/RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX . BRANCH OF SERVICE: Army

CASE NUMBER: PD2012-00213 SEPARATION DATE: 20090721

BOARD DATE: 20120827

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve Major/O-4 (66H/Med Surgeon Nurse), medically separated for lumbosacral strain. CI’s low back pain began in September 2006 while setting up a tent during a field training exercise. She experienced chronic pain and developed pain radiating into her left leg. She was fully evaluated and treated yet her lumbosacral strain condition could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS). She was issued a permanent L3/S3 profile and referred for a Medical Evaluation Board (MEB) for low back pain with degenerative joint disease and lumbosacral radiculopathy, left knee pain with osteoarthritis, and major depressive disorder. The Physical Evaluation Board (PEB) adjudicated the lumbosacral strain condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The PEB adjudicated the left knee pain with osteoarthritis and major depressive disorders as not unfitting conditions. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “When I started the MEB and initiated the process at the Central Exam Station, where I was given a DD Form 2807-1 (Report of Medical History) to fill out the part where it ask "Have you ever had or do you now have”; I marked what were the complains. When the rating came back; it was noted that Major Depression Disorder, was written as a single episode and I was already on medications for Depression because of the health issues with my lower back and knee pain, i was not able to perform my duties as a Nurse on a Telemetry Unit. On regards of my left knee, I turned several copies of my profiles and a copies of my Officer Evaluation Reports that i was on a Physical Profile, and another that i failed a physical fitness test (copies enclosed) the rating came back as that i passed a APFT since the original injury in 2000. I kept on telling my PEBLO how depress I was, the Migraines, knee pain but, nobody took things seriously, i was rushed out, and I lost hope. I was so tired, depress, and frustrated with the whole process of the Medical Board that, I just agreed to take the Severance Pay; Now, I am suffering of severe issues with my health.”

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 lumbosacral strain condition requested for consideration, and the not unfitting left knee pain and major depressive disorder conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested condition, migraines, is 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 the Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20090604** | | | **VA (6 Mos. Post-Separation) – All Effective Date 20090722** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbosacral Strain | 5237 | 10% | Low Back Pain | 5299-5242 | 20% | 20100120 |
| Left Knee Pain | Not Unfitting | | Patellofemoral Syndrome Left Knee | 5299-5010 | 10% | 20100120 |
| Major Depressive Disorder | Not Unfitting | | Mental Condition | 9435 | 50% | 20100125 |
| ↓No Additional MEB/PEB Entries↓ | | | Migraines | 8100 | 10% | 20100120 |
| 0% X 1 / Not Service-Connected x2 | | |  |
| **Combined: 10%** | | | **Combined: 70%** | | | |

ANALYSIS SUMMARY:

Lumbosacral Strain Condition. The CI incurred a lumbar strain in September 2006, while setting up a tent during her two week active duty annual training. The available records fall silent with regard to problems with back pain. The officer evaluation report for the period 30 July 2007 to 29 July 2008 reflects no limitations in performance of Reserve duties, and noted the CI volunteered to be a tactical commander of a field litter ambulance. The first available service treatment record entry for back pain is dated 10 July 2008. The CI reported onset on September 2006. No recent injury was recorded, including any injury during the CI’s last period of active duty training from 7 to 20 June 2008. Muscle spasm was noted but spine motion was stated to be normal. There was radiating pain, but nerve tension testing was recorded as negative. At the 14 July 2008 follow up appointment, the physician noted the CI had an eight month old baby and wrote “having back pain ? exacerbated by pregnancy”. Gait and stance were normal. At a 5 September 2008 family practice appointment, low back pain was “worse when active, pain minimized with pain medication”. On examination, gait and stance were normal and the lumbar spine “exhibited no abnormalities.” Pain was treated with medication. A 15 October 2008 family practice clinic encounter recorded there was an acute exacerbation of back pain without further details. This was apparently a “re-aggravation” while lifting a patient at her civilian nursing job (per psychiatry NARSUM 17 February 2009 and VA C&P examination 7 December 2010). The CI declined referral to a pain management clinic (13 November 2008). The MEB history and physical examination 26 November 2008 recorded pain with back motion. Gait and stance were normal. A 4 December 2008 public health clinic encounter recorded pain level at 2, and noted the CI was working fulltime. A 5 December 2008 family practice clinic encounter documents a return to work note advising assistance for lifting patients. The CI’s medication list reflected prescriptions dated 8 December 2008 for travel including medications for malaria prophylaxis, travelers’ diarrhea, and motion sickness. A 12 December 2008 electrodiagnostic study (electromyogram and nerve conduction velocity) was normal, without evidence for radiculopathy or peripheral nerve condition. The MEB NARSUM dated 12 December 2008, records thoracolumbar range of motion of flexion 70 degrees, extension 30 degrees, and right and left lateral bending of 30 degrees. At the 22 December 2008 occupational medical examination for hire as a case manager in the Warrior Transition Unit, the examiner noted the history of low back pain and limitations on heavy lifting. On examination, posture, gait and stance were normal, the back examination was stated to show no abnormalities, and “no physical disability observed”. The CI was medically cleared for work as a case manager not requiring heavy lifting. MRI of the lumbosacral spine on 5 January 2009 demonstrated degenerative changes of the L4-5 and L5-S1 intervertebral discs without evidence of neural impingement consistent with physical examinations, and electrodiagnostic testing. A 12 January 2009 neurology appointment noted complaints of low back pain radiating to the left leg, but also noted the CI “claims to be doing well on current medicines”. An orthopedic surgery examination 13 May 2009, two months before separation from the Reserves, noted the history of injury in September 2006 and wrote, “The patient states that as her job as a nurse, she is able to perform her duties, but when she gets off work, she does have significant increase in her pain and difficulties with getting up in the morning with her back pain.” On examination, there was thoracolumbar flexion to 75 degrees, extension to 28 degrees, lateral bending to 20 to 25 degrees, and right and left rotation to 30 degrees. The gait, strength and reflexes were normal. Nerve root tension testing was negative for radiating pain. A VA compensation and pension (C&P) examination performed approximately six months after separation from the Reserves, and 18 months after her last period of active duty, recorded a thoracolumbar flexion of 60 degrees. The Board concluded the MEB NARSUM and May 2009 orthopedic examinations were of higher probative value for rating recommendation at separation. The Board noted that the MEB NARSUM and orthopedic examinations were consistent with each other and with the other service treatment record (STR) entries prior to separation. The PEB and VA chose different coding options, however this had no bearing on rating as rating is based on the VASRD general rating formula for diseases and injuries of the spine. All Board members agreed, the range of motion examinations prior to separation were consistent with the 10% rating IAW VASRD §4.71a. 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 an 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 concluded that there was insufficient cause to recommend a change in the PEB adjudication for the lumbosacral strain condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were left knee pain and major 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.

Left Knee Pain. The STR document the beginning of CI’s left knee pain in June 2000 when she was hit in the medial aspect of her left knee with a softball. Over the next two years, she was seen several times for complaints of medial left knee pain and intermittent locking. Numerous physical examinations failed to reveal any effusion, instability or abnormal gait. All plain film X-rays and magnetic resonance imaging (MRI) of the left knee were normal. She was diagnosed with patellofemoral syndrome in 2002 and given a physical therapy consult. Except for the medical documents prepared for CI’s MEB and VA claims, there are no STR entries concerning the left knee after December 2002 available for review. The May 2004 Officer Evaluation Report (OER) recorded that the CI passed the PT test in December 2003. In July 2008, the CI’s OER documents that she “maintains appropriate level of physical fitness and bearing” and indicated participation in unit training without mention of limitations. STR documents from July 2008 do not show care of left knee pain and examinations document normal gait. A 22 October 2008 occupational medicine examination notes a history of knee pain and records a normal knee examination and a normal gait. The orthopedics MEB NARSUM, completed 13 May 2009, recorded a history of left knee pain since injury in 2000. On examination gait was normal and range of motion was noted for flexion to 110 degrees with normal extension. The Board noted that the left knee pain condition existed since 2000 without re-injury and the CI continued to perform duties afterwards. After due deliberation, and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the left knee condition as additionally unfitting for disability rating.

Major Depressive Disorder. The PEB concluded the depression condition was not unfitting citing the psychiatry NARSUM examiner’s opinion that the condition was not likely to be a chronic longstanding condition. The PEB also noted that there was no indication of service-connection and therefore a non-compensable condition even if determined to be unfitting (in accordance with DoDI 1332.38, the condition must be a direct consequence of an occurrence during a period of active duty). The CI was a member of the Reserve component and had not been on a period of extended active duty of 30 days or more. The MEB NARSUMs record CI report that her depression was caused by back pain from the September 2006 injury. However, the psychiatry NARSUM 17 February 2009 and VA C&P examination 7 December 2010 note that there was a “re-aggravation” of back pain while lifting a patient at her civilian nursing job. The psychiatry NARSUM notes occupational problems as well as back pain: “In the past year, this has caused significant occupational difficulties for her after she aggravated her back due to lifting a patient. This has caused occupational limitations of her only performing light duty. This has caused significant distress, and the pain, along with the occupational changes, certainly has contributed to her present depressive state.” At the time of this examination, the CI had stopped taking her anti-depressant medication for four days. The STR of 14 July 2008 also noted possible aggravation of back pain associated with pregnancy, and associated depression symptoms with recent child birth “Depression, not sleeping, has 8 month old baby”. The VA C&P examination in January 2010 notes CI report of onset of depression a year after the September 2006 back injury, placing depressive symptom onset during late pregnancy in the fall of 2007. The Board concluded that while back pain may have been a contributory factor to depression, the depression was not a direct consequence of the injury in September 2006. The officer evaluation report for the period 30 July 2007 to 29 July 2008 reflects good duty performance without indication of impairment due to depressive symptoms. The 22 December 2008 occupational health pre-employment medical examination records CI report of “Some depression secondary to back pain”, and noted the history of low back pain with limitations on heavy lifting. On examination, posture, gait and stance were normal, the back examination was stated to show no abnormalities, “no physical disability observed”, and a normal psychiatric examination was indicated. The CI was medically cleared for the case manager job. Subsequent VA examinations record that the CI continued to work full time as a nurse case manager following separation from the Reserves. After due deliberation, and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the depression as additionally unfitting for service disability rating.

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 lumbosacral strain and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended left knee pain and major depressive disorder 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** |
| Lumbosacral Strain | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120316, 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 XXXXXXXXXXXXXXXXXXXXX, AR20120016154 (PD201200213)

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 XXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA