RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1000043 SEPARATION DATE: 20060331

BOARD DATE: 20110812

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sergeant (92A, Automated Logistics) medically separated for a lumbar spine condition. The condition began in 2002 as a consequence of falling onto his back, and was not associated with a surgical indication. He did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was issued a permanent L-3 profile and underwent a Medical Evaluation Board (MEB). Low back pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Focal segmental glomerulosclerosis and obstructive sleep apnea (OSA) were also identified and forwarded as medically acceptable conditions. Additional conditions supported in the Disability Evaluation System (DES) file are discussed below, but were not forwarded for PEB adjudication. The PEB adjudicated the low back condition as unfitting, rated 0% with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “I was discharged for my lower back. I am currently rated at 40% and my VA file is being reviewed for IU due to my back and injury and me not being able to maintain gainful employment due to my injury.” In a submitted letter dated October 21, 2010, the CI also reports his condition has worsened since discharge and refers to all of his VA disability rating in the chart below.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060302** | | | **VA (2 Mo. before Separation) – All Effective 20060401** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain | 5243 | 0% | Degenerative Disc Disease | 5242 | 10% | 20060109 |
| Obstructive Sleep Apnea | Not Unfitting | | Obstructive Sleep Apnea | 6847 | 50% | 20060109 |
| Glomerulosclerosis | Not Unfitting | | Glomerulosclerosis | 7101-7536 | 30% | 20060106 |
| ↓No Additional MEB Entries↓ | | | 1 x 0%\* / 6 x Not Service Connected | | | 20060109 |
| **Combined: 0%** | | | **Combined: 70%** | | | |

\*Left knee condition increased to 10% effective 20070104

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his quality of life. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration.

Low Back Pain 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 following chart.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT ~ 3 Mo. Pre-Sep | VA C&P ~ 2 Mo. Pre-Sep |
| Flexion 0-90⁰ normal | 55⁰ | 80⁰ |
| Combined 240⁰ normal | 224⁰ | 195⁰ |
| §4.71a Rating | 20%\* | 10% |

\*Based on flexion component only

The narrative summary (NARSUM) examination was silent regarding gait, muscle tenderness, spasm and contour. Magnetic resonance imaging reported a small annular tear with mild degenerative disc disease and a herniated disc at L4-5. The compensation and pension (C&P) examiner noted normal gait and posture, and no localized tenderness. Strength, sensory and reflex findings were normal, and straight leg raise testing was negative. Because the C&P examination was significantly more detailed than the NARSUM exam, it was considered by the Board for rating purposes. The PEB’s 0% rating required application of the USAPDA pain policy, since the VA Schedule for Rating Disabilities (VASRD) §4.71a yields a 10% or 20% rating based upon the ROM in evidence. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The Board also considered rating intervertebral disc disease under the alternative formula for incapacitating episodes, but could not find sufficient evidence which would meet even 10% criteria under that formula. There was no evidence of ratable peripheral nerve impairment in this case. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the lumbar spine condition, and agrees with the PEB’s coding choice of 5243.

Renal Condition. The CI had a history since childhood of significant proteinuria. A pre-enlistment biopsy established the diagnosis of focal segmental glomerulosclerosis, although his entrance physical did not report the condition and showed no proteinuria. While on active duty, he was followed by a civilian nephrologist for at least one year prior to the MEB, but these records are not in evidence. He was also being treated for hypertension, which was considered a complication of the renal condition and was reasonably controlled on medication. The MEB nephrology addendum assessed stable, mildly diminished renal function, but with the possibility of kidney failure several years in the future. The nephrologist stated that the renal condition caused no specific functional impairment, no restriction for worldwide duty and no requirement for a permanent profile. The VA granted a 30% rating based on recurring proteinuria with hypertension. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the renal condition.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was OSA. The condition was diagnosed in 2005 and subsequent treatment with continuous positive airway pressure (CPAP) device was successful. The services do not routinely find OSA, with or without CPAP requirement, unfitting if symptoms are controlled and functioning is unimpaired. The burden of providing CPAP in field and deployment environments is not considered to be a critical factor with the common availability of portable generators and sanitary facilities. This condition was not profiled, implicated in the commander’s statement or noted as failing retention standards. It was reviewed by the action officer and considered by the Board. There was no indication from the record that it significantly interfered with satisfactory performance of MOS requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the OSA condition.

Remaining Conditions. Other conditions identified in the DES file were left knee pain, bilateral ankle pain and obesity. 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 posttraumatic stress disorder, bilateral cataracts, and a right knee condition 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. As discussed above, PEB reliance on the USAPDA pain policy for rating lumbar spine condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the low back pain condition, the Board unanimously recommends a rating of 10% coded 5243 IAW VASRD §4.71a. In the matter of the glomeruloscerosis and OSA conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. 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.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Low Back Pain | 5243 | 10% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100126, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

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President

Physical Disability Board of Review

SFMR-RB DEPARTMENT OF THE ARMY ARMY REVIEW BOARDS AGENCY 1901 SOUTH BELL STREET 2ND FLOOR ARLINGTON, VA 22202-4508

29 SEP 2011 MEMORANDUM FOR Commander, US Army Physical Disability Agency (TAPD-ZB *I* WRAMC, Building 7, Washington, D.C. 20307-5001

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for AR20110018892 (PD201000043)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board's recommendation to modify the individual's disability rating to 10% without recharacterization of the individual's separation. This decision is final. 2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum. 3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY: Encl CF: ( ) DoD PDBR ( ) DVA