RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900240 BOARD DATE: 20091230

SEPARATION DATE: 20050809 (DD 294) 20070409 (TDRL)

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SUMMARY OF CASE: This covered individual (CI) was a Staff Sergeant Computer Operator who was medically separated from the Air Force in 2007 after 13 years of service. The medical basis for the separation was Lower Back Pain. The CI was referred to the PEB, found unfit for continued military service, and put on Temporary Disability Retired List (TDRL) at 30% for Pain Disorder as a result of his back disorder. At the TDRL Re-Evaluation, he was found unfit because of Low Back Pain and was separated at 10% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable USAF and Department of Defense regulations.

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CI CONTENTION: The CI states: “I feel I was rated on a mental health issue: with an underlying back problem. I was diagnosed with type 2 diabetes on May 2006. I have continued to suffer from neck and low back pain. I am not sure how my rating of 3O% for the TDRL would go down to 10% when I feel my condition has not improved but has deteriorated. I feel because of my back problem and other underlying conditions my rating should be increased.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (16 Mo. Pre-Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Pain Disorder as a Result of Post-Laminectomy syndrome | 9422 | 30% | 20050621 | Post Laminectomy Syndrome, Lumbar Strain With Residual Tendonitis of Legs (Also Claimed As Degenerative Disc Disease, Spinal Stenosis Spondylosis,  Lumbar Facet, And Bilateral Lower Extremities  Radiculopathy) | 5237 | 20%  20% | **20051220**  **20081103** | **20050810** |
| **TDRL RE-EVAL** | | | |
| Low Back Pain Due to Degenerative Disc Disease Status Post T11-T12  Laminectomy with Good Range of Motion | 5243 | 10% | 20070302 |
| Pain Disorder Due to Post Laminectomy Syndrome Resolved. CATEGORY II: (conditions that can be unfitting but are not currently compensable or ratable) | 9422 | CAT II | 20070302 | Pain Disorder | 9400 | NSC |  |  |
|  |  |  |  | Status Post Left Middle Finger Surgery | 5229 | 10% | **20051220** | **20050810** |
|  |  |  |  | Left Middle Finger Surgery Scar | 7r02 | 0% | **20051220** | **20050810** |
|  |  |  |  | Right Plantar Calcaneal Spur (Claimed As Plantar  Fasciitis, Bilateral) | 5299-5284 | 10% | **20051220** | **20050810** |
|  |  |  |  | Left Plantar Calcaneal Spur (Claimed As Plantar  Fasciitis, Bilateral) | 5299-5284 | 10% | **20051220** | **20050810** |
|  |  |  |  | Rhinitis, Allergic Seasonal | 6522 | 10% | **20051220** | **20050810** |
|  |  |  |  | Sciatic nerve residuals right leg associated with post laminectomy syndrome | 8526 | 10% | **20081103** | **20080908** |
|  |  |  |  | Sciatic nerve residuals left leg associated with post laminectomy syndrome | 8526 | 10% | **20081103** | **20080908** |
|  | | | | NSC X 3 | | |  |  |  |  |  |  |  |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **50% from 20050810 with BL 1.9 for 5284, 5284**  **60% from 20080908 with BL 3.4 for 8526, 8526, 5284, 5284** | | | | |  |  |  |  |  |  |  |

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ANALYSIS SUMMARY:

Condition 1: Low Back Pain

The initial informal PEB (IPEB) 20050427 determined the CI was unfit for 5243 Post Laminectomy Syndrome (T11-T12) associated with Chronic Low Back Pain Secondary to Degenerative Disk Disease and recommended separation with 20% rating. In May 2005, the CI appealed to the formal PEB (FPEB) and asked to be retained on active duty. The FPEB ordered a psychiatric evaluation and he received a diagnosis of Pain disorder associated with both psychological factors and a general medical condition. CI’s counsel wrote a letter to the FPEB requesting placement on the TDRL with a 30% rating for the pain disorder. He was being evaluated for surgery to insert an intrathecal pump and requested placement on the TDRL while this was being pursued. On 20050621 the FPEB placed CI on TDRL at 30% for Pain Disorder as a result of Post-Laminectomy Syndrome, VASRD 9422. The CI did not have the intrathecal pump implanted. After TDRL re-evaluation in November 2006 the IPEB 20070302 determined CI was unfit for continued service as a result of his back pain and the psychiatric condition no longer existed. He was separated for his back pain with a rating of 10% for flexion limited to 70 degrees as documented in the NARSUM dated 20061129.

The initial VA C&P exam (20051220) was done three months after placement on the TDRL (20050809) and it documented flexion of the thoracolumbar spine at 60 degrees. This is the minimum criteria for a 20% rating. No motor, sensory, or neurologic problems were present. At the time of the TDRL re-evaluation (20061129) the flexion had increased slightly to 70 degrees and this warrants a 10% rating. There were no additional findings that met the 20% criteria, specifically no abnormal gait or spinal contour. A later VA C&P examination was done 20081110, nineteen months after separation from the TDRL and two years after the TDRL re-evaluation. This exam documented similar ROM measurements but also reported slightly decreased strength of hip flexion and extension bilaterally and bilateral ratings were applied for sciatic nerve residuals. The rating decision acknowledged that the ROM exam warranted only a 10% rating but continued the 20% rating because “sustained improvement has not been definitely established”. Subsequent examinations and outpatient visits did show a deterioration of his condition and his ROM exam to the level required for a 20% rating. However, this is considered a worsening of the condition and is therefore not relevant to the determination of level of disability at the time of separation from the TDRL.

The three exams from 2005, 2006, and 2008 are fairly similar and it appears more likely than not that the 70 degrees of flexion accurately reflects the CI’s condition at the time of separation from the TDRL. No signs or symptoms of sciatic nerve involvement were present until the 2008 VA C&P examination and there is no evidence that this condition existed at the time of separation from the TDRL. This appears to be a worsening of the CI’s degenerative disc disease over time. Therefore a 10% rating appears warranted and no recharacterization is recommended.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Movement  Thoraco-  lumbar | Normal ROM | ROM VA Physical therapy 20090422 | ROM VA C&P  20081103  (19mo after left TDRL) | ROM Mil  20061129  (TDRL Re-Evaluation) | ROM VA  20051220  (While on TDRL) | ROM Mil exam Pain clinic 20050329 | Mil exam Orthopedic 20050308 |
| Flex | 0-90 | 45 | 75 | 70 | 60 | 40 |  |
| Ext | 0-30 | 3 | 30 | 10 | 5 | 5 |  |
| R Lat flex | 0-30 | 45 (30) | 20 | 30 | 30 |  |  |
| L lat flex | 0-30 | 30 | 40 (30) | 30 | 30 |  |  |
| R rotation | 0-30 | 85 (30) | 25 | 35 (30) | 30 |  |  |
| L rotation | 0-30 | 70 (30) | 35 (30) | 35 (30) | 30 |  |  |
| COMBINED | 240 | 168 | 210 | 200 | 185 |  |  |
| Notes: |  | Released from PT, goals achieved, doing home program and TENS; (antalgic gait on 20090401) | Guarding, spasm, and tenderness but no abnormal gait or contour; added bilateral sciatic nerve residuals after this exam, slight motor deficits at hip bilateral; normal sensation, normal DTRs | Normal sensation to light  touch throughout his bilateral lower extremity; Motor 5/5 bilateral; DTRs 2+ bilaterally;  Babinski is down-going bilaterally; No clonus; negative straight leg test  bilaterally | Thoracic lumbar  spine is additionally limited by pain after repetitive use. It is not additionally limited by  fatigue, weakness, lack of endurance or incoordination after repetitive use. | Significant tenderness to palpation;  normal sensation; normal DTRs; motor decreased b/c of pain | Antalgic gait; motor affected by pain; normal sensation, DTRs normal |
| VASRD Rating |  | 20% for flexion limited to 45 (greater than 30 but not greater than 60) | \*These ROM rate 10% but VA continued 20% rating because “sustained improvement has not been definitely established” | 10% for flexion limited to 70 (greater than 60 but not greater than 85) | 20% for flexion limited to 60 (greater than 30 but not greater than 60) | 20% for flexion limited to 40 (greater than 30 but not greater than 60) | Possibly 20% if antalgic gait resulted from muscle spasm or guarding |

Condition 2:Pain disorder as result of post-laminectomy syndrome

Although the CI was originally placed on the TDRL for this condition, it was not found to exist at the time of his TDRL re-evaluation. The Air Force psychiatrist stated that no axis I diagnosis existed, the CI’s profile was S1, and his GAF was 80. The VA initially deferred its decision on the condition of pain disorder and later determined it was not a service connected condition. The original C&P exam is missing as is the rationale for this rating. However, the decision to not service connect a mental health condition is consistent with the Air Force Psychiatrist’s opinion that no mental health condition was present. As this condition did not exist at the time of separation from the TDRL, no mental health rating can be applied.

Condition 3: Other Conditions

The other conditions rated by the VA were not mentioned in the Disability Evaluation System (DES) package and are therefore outside the scope of the Board. The CI retains the right to request that his service Board of Correction for Military Records (BCMR) consider adding these conditions as unfitting.

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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. After careful consideration of all available information, the Board unanimously concluded that the CI’s condition is appropriately rated at 10% for 5243 Low Back Pain due to Degenerative Disc Disease Status Post T11-12 Laminectomy.

At the time of separation from the TDRL, flexion of the CI’s thoracolumbar spine was limited to 70 degrees and no motor, sensory, or neurologic deficits were present. Also no abnormal gait or spinal contour was present. Therefore the back condition is appropriately rated at 10%.

The psychiatric evaluation performed for the TDRL re-evaluation stated no psychiatric diagnosis existed and therefore no rating can be applied for a mental health condition. The other conditions rated by the VA were not mentioned in the Disability Evaluation System (DES) package and are therefore outside the scope of the Board. The CI retains the right to request that his service Board of Correction for Military Records (BCMR) consider adding these conditions as unfitting.

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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 20090224, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB MD 20762-7002

XXXXXXX

Dear XXXXXXXXXXX

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2009-00240.

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 appropriate. Accordingly, the Board recommended no re-characterization or modification 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 and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely

JOE G. LINEBERGER

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR