RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: aIR fORCE

CASE NUMBER: PD0900319 BOARD DATE: 20090902

SEPARATION DATE: 20031128

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

SUMMARY OF CASE: This covered individual (CI) was Services Craftsman Staff Sergeant medically separated from the Air Force in 2003 after more than 8 years of service. The medical basis for the separation was chronic back pain. CI was referred to the Air Force Physical Evaluation Board (PEB), found unfit and separated at 10% disability.

MEDICAL HISTORY: The CI experienced low back pain after a motor vehicle accident in December 1997. He received conservative therapy including physical therapy but his symptoms did not resolve and other treatment modalities such as chiropractic care and epidural steroids were also provided. However, nothing led to resolution of his pain. He had multiple radiographic studies of his lumbar spine to include X-rays in May 1998, CT in January 1999, MRI in March 1999, and MRI in August 2002. The X-rays were normal but the CT and MRIs showed a bulging disc at L5-S1. He also had EMG studies which demonstrated a mildly active left lower lumber radiculopathy (L4, L5, and S1). He was seen by both orthopedics and neurosurgery and neither specialist thought surgery was indicated. He was also followed in a pain clinic and epidural steroid injections were provided but these did not relieve his symptoms. NARSUM reported no current complaint of radicular symptoms, although in the past he intermittently experienced left sided leg numbness and pain. There was no mention of left leg radicular symptoms in his VA C&P examination. He did not have abnormal motor or sensory examinations of his lower extremities.

Appropriate therapy failed to alleviate his symptoms and he was referred to the Air Force PEB. The Informal PEB determined he was unfit for continued military service and he was then separated with a 10% disability for 5295 Chronic Back Pain using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations.

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

CI CONTENTION: “I feel that I my case was not fairly reviewed, My Doctor at the time (Dr. Polito stated that she did not agree. She would not diagnose me. I have 2 herniated discs in my lower back, Extensive lower and thoracic back pain. I was seeing specialist off base and no one ever referenced their findings. I was convinced by my representative (military attorney) not to go before the board before she read my case. She stated that I would be wasting my time going before the board. I am not a faker. I love my country and my service. I did not ask to end my career. I served Honorably for the US Air Force and the United States Special Operations Command. There are many who have faked their injuries and have received higher ratings for the same issues that I have. I am not here to blame others, I am here to receive what the board rightfully considers that I deserve, I just want to have a fair and just review of my records. I feel that I should have been retired. I have not been able to work in my career field since leaving the military because my injuries require me to sit and stand for certain periods of time. I cannot drive for long periods of time. I have to sit sideways in my car. I cannot sleep at night for the pain. I take pain killers that only cover the pain and suffering. I have lost my sex life and emotional connection to my family. I do not feel like a man, meaning I can't do things that a man can. I can't lift anything, I can't work on my car, I can't play with my daughter as a normal man could. It is embarrassing and depressing. I have missed a lot of work due to my problems.

As for my V.A. records, I am trying to get those corrected also. When I went for my physical, I had a civilian doctor who was seemingly upset that he had to work. He told me that it was not his job and that it was a part of his clinical. He was a student at University of South Florida. He did not thoroughly examine me and stated that the VA did not have my records. I gave him a copy and he stated that he did not need them.”

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Chronic Back Pain | 5295 | 10% | 20030731 | Thoracolumbar Strain (Claimed 10% Nov 29, 2003  as Low Back Pain, Herniated  Disc, Upper Back and Arthritis  of the Back) | 5237 | 10% | 20040508 | 20031129 |
|  |  |  |  | Chin Scar | 7800 | 0% | 20040508 | 20031129 |
|  |  |  |  | Residuals of Right Thumb Scar | 7805 | 0% | 20040508 | 20031129 |
|  |  |  |  | Bilateral Plantar Fasciitis | 5299  -  5279 | 0% | 20040508 | 20031129 |
|  |  |  |  | Left Knee Tendonitis, Osgood-Slaughter's  Disease | 5260 | 0% | 20040508 | 20031129 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*incl non-PEB Dxs*): 10% from 20031129** | | | | |

ANALYSIS SUMMARY: Using an evaluation completed six months after the time of separation from the Air Force, the Veterans Administration (VA) rated this disability as 5237 Thoracolumbar Strain at 10% using the 2004 VASRD. However, the 2003 VASRD was in effect until 20040623 and they should have used this version to rate the CI’s back condition. Also the rating rationale incorrectly transcribed the Range of Motion (ROM) examination findings and added the total degrees of ROM incorrectly. If the 2004 VASRD is used a 40% rating is warranted due to a thoracolumbar flexion of 30 degrees. If the 2003 VASRD is used the documented findings warrant a rating of 40% for 5292 Severe Limitation of Motion of Thoracolumbar Spine.

The Narrative Summary (NARSUM) did not include ROM measurements but these were not required until the 2004 VASRD was in effect. However, notes from the CI’s visits to a pain clinic included detailed ROM examinations. The normal limits for these measurements were the same as those in the 2004 VASRD except for right and left rotation. The pain clinic notes list 90 degrees as the normal limit of right and left rotation and the 2004 VASRD lists 30 degrees. The pain clinic notes documented thoracolumbar flexion limited to 85 degrees with pain at 75 degrees and extension limited to 25 degrees with pain at 15 degrees. The NARSUM states there is full ROM but some pain and stiffness is present with flexion, extension, and lateral motion. There is no mention of the degree at which these symptoms occur. The IPEB rated this condition at 10% under 5295 Lumbosacral Strain which requires pain on motion. A 20% rating under this code is not warranted as there is no documented muscle spasm with forward bending or loss of lateral spine motion, unilateral, in standing position. However, these evaluation findings could also be rated at 20% under 5292 Moderate Limitation of Motion of Lumbar Spine. IAW VASRD paragraph 4.7 where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be applied.

At the time of the NARSUM, the CI had no current complaint of radiculopathy although there was a history of intermittent left leg numbness and pain. No abnormal neurologic findings are documented. Multiple MRIs from 1999, 2001, and 2002 did document a bulging disc at L5-S1 but no nerve compression was noted. An EMG from 1999 did show a mildly active lower left lumbar radiculopathy (l4, L5, S1). The VA examination included occasional right thigh pain but this was felt to be related to a prior hip injury. Neurologic exam was within normal limits. Also, the CI’s personal statement to the PDBR did not mention radicular symptoms. It is not clear if there were symptoms of radiculopathy at the time of separation. However, even if it was present it is unlikely to have been unfitting.

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

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 PDBR 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 a 20% for 5292 Moderate Limitation of Motion of Lumbar Spine using the 2003 VASRD.

When considering the examinations from the NARSUM and Pain Clinic visits from June to August 2003 (three to five months prior to separation), the CI’s condition warranted a 10% rating. The VA examination done six months after separation in May 2004 documented a thoracolumbar flexion limited to 30 degrees and this warrants a rating of 40%. Both evaluations appear to have been correct at the time they were done. The CI’s condition worsened at some point in time between the Air Force and VA evaluations but it is not clear when this occurred. There could have been a steady gradual decline over time, or there could have been a sharp increase in disability after an inciting event. The Board is unable to determine which scenario occurred and both are equally likely. However, the Board determined that, more likely than not, the CI’s limitation of motion of his thoracolumbar spine reached the level of moderate by the time he separated from service.

The single voter for dissent (who recommended no recharacterization) elected not to submit a minority opinion.

The other conditions rated by the VA were not mentioned in any PEB paperwork and could not be considered by the Board.

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

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

|  |  |  |
| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| Chronic Low Back Pain with Moderate Limitation of Motion of Lumbar Spine | 5292 | 20% |
| Combined | 20% |

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090301, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

SAF/MRB

1535 Command Drive, Suite E-302

EE Wing, 3rd Floor

Andrews AFB MD 20762-7002

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2009-00319.

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 re-characterization 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.

Sincerely

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2009-00319

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 relatingXXXXXXXXXX be corrected to show that the diagnosis in his finding of unfitness was chronic low back pain with moderate limitation of motion of lumbar spine, VASRD code 5292, rated at 20%.

Director

Air Force Review Boards Agency