RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1000120 SEPARATION DATE: 20071227

BOARD DATE: 20110916

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Specialist (21B10, Combat Engineer) medically separated for a lumbar spine condition. The condition began in 2007 as a consequence of trauma sustained while riding in a Humvee, 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). Chronic lower back pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Bilateral knee pain, migraine headaches, adjustment disorder with anxiety with depressed mood, and dyspepsia were also identified and forwarded on the MEB submission as medically acceptable conditions IAW AR 40-501. Additional conditions supported in the Disability Evaluation System (DES) file are discussed below, but were not forwarded for PEB adjudication on the DA Form 3947. The PEB adjudicated the low back condition as unfitting, rated 10% with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: The CI requests that the ratings he received from the PEB be increased due to worsening of his condition since separation from the service. He specifically requests a re-evaluation of his PTSD. He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20070924** | **VA (1 Mo. before Separation) – All Effective 20071228** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbar Spondylolisthesis | 5239 | 10% | Spondylolisthesis | 5239 | 10% | 20071210 |
| Bilateral Knee Pain | Not Unfitting | Bilateral Knee Tendinitis | Not Service Connected | 20071210 |
| Migraine Headache | Not Unfitting | Migraine Headache | 8100 | 30% | 20071210 |
| Adjustment Disorder | Not Unfitting | Anxiety Disorder | 9413 | 30% | 20071210 |
| Dyspepsia | Not Unfitting | Gastroesophageal Reflux | 7399-7346 | 0% | 20071210 |
| ↓No Additional MEB / PEB Entries↓ | 3 x 0% / 8 x Not Service Connected | 20071210 |
| **Combined: 10%** | **Combined: 60%** |

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 Department of Veterans' Affairs.

Lumbar Spine Condition. The CI was in the turret position when the Humvee he was riding in hit a large pot hole/crater in February 2007. Initial medical documentation at the time of the incident records a complaint of back pain and severe leg weakness, without disturbance of bowel or bladder function. The CI recovered full lower extremity strength and coordination over a period of weeks but experienced duty limiting back pain. There were three goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT ~ 5 Mo. Pre-Sep | VA C&P ~ 2 Wk. Pre-Sep | VA C&P ~3 Mo. Post-Sep |
| Flexion 0-90⁰ normal | 15⁰ | 75⁰ | 75⁰ |
| Combined 240⁰ normal | 85⁰ | 220⁰ | 220⁰ |
| Comments | Limited by painNo abnormal gait due to spasmNormal contour | Painful motion | No painful motion, no spasm, normal gait, normal contour |
| §4.71a Rating | 40% | 10% | 10% |

The MEB examination, six months after injury and five months before separation, differs significantly from the subsequent VA examinations that were closer to the time of separation. The MEB examiner reported a normal gait and mild bilateral lumbar muscle tenderness and spasm. Straight leg raise testing was negative and lower extremity neurologic findings were normal. Spinal contour was noted by the physical therapy examiner to be normal. A magnetic resonance imaging showed minimal anterior spondylolisthesis of the fifth lumbar vertebrae (L-5), and otherwise showed no abnormalities. The VA compensation and pension (C&P) examination two weeks before separation reported normal gait and posture, with near normal ROM. While spasm, weakness and tenderness were absent, objective evidence of painful motion was noted. A VA C&P examination three months later showed near normal ROM, no pain with motion, and absence of muscle spasm with normal gait and spinal contour. There were no symptoms or objective findings of radiculopathy. At the time of the latter C&P examination, the CI reported working in construction. Because they were more proximal to separation and considered to better reflect a stable degree of healing status post injury, the C&P examinations were considered for rating purposes. The PEB’s 10% rating required application of the USAPDA pain policy, since §4.71a yields a 40% rating based on the MEB examination ROM. The VA’s 10% rating is supported by the physical examination findings from the C&P examinations. There was no evidence of ratable peripheral nerve impairment in this case. 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 lumbar spine condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were adjustment disorder, bilateral knee pain, migraine headache and dyspepsia. A diagnosis of adjustment disorder was made during the initial care of his back injury, and the CI received intermittent counseling and medication for this during the remainder of his service. A psychiatry memorandum, 7 August 2007, to the PEB reported that the condition did not interfere with the CI’s ability to function in the military setting. Subsequent VA examination noted combat stressors, but diagnosed the CI’s symptoms as anxiety disorder. None of the above conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions 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 any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were post-concussion syndrome, possible obstructive sleep apnea, and left side chest pain. 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 shin splints, cervical spine degenerative disc disease 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. 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 lumbar spondylolisthesis L5 with persistent back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the adjustment disorder, bilateral knee pain, migraine headache and dyspepsia 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lumbar Spondylolisthesis L5 with Persistent Back Pain | 5239 | 10% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100219, 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

• 5 OCT 2011

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB *I* 2530 Crystal Drive, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for AR20110019729 (PD201000120)

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 and hereby deny the individual's application.

This decision is final. The individual concerned, counsel (if any), and any Members of

Congress who have shown interest in this application have been notified of this decision

by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

CF:

( ) DoD PDBR

( ) DVA