RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Air Force

CASE NUMBER: PD200900256 BOARD DATE: 20100106

SEPARATION DATE: 20080228

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SUMMARY OF CASE: This covered individual (CI) was TSgt/E-6, 1A271, Load Master(C-130) medically separated from the Air Force Reserve after more than seven years of active service and four years of reserve service. The CI had also served in the Marine Corps. The medical basis for the separation was Low Back Pain Status-Post Hemilaminectomy with Decompression of L4-5.CI was referred to the Air Force Physical Evaluation Board (PEB), found unfit, and separated at 10% disability with severance pay.

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CI CONTENTION: CI contends: At the time of my medical board I was rated as a disabled veteran with the VA for lower back disability of 40%. This is the same disability and it is my understanding that the MEB rating should have been the same as the rating I had received from the VA.

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Chronic Low Back Pain, Status-Post Hemilaminectomy with Decompression of L4-5 | 5243 | 10 | **20071012** | Degenerative Disease, Lumbosacral Spine with Scar | 5242 | 40% | 20061119 | **20060904** |
|  |  |  |  | Post Traumatic Stress Disorder with Depression | 9411 | 30%  50% | 20061119  20080523 | **20060904**  **20080423** |
|  |  |  |  | Right Achilles Tendon | 5311 | 0%  10% | 20061119  20070417 | **20060904** |
|  |  |  |  | 7 Conditions | NSC |  |  |  |
|  |  |  |  |  |  |  |  |  |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*incl non-PEB Dxs*): 60**% from 20060904  **70%** from 20080423 | | | | |

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**Missing Documents:** The Narrative Summary (NARSUM) for this case was not available for review. The Air Force PEB does not have a copy and the CI did not respond to requests for copies of the NARSUM.

ANALYSIS SUMMARY:

**Condition 1. Back Pain**

The CI was on active duty from 20051003 to 20060903 and had a L4-5 hemilaminectomy with decompressions on 20060418 and a wound revision on 20060510.

The only exam available is the VA exam from 20061117 with flexion limited to 10 degrees and this warrants a rating of 40%. The PEB AF Form 356 showed a diagnosis of chronic low back pain, status-post hemilaminectomy with decompression of L4-5, Existed Prior to but Aggravated by Military Service, 5243 rated at 10%. It is not clear if the CI’s condition rated more than 10% and some amount was deducted for EPTS or if this was his actual level of disability at the time. A Line of Duty (LOD) determination dated 20060407 determined the back injury was LOD-Yes and EPTS-No.

The latest information from the service treatment record (STR) was a physical therapy (PT) progress note from 20060821 which stated he had full lumbar range of motion (ROM), 5/5 strength in his lower extremities, negative straight leg raise, and was observed performing a 60 minute exercise routine without discomfort. He had been predominately pain free and had no functional limitations. All goals were achieved and CI was released from PT. Other progress notes from dates after the surgery in April 2006 and this PT note from August 2006 also showed similar physical findings. He was released from active duty in September 2006.

MRI was done 20060703 for recurrent right leg pain after laminectomy and it showed bilateral laminectomy defects at L4-5 and probably bilateral synovial cysts, right larger than left, with the right slightly compressing the right L5 nerve root. Synovial cysts occur as a result of degeneration of facet joints of the lumbar spine and can cause pain ranging from none to severe.

It is not clear when the medical board was initiated or if it was initiated because the CI’s condition worsened. This information would presumably have been in the NARSUM but the NARSUM was not available for review. The date of the informal PEB is 20071012.

The VA exam was done in November 2006—after the August 2006 PT note and less than 12 months prior to the October 2007 PEB. It is clinically feasible that the CI initially did well for a few months after his April 2006 surgery and then deteriorated. The Board has seen this with other cases with a more complete record.

The Board has no clinical information dated after the VA examination except the limited information on the AF Form 356. Whatever clinical information the NARSUM contained, the PEB used it to rate his condition at 10%. The AF Form 356 documented functional limitations of no lifting over 10 pounds, sitting/standing longer than 15 minutes, kneeling, squatting or climbing. These extensive restrictions suggest a severe condition that would more likely than not warrant a rating greater than 10%.

The AF Form 356 also stated that examination of the lower extremities reveals normal reflexes and sensation, and near-normal strength. These findings were also present on the VA examination. The VA rating is based solely on limited ROM; no other abnormal clinical findings were present. The normal and “near-normal” neuromuscular findings from the PEB form would not change this rating if the two were looked at together. Although the VA exam was done 15 months prior to separation, it is a complete exam and it therefore has more probative value than whatever findings the Board might guess to be present on the NARSUM.

The Board’s only option is to rate the CI’s condition based on the findings of the VA examination from November 2006.

Mil exam: Not available VA exam: 20061117

|  |  |  |  |
| --- | --- | --- | --- |
| Movement  Thoracolumbar | Normal ROM | ROM Mil  (# for VASRD) | ROM VA  (# for VASRD) |
| Flex | 0-90 | n/a | 10 |
| Ext | 0-30 | n/a | 35 (30) |
| R Lat Flex | 0-30 | n/a | 25 |
| L Lat Flex | 0-30 | n/a | 25 |
| R Rotation | 0-30 | n/a | 35 (30) |
| L Rotation | 0-30 | n/a | 35 (30) |
| TOTAL | 240=VA normal |  | 150 |
|  |  | AF Form 356: Normal reflexes and sensation in lower extremities and near-normal strength |  |
| VASRD Rating |  |  | 40% for flexion of 30 degrees or less |

Condition 2. Post traumatic stress disorder with depression

Not mentioned in available DES package.

Condition 3. Right Achilles Tendon

Not mentioned in available DES package.

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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 most appropriately rated at 40% for 5243 Chronic Low Back Pain, Status-Post Hemilaminectomy with Decompression of L4-5

Although the VA evaluation from November 2006 was completed more than one year prior to separation from service, it is the latest clinical information available for review and it is a complete examination. This examination documented thoracolumbar flexion limited to 10 degrees and this warrants a 40% rating under VASRD 5243.

The Board cannot consider any of the other conditions rated by the VA as none were mentioned in the available DES paperwork and all are therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Military Records (BCMR) consider adding these conditions as unfitting.

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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 the CI’s prior medical separation.

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| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| CHRONIC LOW BACK PAIN, STATUS-POST HEMILAMINECTOMY WITH DECOMPRESSION OF L4-5 | 5243 | 40% |
| Combined | 40% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090305, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

PDBR PD-2009-00256

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) and Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating to XXXXXXXXX, be corrected to show that:

a.  The diagnosis in his finding of unfitness for chronic low back pain, VASRD code 5243, was rated at 40% rather than 10%.

b.  On 27 February 2008, spouse and child coverage under the Survivor Benefit Plan (SBP) based on full retired pay was established.

c.  He was not discharged on 27 February 2008 with entitlement to disability severance pay; rather, on that date he was relieved from active duty and on 28 February 2008 his name was placed on the Permanent Disability Retired List.

JOE G. LINEBERGER

Director

Air Force Review Boards Agency