RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200088 SEPARATION DATE: 20060810

BOARD DATE: 20120727

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSGT/E-6 (98C30/Research, Development, Test and Evaluation NCO), medically separated for chronic low back pain (LBP) and right hip pain. 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). LBP and anterior right hip pain were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the chronic LBP and right hip pain conditions as unfitting, rated 0% and 0% respectively; with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 0% combined disability rating.

CI CONTENTION: “The disability rating that I received from the Department of Verterans [sic] Administration (VA) shortly after my discharge thoroughly evaluated all conditions associated with my injury and/or disease. As one example, the neurological issues to my lower extremities that are result of my degenerative disc disease were supported by the VA physical evaluation, but were not addressed by the Army's Physical Evaulation Board (PEB). Overall, my VA rating decision highlighted the disparity of rating considerations that the Army PEB concluded for the same injury and/or disease for which I was discharged.”

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. The chronic LBP and right hip pain conditions meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. The other requested conditions and remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and listed on the DD Form 294 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 PEB – Dated 20060605** | **VA (3 Mos. After Separation) – All Effective Date 20060811** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5237 | 0% | DDD of the Lumbar Spine | 5242 | 20% | 20061107 |
| Right Hip Pain | 5024 | 0% | Chronic Right Hip Tendonitis | 5024-5251 | 10% | 20061107 |
| ↓No Additional MEB/PEB Entries↓ | Right Leg Neurological Abnormalities…DDD of the Lumbar Spine | 8520 | 10% | 20061107 |
| Neurological Abnormalities of the Left Leg….DDD of the Lumbar Spine | 8520 | 10% | 20061107 |
| Depressive Disorder | 9434 | 30% | 20061002 |
| Left Knee Chondromalacia | 5260 | 10% | 20061107 |
| Right Knee Chondromalacia | 5260 | 10% | 20061107 |
| 0% x 2/Not Service-Connected x 5 | 20061101 |
| **Combined: 0%** | **Combined: 70%** |

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 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 the 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 Low Back Pain. The CI experienced onset of back pain during pregnancy that persisted and worsened with resumption of vigorous physical training following delivery of her child. According to a 14 February 2006 orthopedic surgery evaluation, 6 months before separation, back pain was increased with lifting and prolonged sitting and running. There was radiating pain into the right leg occurring once per week during activity however there was no limb weakness, tingling or numbness. Thoracolumbar spine range-of-motion (ROM) was recorded as normal (flexion, extension). There was no tenderness or muscle spasm. The spine was normal in appearance, and gait and posture were normal. Lower extremity strength, reflexes and sensation were intact and normal with negative provocative testing for nerve root irritation. Magnetic resonance imaging (MRI) of the lumbar spine performed on 23 February 2006, demonstrated mild diffuse bulging of the L5-S1 disc without compression of neural structures. Follow up evaluation with orthopedics on 14 March 2006, recommended non-surgical treatment. At the time of the MEB narrative summary (NARSUM), completed on 12 May 2006, there was full active ROM of the back and normal gait. The thoracolumbar ROM was flexion 100 degrees (100, 110, 100), extension 30 degrees (30, 30, 30), lateral flexion was 30 degrees bilaterally (30, 30, 30), and rotation 80 degrees bilaterally (75, 80, 85). The VA Compensation and Pension (C&P) examination was performed on 7 November 2006, 3 months after separation. At the time of examination, the CI was approximately 6 months pregnant. The CI reported persisting chronic LBP radiating into the right leg. On examination, flexion was 60 degrees, extension 20 degrees, and lateral bending 20 degrees. The examiner stated rotation could not be assessed but did not state the reason why. There was no muscle spasm and gait was normal. There was complaint of radiating pain with leg raising on the right but strength was normal. There was non-dermatomal decreased sensation of the right foot (stocking distribution). A VA peripheral nerves C&P examination, performed on 12 October 2006, recorded a normal general neurologic examination indicating presence of normal strength, coordination, sensation, and deep tendon reflexes.

The Board directs attention to its rating recommendation based on the above evidence. The normal range of motion documented in the MEB NARSUM examination was non-compensable under the VASRD general rating formula for diseases and injuries of the spine (§ 4.71a). The orthopedic examination performed on 14 February 2006, ROM was consistent with the MEB NARSUM examination and also indicated absence of tenderness or muscle spasm that would support a 10% rating using the general rating formula. The Board however noted service treatment record (STR) entries from January 2006 documenting tenderness and painful motion supporting of a 10% rating. The Board considered the ROM examination from the post-separation C&P examination; however, the Board concluded that examination was of limited probative value because the CI was 6 months pregnant, a temporary condition that also causes back pain and decreased mobility. There was no evidence of incapacitating episodes due to intervertebral disc disease that would meet the criteria for a minimum rating under the alternative formula for incapacitating episodes due to intervertebral disease. There was no evidence of unfitting peripheral nerve impairment in this case. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the chronic LBP condition.

Right Hip Pain. The CI experienced right hip pain beginning in 2004. An orthopedic evaluation performed on 14 February 2006, 6 months before separation, recorded worsened right hip pain with extended activity associated with a clicking sensation. On examination, the hip region was non-tender. Right hip ROM was considered normal with pain at extreme end ROM. The iliopsoas tendon was observed to snap with external rotation and extension of the right hip. X-rays of the hips were normal and a MRI arthrogram of the right hip performed on 26 February 2006, was normal. Orthopedic surgery, performed on 14 March 2006, concluded with diagnosis of snapping hip syndrome and recommended non-surgical treatment. At the time of the MEB NARSUM on 12 May 2006, the gait was normal. There was tenderness of the right ilioinguinal ligament. The right hip ROM was flexion 110 degrees (110 110 120), extension 15 degrees (10, 15, 15), internal and external rotation were 45 degrees bilaterally (45, 45, 45), abduction was 45 degrees (45, 45, 45), and adduction was 35 degrees (30, 35, 40). During the 7 November 2006, VA C&P examination the CI reported constant pain limiting activity. Right hip ROM was flexion 120 degrees, extension 4 degrees, internal and external rotation 10 degrees, abduction 30 degrees, and adduction 30 degrees. There was pain reported with motion but no additional limitation after repetition. The gait was normal on C&P examinations on 1 November and 7 November 2006.

The Board directs attention to its rating recommendation based on the above evidence. The right hip ROM documented in the MEB NARSUM and service treatment records was non-compensable; however, painful motion was documented on several examinations that supports adjudication of a 10% rating with application of §4.59 (painful motion). The C&P examination indicated worsening of the right hip condition with decreased ROM compared to the MEB NARSUM examination. Other than pregnancy, there was no other cause such as injury that would account for the worsening since the time of the MEB NARSUM. Regardless, the C&P examination ROM supported no higher than a 10% rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the right hip pain condition coded 5024-5251.

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, there was likely application of the USAPDA pain policy by the PEB for rating the chronic LBP and right hip pain and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic LBP condition, the Board unanimously recommends a disability rating of 10%, coded 5237 IAW VASRD §4.71a. In the matter of the right hip pain condition, the Board unanimously recommends a disability rating of 10%, coded 5024-5251 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5237 | 10% |
| Right Hip Pain | 5024-5251 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120117, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXX, AR20120013947 (PD201200088)

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