateral retropatellar pain syndrome (RPPS), left wrist volar ganglion, migraine headaches, plantar fasciitis and depressive disorder, as identified in the rating chart below, were also identified and forwarded by the MEB, the last two noted as meeting retention standards. The Physical Evaluation Board (PEB) originally adjudicated the low back pain, bilateral knee pain and migraine headaches as unfitting, rated 10%, 0% and 0%. However, the PEB completed an Administrative Correction on 28 December 2005, adjudicating the LBP as the only unfitting condition, rated at 10% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD).The remaining five conditions were determined to be not unfitting. The CI initially requested a Formal PEB, but then withdrew her request. The PEB subsequently completed another Administrative Correction (16 March 2006), (slightly changing the disability description) without a change in combined disability rating. She made no further appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “Depressive disorder, right shoulder impingement disorder, thoracolumbar spine strain, urinary incontinence, urethral reimplantation, left hip bursitis, right hip bursitis, left wrist cyst, left knee retropatellar pain syndrome, right knee retropatellar pain syndrome, migraine headaches, left foot plantar fasciitis with hallux, right foot plantar fasciitis with hallux valgus, bone spurs, left lower extremity varicose veins, right lower extremity varicose veins, maninginome brain.” The CI listed all service connected conditions rated by the VA, but elaborated no specific contention in her application. She also stated that a meningioma seen on MRI was not considered by the PEB.

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 conditions “identified but not determined to be unfitting by the PEB.” The back pain, depressive disorder, bilateral plantar fasciitis, bilateral retropatellar pain, migraine headaches and left wrist conditions meet the criteria prescribed in DoDI 6040.44 for Board purview. The other requested conditions, right shoulder impingement, urinary incontinence, urethral re-implantation, left hip bursitis, right hip bursitis, bone spurs, bilateral varicose veins and meningioma brain are outside 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:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **PDA Admin Corr– Dated 20060316** | | | **VA 2.5 Mo. After Separation – All Effective Date 20060527** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain | 5299-5237 | 10% | Thoracolumbar Strain | 5237 | 20% | 20060304 |
| Left Wrist Volar Ganglion | Not Unfitting | | Left Wrist Cyst | 7813-5023 | 10% | 20060304 |
| Migraine Headaches | Not Unfitting | | Migraine Headaches | 8100 | 10% | 20060304 |
| Bilateral Retropatellar Pain | Not Unfitting | | R knee retropatellar pain | 5024 | 10% | 20060304 |
| L knee retropatellar pain | 5024 | 10% | 20060304 |
| Depressive Disorder | Not Unfitting | | Depressive Disorder | 9434 | 30% | 20060308 |
| Plantar Fasciitis | Not Unfitting | | L Foot Plantar Fasciitis | 5284-5280 | 0% | 20060304 |
| R Foot Plantar Fasciitis | 5284-5280 | 0% | 20060304 |
| ↓No Additional MEB/PEB Entries↓ | | | Urinary Incontinence s/p urethral re-implantation | 7511-7512 | 20% | 20060304 |
| R Hip Bursitis | 5019 | 10% | 20060304 |
| L Hip Bursitis | 5019 | 10% | 20060304 |
| R Shoulder | 5203-5201 | 20% | 20060304 |
| 0% x 4/Not Service Connected x 2 | | | 20060304 |
| **Combined: 10%** | | | **Combined: 80%** | | | |

\*No additional VARDs in the record other than vocational rehabilitation

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 Department of Veteran Affairs (DVA) 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.

Low Back Pain Condition. The CI first sought medical attention for low back pain (LBP) in 1998, around 8 years prior to separation. Onset had been insidious without antecedent trauma. Conservative management included medications, duty limitations and physical therapy (PT) which did not provide relief sufficient for full duty. Imaging showed mild degenerative changes of the thoracic and lumbar spine with minimal scoliosis. The latter was determined to be congenital by the PEB. The MEB narrative summary (NARSUM) examination, conducted a little over 7 months prior to separation, noted that the CI endorsed left greater than right lumbar pain which ranged from 4-8/10. It was increased with a Valsalva maneuver and by impact activities, such as jumping, as well as bending, lying on her back and lifting. Her symptoms improved with treatment, but did not resolve. The examiner documented normal sensory, motor, and deep tendon reflex (DTR) examinations. Gait was normal. There was tenderness to palpation at L5-S1 and at the left sacroiliac joint. Range-of-motion (ROM) was noted to be full other than 10 degrees reduction in extension. The VA Compensation & Pension (C&P) was just over 2 months prior to separation. She reported that she had pain as often as 5 times a week, lasting a day each time. She reported 2 days of incapacitation over the prior year. The pain was described as burning, aching, sharp and sticking in nature. The examiner noted a normal gait, spinal curve and posture. There was lumbar tenderness, but no spasm. ROM was reduced 10 degrees for flexion and for the combined total, but otherwise normal. DeLuca criteria were pain, fatigue, weakness and a lack of endurance with repetition with pain the predominant factor. The examiner noted “The above factors additionally limit the joint function by 45 degrees because of pain. There are no signs of intervertebral disc syndrome with chronic and permanent nerve root involvement.” Sensory, motor and DTR examinations were normal. Imaging was normal. The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both coded the back condition as 5237, lumbosacral strain. Both rated the condition at 10% for ROM; however, the VA awarded 20% based on the C&P examiners statement that joint function was additionally limited by pain. It was not clear if there was objectively observed decrease in ROM of 45 degrees or if the examiner was stating an opinion. It also noted that the MEB examiner documented full flexion, but slight reduced extension on repetitive measurements*.* The imaging was normal on the VA exam and showed mild L5-S1 disc space narrowing on the MEB examination, a not uncommon finding in an adult. Neurological examination and gait were normal as was posture. No spasm was noted. The Board reviewed the service treatment records and noted that there was one visit in the record for her back pain, 2 months prior to separation, after the CI entered the MEB process 26 August 2005. Previous visits consistently noted normal or good ROM typically without pain. The Board determined that the C&P examiner’s statement about additional decrease in ROM was not consistent with the remainder of the C&P examination, which was otherwise essentially normal, or with the MEB examination and clinical record. 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 back condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were bilateral retropatellar pain syndrome (RPPS), left wrist volar ganglion, migraine headaches, plantar fasciitis and depressive disorder. 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. Plantar fasciitis and depressive disorder were both noted to meet retention standards. In addition, the depressive disorder was determined to have existed prior to service. The depressive disorder had never been profiled and the plantar fasciitis was temporarily profiled albeit 7 years prior to separation. These conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance. RPPS, left wrist volar ganglion, and migraine headaches had been profiled in the final profile before separation and were judged to fail retention standards by the MEB. However, that does not establish whether or not a condition is unfitting. The PEB arrives at that determination through a performance-based assessment. The neurologist determined that the headaches had not been adequately treated and that the prognosis was good with proper treatment and lifestyle modifications. The MEB examiner noted that the right dominant CI had good strength of the left wrist and full ROM. The VA examiner noted the same, but documented a 10 degree decrease in ROM from pain with repetition. The duty limitations noted were for carrying a weapon and doing push-ups. Review of the record shows that the last visit for the left wrist in the service treatment record, other than for imaging during the MEB process, was 13 months prior to separation and followed an acute re-injury the previous evening. She was treated with splinting, ice and 2 weeks light duty. The wrist was not given a profile until after she was entered into the DES. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance to the degree of being separately unfitting conditions. The left knee condition kept her from running and carrying a rucksack and stemmed from a hyperextension injury while dancing in 1995. The CI had been on an L2 profile for her knee for 6 years prior to DES entry. Later there was complaint of right knee pain during pregnancy. She was placed on an L3 profile by the orthopedist who initiated the MEB. Previously, management had been conservative and she was also advised to lose weight. She had full ROM without instability or evidence of meniscal tears. There was no muscle atrophy present. However, imaging showed mild bilateral joint space narrowing which was more pronounced on the left; MRI showed left and right (per the NARSUM) osteochondral defect or contusion, although only the report for the left knee was in evidence of the record. She was noted to have a normal gait, toe and heel walk, and tandem walk. The Board also noted that she was two pounds under her maximum at enlistment and had gained 33 pounds by the MEB separation examination and 52 pounds by the time of the VA C&P exam, two months prior to separation. The Board observed that this would aggravate any painful condition of the knees, contributing to her impairment. The VA rated each knee at 10% for painful motion, while noting an essentially normal examination. Although the orthopedist who initiated the MEB also profiled the knee as L3, there is no indication in the note that the condition had significantly worsened from previous examinations. However, the profile issued by the same orthopedic surgeon who initiated the MEB was more restrictive that the previous profile. The Board also notes that the CI had been successfully managed with duty limitations and conservative management for over six years at the time of DES entry. X-ray changes were worse in the left knee and that knee was injured in a hyperextension injury early in her career. The Board considered each knee separately. The evidence is not sufficient to determine that the right knee was a separately unfitting condition. The majority of Board members determined that the preponderance of evidence supported adjudicating the left knee as separately unfitting but not the right knee. The Board then considered the disability rating for the left knee. It noted that other than the changes on imaging there were no objective findings. The Board recommends a disability rating of 10% for painful motion coded 5299-5260, analogous to limited range of motion in flexion. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change to the PEB fitness determination for the any of the contended conditions other than the left knee. It recommends an additional disability rating of 10% for the left knee coded 5299-5260.

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 back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended left wrist, headache, plantar fasciitis and depression conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. In the matter of the bilateral RPPS, the Board unanimously agrees that the right knee was not unfitting. In the matter of the left knee, the Board determined by a 2:1 vote that it was unfitting and recommends a disability rating of 10%, coded 5299-5260 IAW VASRD §4.71a. The minority voter did not elect to submit a minority opinion. 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 non-radiating low back pain | 5299-5237 | 10% |
| Left knee retropatellar pain syndrome | 5299-5260 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120115, 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 XXXXXXXXXXXXXXXXXXXX, AR20120016889 (PD201200072)

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 XXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA