RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD0900322 COMPONENT: regular

BOARD DATE: 20090722 SEPARATION DATE: 20061124

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SUMMARY OF CASE: This covered individual (CI) was a Staff Sergeant Fuels Craftsman medically separated from the Air Force in 2006 after almost eleven years of service.

The CI first noticed back pain in August 2003 after changing a five ton filter at work. Conservative treatment failed to alleviate his symptoms and an MRI showed a herniated disc at L5-S1. He experienced severe back pain with posterolateral right leg pain and radiation of pain and numbness into his right foot. He had a L5-S1 microdiscectomy in May 2004 and was compliant with rehabilitation therapy. However, he continued to have back and right leg pain and subsequently received several epidural injections and two radiofrequency ablation treatments. His symptoms did not resolve and he remained unable to perform any fitness activity without severe symptoms.

Appropriate therapy failed to alleviate his symptoms and he was referred to the Air Force Physical Evaluation Board (PEB). The Informal PEB determined he was unfit for continued military service. He appealed this decision and asked the Formal PEB to consider returning him to duty either in his current AFSC or cross-training him for another. The Formal PEB upheld the decision of the Informal PEB and he was then separated with a 10% disability for 5243 Chronic low back pain status post L5-S1 microdiscectomy using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations. The CI also appealed the Formal PEB’s decision but it was upheld by the Air Force Personnel Council based, in part, on the full range of motion of the back noted on the Medical Evaluation Board (MEB) Narrative Summary (NARSUM).

Using an evaluation completed two months after the time of separation from the Air Force, the Veterans Administration (VA) rated this disability as 5238 Lumbar degenerative disk disease and spinal stenosis, facet disease, spinal stenosis and back strain at 40% and 8520 right lower extremity radiculopathy, sciatica at 10% for a combined rating of 50%. The VA also rated 6522 Allergic rhinitis, 7800 Scar, right lower eye, 7805 Scar, back, status post laminectomy, 7805 Left foot scar, status post bunionectomy, and 7819 keratosis pilaris all at 0% for an initial total combined rating of 50%. A rating of 30% for 9499-9434 Depressive disorder with anxious features associated with lumbar degenerative disk disease and spinal stenosis, facet disease, spinal stenosis and back strain was added effective 20080619 and the combined total rating was then 80%.

The CI contends that he never had back range of motion (ROM) measurements done by the Air Force before his case went to the PEB. He noticed his MEB paperwork said full ROM but this was never measured.

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BOARD FINDINGS: IAW DoDI 6040.44, the Board used the VASRD as the most favorable basis for rating. After careful consideration of all available information, the Board unanimously concluded that the CI’s condition is appropriately rated at a 40% for Chronic low back pain status post L5-S1 microdiscectomy using the VASRD general rating formula for diseases and injuries of the spine.

The MEB Narrative Summary (NARSUM) examination did state there was full range of motion (ROM) in the back and this is inconsistent with evaluations both prior and subsequent to this time in both the service treatment and VA records. While limitations of ROM can wax and wane over time, it is highly unlikely that this CI had full ROM on the NARSUM exam. Also the NARSUM simply states +FROM under the heading of musculoskeletal; there is no specification that the examiner is referring to the back. There are no actual measurements recorded and no mention of pain or the effect of repetitive motion. The VA examination done two months after the CI separated is a complete and comprehensive exam and demonstrates a severely limited ROM including flexion limited to 25 degrees. This examination is consistent with multiple entries by a Physiatrist in the CI’s service treatment record and is also in concordance with recorded MRI results. The VA examiner specifically stated that the degree of pain and the extent of limitations as described by the veteran and as found on physical examination are credible and supported by the records. He did not perform repetitive motion evaluations because the CI was in such great pain he did not think it was advisable. The Board therefore placed a much greater probative value in the VA examination and service treatment record. The VA examination also documented a markedly antalgic gait and a marked tenderness to palpation of the paralumbar muscles that extended to the entire right buttock.

The Board considered adding 8520 Right lower extremity radiculopathy, sciatica as an unfitting condition. The CI did have pain radiating down the right lower extremity to the foot and had some decreased sensation documented by both the VA examiner and the Air Force Physiatrist. Motor strength was recorded as normal in the service treatment record. The VA examiner was unable to perform an adequate motor exam because the CI was in too much pain. The radiating pain was used to support the 40% rating for the back and therefore cannot be used to support rating another condition. The decreased sensation was not unfitting and was not rated separately. Therefore VASRD 8520 was not added.

The Board also examined each of the other conditions rated by the VA and did not find any to be unfitting.

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 disability retirement, effective as of the date of his prior medical separation.

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| Unfitting Condition | VASRD Code | Rating |
| Chronic low back pain, status post L5-S1 microdiscectomy | 5243 | 40% |
| Combined | 40% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090414, 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-2009-00322.

 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 your separation be re-characterized to reflect disability retirement, rather than 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 determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

 As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at 1-800-531-7502 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 30 days from the date of the letter, you will not be enrolled in the SBP program. Unless at the time of your separation you were married or had an eligible dependent child, in such a case, failure to render an election will result in automatic enrollment.

 Sincerely

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

