RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: nAvY

CASE NUMBER: PD0900490 SEPARATION DATE: 20080424

BOARD DATE: 20110309

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO2/E-5 (9585, Recruiter) medically separated from the Navy in April 2008. The medical basis for separation was lumbar radiculopathy*.* He began having back pain with radiation to the right leg in early 2006, and was initially treated with medication, non-surgical modalities, and epidural steroids. In 2007 he underwent a discectomy which provided short-term improvement of symptoms, but then his back pain and right-sided radiculopathy returned. He did not respond adequately to further treatment to perform within his rating or participate in a physical fitness test. The CI was issued an L3 profile and underwent a Medical Evaluation Board (MEB). Degeneration of lumbosacral intervertebral disc and lumbago were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable conditions. No other conditions appeared on the MEB’s submission. Other conditions included in the narrative summary (NARSUM) and Disability Evaluation System (DES) file will be discussed below. The informal PEB adjudicated the lumbar radiculopathy condition as unfitting, rated 10% IAW with the Veterans’ Administration Schedule for Rating Disabilities (VASRD). Degeneration of lumbosacral intervertebral disc and lumbago were considered to be not unfitting and therefore not ratable. The CI made no appeal, and was medically separated with a 10% disability rating.

CI’s CONTENTION: The CI states, “Injuries happened while in support of combat operations while in a combat zone. The injuries I incurred became worse once I returned to the USA. The end result of my injuries was lower back surgery, which has made me unfit to stay in service. My records should indicate that my injuries were obtained in support of combat operations while in a combat zone. I request this correction of my records and the recoupment of severance pay should stop immediately.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions in the DD 294 application. However, in an undated memorandum he references his MEB and VA conditions and requests favorable review.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Navy PEB – Dated 20080229** | **VA (3 mo. Pre Separation) – All Effective 20080425** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbar Radiculopathy | 8520 | 10% | Sciatic Nerve Impairment | 8720 | 10% | 20080114 |
| Mechanical Low Back Pain | Cat II | Intervertebral Disc Syndrome | 5243 | 20% | 20080114 |
| Lumbago | Cat II |
| ↓No Additional MEB Entries↓ | Tinnitus | 6260 | 10% | 20080114 |
| 0% X 0/Not Service Connected X 16 | 20080114 |
| **TOTAL Combined: 10%** | **TOTAL Combined: 40%** |

ANALYSIS SUMMARY: The Board notes that the CI requests specific correction of records and specified entitlements regarding the PEB’s determination that, “The disability did not result from a combat related injury as defined by Title 26 U.S. Code Section 104(b)(3).” By law the Board authority is limited to making recommendation on correcting disability determinations. The actual correction of records and consequential entitlement determinations is the responsibility of the applicable Secretary and Accounting service. The applicant's request will of course remain with the application as it is processed.

Back Condition. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below:

|  |  |
| --- | --- |
| Thoracolumbar | Separation Date: 20080424 |
| Goniometric ROM | PT ~ 9 Mos Pre Sep | VA C&P ~ 3 Mos Pre Sep |
| Flexion (90⁰ normal) | 70⁰ | 60⁰ |
| Combined (240⁰ normal) | NA | 160⁰ |
| Comments | Normal gait, posture | Normal gait, no spasm |
| §4.71a Rating | 10% | 20% |

Many clinical visits for back stiffness with pain radiating to the right leg are documented during the year prior to the CI’s separation. These visits intermittently documented paraspinous muscle spasm and antalgic gait, but consistently documented a normal motor examination of the lower extremities. Prior to the CI’s lumbar disc surgery, nearly every neurological exam was objectively normal. After surgery, several neurological examinations documented sensory deficits of the distal right leg. A nerve conduction study showed evidence of a mild right S1 radiculopathy. Diagnostic imaging of the lumbosacral spine showed degenerative changes of discs at several levels. The PEB and Veterans’ Affairs (VA) chose different coding options and rating approaches for the condition, which accounts for the differences in rating. The Navy PEB adjudicated the lumbar radiculopathy condition (pain radiating to the right leg without motor impairment and with minimal sensory impairment) as unfitting, while finding the underlying intervertebral disc disease with associated painful motion of the back to be not unfitting. The VA’s rating choice appears to be consistent with the evidence from post-surgical exams. The Board judged the more completely documented VA exam (that occurred considerably closer to separation) to be of higher probative value for rating purposes. The Board debated the degree to which the CI’s minimal radicular sensory deficits contributed to rendering him unfit. 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 radiculopathy is subsumed under the general spine rating as specified in §4.71a. The sensory component in this case has no functional implications and there was no motor impairment. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on nerve impairment. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the back pain with mild sensory radiculopathy, and a change in VASRD code to 5243.

Remaining Conditions. Other conditions identified in the DES file were asthma and eczema. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period, none carried attached profiles, and none were implicated in the commander’s statement. These conditions were reviewed by the Action Officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally tinnitus and several other non-acute conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES.

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 back pain and radiculopathy condition, the Board unanimously recommends a rating of 20% (coded 5243) IAW VASRD §4.71a. In the matter of the asthma and eczema conditions, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Intervertebral Disc Syndrome, with Mild Radiculopathy | 5243 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090813, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXXX, FORMER USN, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 23 Mar 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (reference (b)).

2. The subject member’s official records are to be corrected to reflect the following disposition:

 a. Separation from the naval service due to physical disability rated at 20 percent (increased from 10 percent) effective 24 April 2008.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)