RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD201000364 SEPARATION DATE: 20050712

BOARD DATE: 20120216

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Air National Guard member, TSgt/E-6 (3M071, Services Craftsman), medically separated for chronic low back pain (LBP) associated with degenerative disc disease (DDD) and lumbar spondylosis*.* The CI’s LBP began in November 2003 when he was involved in a motor vehicle accident, suffering a lumbar strain. MRI revealed two-level DDD and facet joint arthropathy. His treatment included medications (including daily narcotics), physical therapy, and facet joint injections without lasting relief. He did not respond adequately to this treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a temporary U3 profile and underwent a Medical Evaluation Board (MEB). “Other neurological conditions” were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file are discussed below. The PEB adjudicated the chronic low back pain condition as unfitting, rated 20% with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI did not appeal and was medically separated with a 20% disability rating.

CI CONTENTION: “Cannot work due to injury.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050429** | | | **VA– All Effective Date 20050713** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| LBP A/W DDD & Lumbar Spondylosis | 5243-5299 | 20% | DDD & L4-S1 … | 5243 | 20%\* | STR |
| ↓No Additional MEB/PEB Entries↓ | | | Not Service Connected x 1 | | | STR |
| **Combined: 20%** | | | **Combined: 20%\*** | | | |

\* DDD 5243 increased to 40% effective 20070124 (combined 40%) and added PTSD 9411 at 70% effective 20080807 (combined 80%) both by Board of Veterans’ Appeals decision

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him, and its impact on his current earning ability. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the DES operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximate to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation.

Low Back Pain Condition. There were four thoracolumbar spine evaluations, including one goniometric range-of-motion (ROM) evaluation, in evidence which the Board weighed in arriving at its rating recommendation. These evaluations are summarized in the below chart.

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| Goniometric ROM - Thoracolumbar | STR ~10 Mo. Pre-Sep  (20040921) | Pain Management ~6 Mo. Pre-Sep  (20050105) | NARSUM ~ 4 Mo. Pre-Sep  (20050313) | PT ~ 2 Mo. Pre-Sep  [VA-Rated] *(20050526)* | VA C&P ~ 29 Mo. Post-Sep  *(20070124)* |
| Flex (0-90) | “↓ flexion but otherwise normal ROM” | No ROMs reported | No ROMs reported | (48⁰) 50⁰ | 30⁰ |
| Ext (0-30) | 20⁰ | 10⁰ |
| R Lat Flex (0-30) | 20⁰ | 30⁰ |
| L Lat Flex 0-30) | (22⁰) 20⁰ | 30⁰ |
| R Rotation (0-30) | (48⁰) 30⁰ | (40) 30⁰ |
| L Rotation (0-30) | (40⁰) 30⁰ | (40) 30⁰ |
| COMBINED (240) | 170⁰ | 160⁰ |
| Comment | Mod lumbar muscle rigidity, normal gait, neg SLR bilat, normal reflexes, no wasting | TTP at L4-L5 and L5-S1 (worse w/ flexion & extension), neg SLR, no radicular symptoms, neuro normal, heel- and toe-walk normal | Walks with a cane, requires daily narcotics, difficulty sitting/walking, difficulty driving/sleeping | Lower extremity strength normal, +SLR at 60, +Waddell’s x4 | Pain-limited motion; normal muscle tone & gait; can walk on heels and toes; lumbar curve normal; reflexes normal; Hx – uses cane, unemployed |
| §4.71a Rating | 20% | 10% | (PEB 20%) | 20% | 40% |

An outpatient note in the service treatment record (STR) 10 months prior to separation, reported decreased flexion but otherwise normal ROMs (without quantitative values). The examiner also noted moderate lumbar muscle rigidity. Gait was normal, straight leg raises negative, reflexes were normal, and there was no wasting (atrophy). Two prior notes, at 11 and 20 months pre-separation (initial injury was 20 months pre-separation), also noted spasm or muscle rigidity, and the 20-month note reported ROM deficits in all ranges secondary to spasm (without quantitative values).

Pain management notes, six months prior to separation, reported tenderness at L4-5 and L5-S1, worse with flexion and extension. The remainder of the exam was normal, with negative straight leg raises, normal neurological evaluation, and normal heel- and toe-walking. The examiner also noted the CI reported no radicular symptoms.

The narrative summery (NARSUM), four months prior to separation, did not contain a separate ROM physical examination, but provided useful historical and interview data. The examiner noted the CI walked with a cane, required daily narcotic medications, and had a “difficult time sitting, standing, and walking for any significant period without switching positions or having to stop and rest.” He was also noted to have a difficult time driving distances and difficult time sleeping at night due to his lumbar discomfort. MRI had revealed mild diffuse disc bulges and mild facet arthropathy at L4-L5 and L5-S1, without neuroforaminal or spinal cord impingement.

The STR also contained evidence the CI underwent (previously planned, as noted in the NARSUM and pain management notes) radiofrequency neurotomy (rhizotomy) bilaterally at three levels, L3-4, L4-5, and L5-S1, at three months pre-separation. The CI’s immediate response to this procedure was not reported; however, the pain management physician anticipated 60-70% reduction in his pain lasting about 12 months.

A physical therapy note two months before separation, containing the only quantitative (goniometric) ROMs in the record, revealed decreased flexion meeting the 20% criteria under the general rating formula for diseases and injuries of the spine, VASRD §4.71a. The examiner also noted normal lower extremity strength, straight leg raising (apparently positive) at 60 degrees, and four positive Waddell’s signs.

Although remote from separation, VA exams at 29 and 66 months post-separation showed continued significant impairment due to LBP with decreased ROMs. At both exams the CI reported using a cane and remained unemployed. ROM deficits were significant, meeting the 40% criteria at 29 months, and 20% at 66 months. Painful motion or pain-limited motion was also noted. There was no spasm, abnormal gait (despite cane use noted in history), or abnormal spinal contour, and neurological exams remained normal. The VA Board of Appeals (noted in VARD from September 2010) granted a 40% lumbar spine rating effective January 2007 (18 months post-separation). Any increased impairment noted in either exam would be considered a post-separation worsening, and not indicative of the CI’s condition at separation.

Coding in this case would optimally be either 5237 (lumbosacral strain) or 5242 (degenerative arthritis of the spine); however the radiologic evidence of disc pathology supports the analogous coding to 5243 (intervertebral disc syndrome); that code, as selected by the PEB and VA, is acceptable. There were no reports of incapacitating episodes requiring bed rest prescribed by a physician and treatment by a physician, as required for rating under intervertebral disc syndrome, so the condition is most appropriately rated using the general rating formula for diseases and injuries of the spine. The record did not provide evidence the CI’s condition ever approached the 40% criteria (requiring forward flexion of 30 degrees or less, or favorable ankylosis of the entire thoracolumbar spine) proximate to separation. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the low back pain condition.

LBP Condition (Radiculopathy). There was no evidence of unfitting peripheral nerve impairment in this case. The CI endorsed episodic radiation of his pain into his legs, but no leg weakness or paresthesias. Any pain radiculopathy is considered above under the CI’s primary unfitting lumbosacral condition IAW the general rating formula for diseases and injuries of the spine, “with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease.” Although the MEB diagnosed “other neurological conditions,” there was no evidence of neuropathy. None of the exams in the record noted any sensory deficits, and lower extremity motor function was normal throughout the record, without atrophy or foot drop. The reported gait abnormalities (requiring a cane to walk) were most likely due to pain and/or muscle spasm, as the neurological evaluations were normal. This leaves no grounds for Board recommendation of an additionally unfitting neuropathy. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of any lower extremity radiculopathy as an unfitting condition for separation rating.

Remaining Conditions. No other conditions were noted in the NARSUM or found elsewhere in the DES file. The VA granted a 70% rating for posttraumatic stress disorder (PTSD) effective January 2007 and VA notes indicated a prior diagnosis of depression in 2003; however, no mental health condition was noted in the DES file, the profile was S1, and the commander’s statement indicated good motivation and only back-related physical constraints to full duty. 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. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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 low back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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** |
| Chronic LBP Associated with DDD and Lumbar Spondylosis | 5299-5243 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100319, 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

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXX

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2010-00364

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 appropriate. Accordingly, the Board recommended no re-characterization or modification 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 and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

XXXXXXXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings