RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200120 SEPARATION DATE: 20060617

BOARD DATE: 20121009

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (42L/Administrative Specialist), medically separated for narcolepsy. The narcolepsy condition could not be adequately rehabilitated and the CI was unable to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent P3/S2 profile and referred for a Medical Evaluation Board (MEB). Chronic pain syndrome to narcolepsy, mood disorders due to narcolepsy with depressive features, thyroid colloid cysts, gastroesophageal reflux disease (GERD) and right hip and leg pain conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The Informal Physical Evaluation Board (IPEB) adjudicated the narcolepsy condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting and were not rated. The CI appealed the decision and a Formal PEB (FPEB) determined the rating should be 20% due to a definite impact on her industrial adaptability. She was then medically separated with a 20% disability rating.

CI CONTENTION: “The medical condition that I was diagnosed with as Narcolepsy and Mood Disorder were combined at the time of my discharge and also there is not cure even though medications and lifestyle modifications are being made.”

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. The mood disorder condition requested for consideration and the unfitting narcolepsy condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. 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 FPEB – Dated 20060315** | **VA (2 Months Post-Separation) – All Effective Date 20060618** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Narcolepsy with Diffuse Body Pain | 8108 | 20% | Narcolepsy | 8108 | 10%\* | 20060831 |
| Fibromyalgia | 5025 | 0% | 20060831 |
| Mood Disorders due to Narcolepsy with Depressive Features | Not Unfitting | Mood Disorder | 9435 | 10% | 20060821 |
| Thyroid Colloid Cysts | Not Unfitting | Thyroid Nodules | 7902 | 0% | 20060831 |
| Gastroesophageal Reflux Disease | Not Unfitting | Gastroesophageal Reflux Disease | 7346 | 10% | 20060831 |
| Right Hip and Leg Pain | Not Unfitting | Right Leg Condition | 5299-5024 | NSC | 20060831 |
| ↓No Additional MEB/PEB Entries↓ | Tinnitus | 6260 | 10% | 20060803 |
| 0% X 4 / Not Service-Connected x 19 | 20060831 |
| **Combined: 20%** | **Combined: 30%\*\*** |

\*Increased to 40% effective 20100111.

\*\*Increased to 70% effective 20100111 when Narcolepsy increased to 40% and headaches increased from 0% to 30%.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. While the DES considers all of the 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Narcolepsy with Diffuse Body Pain Condition. The MEB narrative summary (NARSUM) performed in October 2005, 8 months prior to separation, noted an initial clinical presentation for fatigue in February 2001 with no further follow-up until May 2004 when the CI presented with complaints of excessive daytime sleepiness. Sleep studies lead to a diagnosis of narcolepsy. In January 2005 the CI was evaluated for body aches and fatigue and received 60 days of doxycycline for possible disseminated Lyme disease. Despite this treatment, the diffuse body pain and fatigue persisted and evaluation by physical medicine and rehabilitation suggested the possibility of fibromyalgia. The NARSUM states a rheumatologist ruled out the diagnosis of fibromyalgia and opined the pain could be secondary to the sleep disorder. However, this report is not present in the record available for review. The CI was being treated with medication but continued to have excessive sleepiness and also reported cataplectic events. The frequency of cataplexy is not reported in the NARSUM. The NARSUM did not include a physical examination but the MEB history and physical examination performed in November 2005 noted no physical abnormalities. The VA Compensation and Pension (C&P) exam performed in August 2006, approximately 2 months after the CI separated included a similar clinical history and noted two cataplectic attacks over the last 2 years, averaging one per year. She had not been employed since she separated.

The IPEB rated this condition at 10% but upon appeal, the FPEB rated it at 20% stating “her impairment has a definite impact on her industrial adaptability.” Neither record of proceedings notes the frequency of cataplectic attacks. The VA rated the condition at 10% based on the frequency of attacks of one per year on average. The Board directs attention to its rating recommendation based on the above evidence. Neither the NARSUM nor the C&P evaluations include any information that can be used to support a rating greater than 20%. 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 narcolepsy with diffuse body pain condition.

Contended PEB Conditions. The contended condition of mood disorders due to narcolepsy with depressive features was adjudicated as not unfitting by the PEB. The Board’s first charge with respect to this condition 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.

The CI was on an S2 permanent profile for mood disorder due to narcolepsy. Her permanent P3S2 profile had four conditions listed and it is not clear which restrictions were attributed to which condition. The restriction against carrying or firing a loaded weapon could be attributed to either the narcolepsy or the mood disorder. However, given the fact that the psychiatric portion of the profile was at level S2, more likely than not, this restriction was attributed to the narcolepsy. When access to a weapon is due to a psychiatric condition, the profile is generally an S3. Additionally, the paragraph containing the weapons access restriction mentions only narcolepsy. The MEB determined the mood disorder condition was medically acceptable and the PEB agreed. No mental illness condition was implicated in the commander’s statement. This condition was reviewed by the action officer and considered by the Board. Although only one mental health outpatient note was available for review, the record contained reports of previous treatment with medications and therapy. A Psychiatric addendum to the MEB NARSUM was performed on 27 July 2005 (11 months prior to separation) and the mental status examination noted the CI was alert but appeared fatigued and her mood was slightly depressed. A Global Assessment of Functioning (GAF) was assessed as 67. A C&P examination for mental illness was performed on 21 August 2006, 2 months after separation, and the examiner noted a GAF of 70 to 80 with a diagnosis of mood disorder secondary to medical condition. The CI had not worked since she had separated from the military and was looking for a job. The mental status examination noted her affect was somewhat constricted in range and her mood was euthymic. There was no indication from the record that this condition 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 mood disorders due to narcolepsy with depressive features condition and, therefore, no additional disability rating 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 narcolepsy with diffuse body pain condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended mood disorders due to narcolepsy with depressive features condition, the Board unanimously recommends no change from the PEB determination 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** |
| Narcolepsy | 8108 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120202, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXXX, AR20120019350 (PD201200120)

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 XXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA