RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200177 SEPARATION DATE: 20041020

BOARD DATE: 20121016

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an AGR SFC/E-7 (79V40/Retention and Training NCO), medically separated for neck pain, fibromyalgia and rotator cuff tear. Neck pain began in 1992, was not a consequence of trauma, and was not associated with a surgical indication. Fibromyalgia was diagnosed in 2001 after years of fatigue and generalized pain. Right shoulder rotator cuff tear was diagnosed after a motor vehicle accident in 2004, and was treated surgically. None of the conditions could be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent U3/L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded cervical spinal stenosis, fibromyalgia and rotator cuff tear, right shoulder, 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 neck pain from congenital spinal stenosis aggravated by bulging cervical discs, fibromyalgia and rotator cuff tear as unfitting, rated 10%, 10% and 0% respectively. The neck pain and fibromyalgia were adjudicated with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD), and the rotator cuff tear with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 20% disability rating. The CI elected disability severance pay in lieu of transfer to the Retired Reserve List.

CI CONTENTION: “Currently I am IU with the VA and at the time of discharge, all medical issues were not address in the rating given. I have suffered with numerous medical issues that existed at time of discharge. Also at time of discharge I was not rated for issues with my shoulder which surgery was recommended by the Army and at time of discharge was not evaluated which 30% was awarded by the VA. I was not evaluated for Mental disorder which was also a part of my records at time of discharge.” [*sic*]

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 shoulder condition requested for consideration and the unfitting neck and fibromyalgia conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The mental disorder and other remaining conditions rated by the VA at separation and listed on the DA Form 294 application 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 IPEB – Dated 20040709** | **VA (1 Mo. Pre-Separation) – All Effective Date 20041021** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Neck Pain | 5299-5237 | 10% | Cervical Spine Deg. Disc Disease | 5242 | 10% | 20040927 |
| Fibromyalgia | 5025 | 10% | Fibromyalgia | 5025 | 20% | 20040927 |
| Rotator Cuff Tear | 5099-5003 | 0% | Right Rotator Cuff Tear | 5003-5201 | 30% | 20040927 |
| ↓No Additional MEB/PEB Entries↓ | Dysthymic / Panic Disorder | 9433 | 70%\* | 20040927 |
| Lumbar Spine Deg. Joint Disease | 5242 | 10% | 20040927 |
| Plantar Fasciitis, Left Foot | 5284 | 10% | 20040927 |
| Plantar Fasciitis, Right Foot | 5284 | 10% | 20040927 |
| Gastroesophageal Reflux | 7346 | 10% | 20040927 |
| Iron Deficiency Anemia | 7700 | 10% | 20040927 |
| Herpes Labialis | 7819-7806 | 10%\* | 20040927 |
| Migraine Headaches | 8100 | 10% | 20040927 |
| 0% X 4 / Not Service-Connected x 4 | 20040927 |
| **Combined: 20#%** | **Combined: 90%** |

\*10% rating for dysthymia and 0% for herpes labialis assigned by 20041217 VA decision, increased to 70% and 10% respectively by 20050504 decision, based on original exam, effective 20041021; combined increased from 60% to 90%.

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that the mental disorder was not evaluated by the Army. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected service improprieties in the processing of her case. 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.

Neck Pain Condition. Chronic neck pain led to a diagnosis in 1996 of congenital cervical spinal stenosis with superimposed acquired stenosis due to C-4 through C-6 disc disease. There were three 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.

|  |  |  |  |
| --- | --- | --- | --- |
| Cervical ROM | NARSUM ~6 Mo. Pre-Sep | VA C&P ~1 Mo. Pre-Sep | VA C&P ~4 Mo. Post-Sep |
| Flex (45⁰ Normal) | 45⁰ | 45⁰ (60⁰) | 40⁰ |
| Ext (0-45) | 45⁰ | 45⁰ (75⁰) | 40⁰ |
| R Lat Flex (0-45) | 40⁰ | 30⁰ | 45⁰ |
| L Lat Flex (0-45) | 40⁰ | 25⁰ | 45⁰ |
| R Rotation (0-80) | 80⁰ | 55⁰ | 75⁰ |
| L Rotation (0-80) | 80⁰ | 55⁰ | 75⁰ |
| COMBINED (340⁰) | 330⁰ | 270⁰ | 320⁰ |
| Comment | Painful motion | Pain with use | Limitation of motion due to neck obesity |
| §4.71a Rating | 10% | 10% | 10% |

The narrative summary (NARSUM) notes that pain occurred with moving the neck and was associated with pain radiating down the right shoulder and arm. Examination 6 months prior to separation revealed normal motor, sensory and deep tendon reflex (DTR) findings. X-rays showed some straightening of the normal lordotic curvature and minimal arthritic narrowing of the C5-6 disc. A NARSUM neurology addendum dated 6 months prior to separation reported the neck pain was increased with prolonged sitting or driving, heavy lifting, wearing a backpack or helmet, marching or high-impact activities. A detailed neurologic examination was normal. Previous magnetic resonance imaging (MRI) revealed congenital spinal stenosis with superimposed disc bulges at C4-C6, but no disc herniation or neuroforaminal narrowing. At the VA Compensation and Pension (C&P) exam performed a month prior to separation the CI reported that prolonged sitting, immobility or flexing the neck precipitated pain. The pain radiated to the thoracic spine and right shoulder, and there was some numbness in the fingertips. The condition did not interfere with activities of daily living. Examination revealed normal posture and gait. At a second C&P exam performed 4 months after separation the CI reported that stress made her neck worse, and that numbness and tingling of upper and lower extremities was present. Physical exam revealed normal strength and DTRs; neck tenderness was not present. During the 45 minute interview, she did not appear to move about in the chair. An electrodiagnostic study (EMG) was negative for radiculopathy.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The assigned 10% rating by the PEB and VA was appropriate given the degree of compensable limitation of combined motion present on each of the examinations. The Board also considered rating intervertebral disc disease under the alternative formula for incapacitating episodes, but could not find sufficient evidence which would meet even the 10% criteria under that formula. The Board further deliberated if additional disability was justified for the history of radiating pain suggestive of radiculopathy. Examiners however recorded normal neurologic findings, including muscle strength, and the EMG performed by the VA was normal. There is no evidence in this case of functional impairment attributable to peripheral neuropathy, and the Board therefore concludes that additional disability was not justified on this basis. 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 neck pain condition.

Fibromyalgia Condition. The fibromyalgia diagnosis was made by a rheumatologist in 2001. Symptoms included generalized pain, fatigue, headaches, numbness and tingling in hands and feet, and sleep disturbance. The CI was followed by the rheumatologist since that time, although the last outpatient evaluation of the condition in evidence was 12 months prior to separation. Her symptoms waxed and waned, and were usually related to whether or not she was taking her medications. The NARSUM examination noted multiple tender spots throughout the body in accordance with her fibromyalgia. The NARSUM neurologist reported aches and pains throughout the body without significant improvement on medication. A commander’s statement 4 months prior to separation noted that the CI was a dedicated performer, and saw no reason her medical conditions should disqualify her from performing within her MOS. A mental health VA examiner 2 months prior to separation reported that symptoms of depression and anxiety included sleeping difficulty, fatigue and lack of energy. The CI had been prescribed an antidepressant medication for depression by her primary care provider, but she discontinued it. The C&P examiner reported difficulty sleeping, constant fatigue and widespread pain. She took amitriptyline daily and flexeril as needed for the fibromyalgia condition. Examination revealed no trigger point tenderness. The C&P examiner reported sleep disturbance and fatigue, although the examiner opined that fatigue could also be related to the CI’s chronic anemia. Pain was noted to be more constant than episodic. Hip and leg pain were reported on the right side, but she did complain of generalized pain in multiple other joints. She could not walk more than one or two blocks. This examiner referred to a recent rheumatology visit at which the CI only had right sided musculoskeletal complaints. Physical exam revealed the CI to “move freely on and off the table.” During the 45 minute interview, she did not appear to move about in the chair. Trigger points in the spine were inconsistently positive, and were negative in the arms and thighs. The assessment was that “complaints are not congruent with physical exam,” and that fibromyalgia trigger points were not evident.

The Board directs attention to its rating recommendation based on the above evidence. The 5025 code used by the PEB and the VA is appropriate given the rheumatologist’s diagnosis of fibromyalgia. The PEB’s 10% rating reflects the judgment that the CI’s symptoms required continuous medication for control. The conclusion that symptoms were episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but were present more than one-third of the time, underpinned the VA’s 20% rating. Under the 5025 code, “widespread musculoskeletal pain and tender points” is the basis for rating. These symptoms may occur “with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud’s-like symptoms.” The Board considered that the two VA exams prior to and after separation encompassed a 5 month interval, and were more proximal to separation than the NARSUM exam. The absence of tender points on those exams pointed to an improved condition. Furthermore, while the record indicates the occurrence of episodic exacerbations, they occurred primarily in the context of not taking the prescribed medication. Therefore, Board members agreed that the condition most closely approximated the 10% rating, and that criteria for the 20% rating were not met. 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 fibromyalgia condition.

Rotator Cuff Tear Condition. An MRI performed on 13 January 2004 showed a 50% rotator cuff tear. At the NARSUM exam, the CI reported that movement of the right arm caused pain, especially with overhead lifting, and that she could not sleep on that side. The examination was silent regarding shoulder ROM. On 24 June 2004, she underwent arthroscopic repair of the rotator cuff and resection of the acromioclavicular joint. At the C&P exam the right hand dominant CI reported that physical therapy was delayed post-operatively for 4 weeks. She reported painful movement for which she took narcotic pain medication, and restricted ROM. Examination showed a normal posture and gait. A well-healed surgical scar was present over the right shoulder and diffuse tenderness was noted. ROM showed forward flexion of 85 degrees (normal 180 degrees) with pain from 60 to 85 degrees, and abduction of 60 degrees (normal 180 degrees). At the C&P exam the CI was noted to have “multiple somatic complaints that appear to be self-motivated.” Although the CI had been given physical therapy bands to exercise the right shoulder, the examiner stated it did not appear these exercises were being performed. Physical examination of the CI reported that “when unobserved moves freely on and off the table.” Shoulder ROM description was documented in an unclear way, but suggested that abduction was limited by only 10 degrees. The examiner also referred to a recent rheumatology note performed on 10 December 2004 that reported “full ROM of the right shoulder.”

The Board directs attention to its rating recommendation based on the above evidence. The VASRD §4.71a threshold for compensable ROM impairment is “shoulder level”, and the first C&P exam demonstrated motion below this level. The PEB rated the condition 0% under an analogous 5003 code with application of the USAPDA pain policy. The VA’s 30% rating under a 5003-5201 code assumed limited arm motion to midway between the side and shoulder level (i.e. approximately 45 degrees). Board members agreed that a 10% rating was easily supported based on painful use (§4.40) or painful motion (§4.59), but considered a rating under the 5201 code. The Board debated the 60 degrees of abduction on the first C&P exam in the context of a post-operative state that did not reflect maximum healing and had not been fully rehabilitated. It was agreed that an actual ROM of 170 degrees was strongly suggested on the second C&P exam, and that this was consistent with the “full ROM” attributed to the rheumatologist. After considerable debate, the Board consensus was that the criteria for a minimal rating under the 5201 were not present. 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 rotator cuff 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 the rotator cuff tear was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the neck pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the fibromyalgia condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the rotator cuff tear condition, the Board by a vote of 2:1 recommends a disability rating of 10%, coded 5099-5003 IAW VASRD §4.71a. The single voter for dissent (who recommended 20% under the 5201 code) 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Neck Pain | 5299-5237 | 10% |
| Fibromyalgia | 5025 | 10% |
| Rotator Cuff Tear | 5099-5003 | 10% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120220, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXX, AR20120019912 (PD201200177)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

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:

 a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

 b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

 c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

 d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

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 XXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA