RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900235 BOARD DATE: 20100408

SEPARATION DATE: 20040201

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SUMMARY OF CASE: This covered individual (CI) was an active duty SPC/Heavy Vehicle Mechanic medically separated from the Army in 2004 after 3 years of service. The medical basis for the separation was a back condition. He experienced an onset of low back pain without specific injury in 2001. It was associated with intermittent left sciatic radicular symptoms, which was not associated with positive neurologic findings or abnormal EMG (nerve conduction study). An initial CT scan showed a mild disc protrusion at L5/S1, but a subsequent Magnetic Resonance Imaging (MRI) was normal. He was not a surgical candidate. Conservative management included opiate analgesics, physical therapy and epidural injections. He did not respond adequately to perform within his Military Occupational Specialty (MOS) or participate in the Army Physical Fitness Test (APFT). He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). His back condition was referred to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Additional conditions supported in the DES packet are discussed below, but were not forwarded for PEB adjudication on the DA Form 3947. The CI was found unfit for the back condition and medically separated with a disability rating of 10%.

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CI CONTENTION: The CI states: ‘I would greatly appreciate your reconsideration due to some of the difficulties I experience such as...’ He goes on to describe examples of his current level of disability and significant difficulties associated with his back condition. He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20031029** | | | **VA (Pre-Separation → 3 Mo. after Separation)** | | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | | **Code** | **Rating** | **Exam** | **Effective** |
| Chronic Low Back Pain… | 5299- 5237 | 10% | Thoracolumbar Somatic Dysfunction | | 5237 | 10% | 20031103 | 20040202 |
| 20% | 20040512 | 20040407 |
| ↓No Additional DA Form 3947 Entries.↓ | | | Epicondylitis, Right Elbow | | 5206 | 10% | 20031103 | 20040202 |
| Reactive Airway Disease | 6699-6602 | | 10% | 20031103 | 20040202 |
| Major Depressive Disorder | | 9434 | 10% | 20031103 | 20040202 |
| Non-PEB X 4 / NSC X 1 | | | | 20031103 | 20040202 |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 30% (40% from 20040407)** | | | | | |

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ANALYSIS SUMMARY:

Back Condition. The PEB’s DA Form 199 did not reflect application of the US Army Physical Disability Agency (USAPDA) pain policy and the spine rating was IAW Veterans Administration Schedule for Rating Disabilities (VASRD) §4.71a. There are three goniometric range-of-motion (ROM) exams from which the Board may derive its rating recommendation. The one reflected in the narrative summary (NARSUM), from which the PEB derived its decision, was not entirely precise. The examiner noted ‘measurements’, but did not stipulate the use of a goniometer. The Board sees no imperative to assume otherwise, however. Also the lateral flexion and rotation measurements were stated as ‘full’ rather than in degrees. For purposes of application to the §4.71a spine formula, the Board assumes VASRD normal values for those four measurements. There are two well-timed VA goniometric examinations in evidence. One was a pre-separation rating exam three months prior and the other was a rating exam performed three months after separation. These examinations are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Thoracolumbar ROM | MEB – 9/23/03 | VA – 11/03/03 | VA – 5/12/04 |
| Flexion | 80⁰ | 80⁰ | 55⁰ |
| Combined | ≥240⁰ | ≥240⁰ | 190⁰ |
| §4.71a Rating | 10% | 10% | 20% |

The MEB examiner did not specify pain on motion or stipulate measurements based on pain. The VA examinations did specify pain end-points and those are the values recorded above. All of the examinations noted tenderness. None of them documented abnormal contour and all specified a normal gait. The VA examination at three months resulted in an appropriate raise of the spine rating to 20%, albeit not retroactive to separation. The timing falls well within the 12 month window specified in DoDI 6040.44 as a basis for Board recommendation. The probative value of that exam is somewhat greater than that of the MEB exam because of the imprecision of the latter (discussed above). It does not, however, outweigh the pre-separation VA rating examination. The service treatment record was reviewed for comparison examinations corroborating the impaired ROM documented on the second VA exam. There are numerous clinical notes and one neurosurgical consult during the MEB period which commented on lumbar ROM. Although none of them provided formal or estimated measurements, all noted normal or ‘full’ ROM. Most of them noted spasm or tenderness, but none noted antalgic gait or abnormal contour. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB adjudication for the lumbar spine condition.

Radiculopathy. The Board deliberated if an additional peripheral nerve rating was justified by the left sciatic radiculopathy evidenced in the case. The normal EMG and neurologic examinations were noted on the DA Form 199 in that regard. All three of the examinations referenced above also documented normal sensory, motor and reflex examinations. The VA did not find a basis for coding or rating peripheral nerve impairment. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating on that basis.

Other Conditions. The NARSUM did not formally identify any other medical conditions at separation, although several conditions rated by the VA at separation were elaborated on the MEB physical and are thereby eligible for Board consideration. These included a right elbow condition, bilateral wrist conditions, bilateral knee conditions, tinea pedis (athlete’s foot), allergic rhinitis, reactive airway disease and major depressive disorder. The right elbow condition was diagnosed as epicondylitis (tennis elbow) in 2002. The bilateral wrist conditions were diagnosed as tendonitis in 2002. The CI received a 10% VA rating for the elbow and the wrists were not service connected. The conditions were noted in some clinical entries during the MEB period, but there were no clinical visits specifically for them. The physical profile was U1 and no upper extremity conditions or limitations were specified in the Commander’s statement. No link to fitness can be drawn for the elbow or wrist conditions. The CI experienced the onset of bilateral knee pain in 2002. His left knee was mentioned in two clinical entries during the MEB period. His VA diagnoses were patellofemoral syndrome and he received non-compensable ratings for each knee. The tinea pedis (and ‘corns’) were mentioned on the MEB physical, and attributed to the wear of boots. There was no footwear profile or active podiatric care during the MEB period. The L3 physical profile was limited to the back condition. Knee or foot problems were not noted in the Commander’s statement. No link to fitness can be drawn for the knee or foot conditions. Allergic rhinitis was mentioned only as ‘allergies’ on the MEB physical and received a non-compensable rating from the VA. The CI had a history of intermittent bronchospasm, which was stable with occasional use of an inhaler. These conditions were not clinically active during the MEB period. The physical profile was P1 and the Commander’s statement was silent regarding these conditions. No link to fitness can be drawn for the allergic rhinitis or allergy conditions. The CI was diagnosed with major depressive disorder by a VA psychiatrist. The MEB physical documented ‘nightmares’ and ‘counseling’. The examiner clarified this as ‘depression - stress secondary to job and low back pain [medical shorthand translated]’. No behavioral health notes were in evidence during the MEB period and no psychotherapeutic medications were prescribed at separation. The VA psychiatric rating examination was performed prior to separation and supported a 10% rating under §4.130. The global assessment of functioning showed minimal, if any, impairment (GAF = 90). The physical profile was S1 and the Commander’s statement noted no mental impairment. No link to fitness can be drawn for the psychiatric condition. No other conditions relevant for Board consideration are in evidence in the service or VA files.

The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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 lumbar spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the lumbar radiculopathy in evidence, the Board unanimously agrees that it cannot recommend additional disability rating for peripheral nerve impairment at separation. In the matter of the right elbow condition, bilateral wrist conditions, bilateral knee conditions, tinea pedis, allergic rhinitis, reactive airway disease, major depressive disorder or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090310, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

