RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1200109 SEPARATION DATE: 20050228

BOARD DATE: 20120517

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sailor, IS2/E-5(3910, Intelligence Specialist), medically separated for a bilateral hip condition*.* She did not respond adequately to conservative, non-operative treatment or meet physical fitness standards and underwent a Medical Evaluation Board (MEB). Bilateral hip pain, etiology unclear, was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB adjudicated bilateral hip pain as unfitting, rated 20%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “I do not feel that I was given the sufficient rating that my disability from my hips have caused including back problems, knee problems and also continuous migraines that I was given a 0% disability.” [sic] She 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 service ratings for unfitting conditions will be reviewed in all cases. The other requested conditions 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 Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20041102** | | | **VA (8 Mo. After Separation) – All Effective Date 20050301** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Hip Pain | 5099-5003 | 20% | Bursitis, R Hip | 5019-5003 | 10% | 20051007 |
| Bursitis, L Hip | 5019-5003 | 10% | 20051007 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 1/Not Service-Connected x 6 | | | 20051007 |
| **Combined: 20%** | | | **Combined: 20%\*** | | | |

\*Includes 1.9% bilateral factor.

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertion that she was not given a sufficient rating for her disability from her hips which have led to back, knee and migraine headache problems and that migraine headaches have subsequently been diagnosed and currently rated by the Department of Veterans’ Affairs (DVA); but, notes that the scope of its recommendations does not extend to conditions which were not diagnosed at the time of medical separation. 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. In this endeavor the Board is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (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 DVA, operating under a different set of laws (Title 38, United States Code). The Board’s operative instruction, DoDI 6040.44, specifies a 12-month interval for special consideration to DVA findings. This does not mean that later DVA evidence is disregarded, but the Board’s recommendations are directed to the implications of the evidence which are referable to the clinical circumstances at separation.

Bilateral Hip Condition. Over the 6 years of her military service the CI underwent extensive evaluation and aggressive outpatient treatment to include steroid injections of her persistent bilateral hip pain. She had profiles and limited duty (LIMDU) limiting aggravating activities for most of this period, principally due to pregnancies and other health issues. Her limitations included; unable to run, stand greater than 20 minutes, sit without discomfort longer than a few hours, and was greatly limited in her cutting ability or ability to turn and make sharp movements. Serial imaging and magnetic resonance imaging (MRI), and specialty consultations, ruled out stress fracture or other pathology of the hips and the ultimate diagnosis was bilateral trochanteric bursitis and tight iliotibial bands. 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 ~ 6 Mo. Pre-Sep  (20040830) | | VA C&P ~ 8 Mo. After-Sep  (20051007) | |
| L/R Hip (Thigh) | L Hip | R Hip | L Hip | R Hip |
| Flexion (0-125) | 60⁰ | 60⁰ | 120⁰ | 120⁰ |
| Extension (10-20) | Not measured⁰ | Not measured⁰ | 30⁰ | 30⁰ |
| Abduction (0-45) | Not measured⁰ | Not measured⁰ | 30⁰ | 30⁰ |
| Adduction (0-45) | Not measured⁰ | Not measured⁰ | 20⁰ | 20⁰ |
| External Rotation (0-45⁰) | 30⁰ | 30⁰ | 30⁰ | 30⁰ |
| Internal Rotation (0-35⁰) | 10⁰ | 10⁰ | 20⁰ | 20⁰ |
| Comment | No painful ROM | | No antalgic gait, all ROMs painful, | |
| §4.71a Rating | 0% | 0% | 10%\* | 10%\* |

\* Conceding §4.59 (painful motion) as below.

At the MEB exam, performed 7 months prior to separation, the CI reported bilateral hip pain 7/10 with 10 being the worse and Motrin use. At the VA Compensation and Pension (C&P) exam, performed 8 months after separation, the CI reported Naprosyn use twice a day two to three times a week, walking and being on her feet a lot would produce a flare-up which would limit her ambulation and disrupt her sleep. The MEB and VA physical exam demonstrated tenderness over the greater trochanter of the left and right hip, normal gait, and normal motor and neurologic exam of the lower extremities. The C&P physical exam also demonstrated no additional loss of motion with repetitions and additional imaging revealed no abnormalities of the bones or joint. Evidence in the service treatment record (STR) reflected an overall full ROM of both hips.

The Board first considered the probative value of the data presented above. While the MEB exam data was the clear outlier for flexion, this did not have a bearing on the rating. The VA C&P exam was the only complete VASRD compliant exam in evidence within 12 months of separation. This exam reflected findings consistent with the totality of evidence except for painful ROMs in all directions which is not consistent with the clinical pathology. This exam, still, weighed heavily in the Board’s rating recommendation. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB chose to rate both hips together analogous to the 5003 code (arthritis, degenerative) and its 20% determination was consistent with §4.71a standards. The VA chose to rate each hip separately at 10% using the 5019 (Bursitis) code analogous to 5003 code which was more specific to the clinical pathology and also consistent with §4.71a standards. The VA ROMs did not warrant a minimal compensable rating for either hip, but §4.59 was correctly applied to achieve the minimal compensable rating. The Board looked in the evidence for an avenue to a higher rating under other hip and thigh codes countenance by the VASRD and did not find any. After due deliberation in consideration of the totality of the evidence, the Board concluded that there is no VASRD basis for recommending a higher rating than the 20% conferred by the PEB in this case.

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 bilateral hip condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Bilateral Hip Pain | | 5099-5003 | 20% |
| **COMBINED (Incorporating BLF)** | | 20**%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110825, 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 29 May 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 individuals’ 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:

- XXX XX former USMC

- XXX XX former USMC

- former USN, XXX-XX-

- XXX XX former USMC

- former USN, XXX-XX-

Assistant General Counsel

(Manpower & Reserve Affairs)