RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: USaf

CASE NUMBER: PD0900049 COMPONENT: RESERVE

BOARD DATE: 20090616 SEPARATION DATE: 20070808

SUMMARY OF CASE: This covered individual (CI) was an Air Force TSgt Aerospace Ground Equipment Mechanic medically separated 2007 after 19 years of combined active and reserve service. He developed back pain in October 2005 while deployed to Iraq. His condition continued to worsen despite comprehensive care including epidural injections. Both orthopedic and neurosurgical specialists agreed that surgery would not provide him any benefit and he was referred to the Air Force Physical Evaluation Board (PEB). He was ultimately found unfit by the Formal PEB and separated with a 10% disability rating for 5243 Intervertebral disc syndrome using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Air Force regulations. Initially the Informal PEB rated both 5243 Intervertebral disc syndrome at 10% and 8520 Mild incomplete paralysis of the sciatic nerve at 10% presumably based on a single finding of weakness in the left hamstring muscle. An MRI scan showed a disc bulge toward the left at L5-S1 that abutted the S1 and possibly L5 nerve roots on the left. There was mild left neural foraminal narrowing. It also showed a small broad based disc bulge at L4-L5 and mild narrowing of both lateral recesses but no significant central canal stenosis. An electromyelogram of the right L4 to S1 myotomes was normal and the test was not performed on the left side. Using an examination prior to separation from the Air Force, the Veterans Administration (VA) rated his disability at 20% using VASRD 5237-5243 Lumbar strain with herniated disc L4-L5 and disc degeneration. The VA examination did not reveal any radiculopathy and did not rate 8520. The CI requested a Formal PEB and this was done after the VA examination and rating had been completed. The Formal PEB determined that while there was a single documentation of hamstring weakness, the majority of clinical entries in the CI’s service treatment record showed a normal neurological examination. The Formal PEB also had the VA exam and rating to review before adjudicating the case. The CI contends that while the VA clearly identified two back conditions, the PEB only acknowledged one and rated him at 10%.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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. After careful consideration of all available information, the Board concluded by simple majority that the CI’s condition is appropriately rated at 20% under VASRD 5243 Intervertebral disc syndrome. This rating is based on a finding of an abnormal gait caused by muscle spasm in the back documented on a VA examination performed prior to separation. Symptoms of radiculopathy appeared very rare and the Board decided this was not an compensable condition.

The VASRD requires use of a general rating formula for all diseases and injuries of the spine. While the VA used a hyphenated code to describe the back condition in more detail, their rating used the same general rating formula the Air Force PEB did and was not affected by the presence of two different codes as contended by the CI. The PEB rating was lower than the VA rating because of the greater range of motion and lack of abnormal gait noted on the examination performed by the Air Force provider.

The single dissenting board member recommended rating 5243 at 10% but elected not to submit a minority opinion.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| Intervertebral disc syndrome | 5243 | 20% |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090122, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

President

Physical Disability Board of Review

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB, MD 20762-7002

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2009-00049.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended modification of your assigned disability rating without recharacterization of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2009-00049

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) it is directed that:

The pertinent military records of the Department of the Air Force relating to xxxxxxxxxxx, be corrected to show that the diagnosis in his finding of unfitness was intervertebral disc syndrome rather than chronic low back pain, with disc bulges of L5-S1 and L4-5; VASRD code 5243; rated at 20%.

Director

Air Force Review Boards Agency