RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1000383 SEPARATION DATE: 20091026

BOARD DATE: 20110920

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SUMMARY OF CASE: This covered individual (CI) was a Reserve SSGT (4NO51, Aerospace Medical Technician) medically separated from the Air Force in 2009. The medical basis for the separation was chronic low back pain (LBP). While in theater in September 2008, he dove for cover and noted back pain. There is no medical record of treatment until 12 February 2009, five days before separation from active duty. Over the next seven months, his symptoms progressed. He did not respond adequately to various treatments, including epidural steroid injections (ESI), and was not able to perform within his career field or participate in a physical fitness test. A P4 profile was issued and he underwent a Medical Evaluation Board (MEB). The chronic LBP condition was determined to be medically unacceptable and was forwarded to the Physical Evaluation Board (PEB). The PEB determined the chronic LBP to be unfitting and recommended a disability rating of 20% utilizing applicable USAF and DoD instructions IAW the VA Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 20% disability rating.

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CI CONTENTION: “Left lower radiculopathy was completely overlooked in the military's rating decision, yet it is clearly evident on all my medical records which were included as part of my MEB package. MRI findings show nerve impingement affecting my left leg due to nerve compression; EMG studies clearly show abnormal findings and nerve damage affecting the left leg. The focus seemed to be on my back itself, and not the residual effects to the leg. In the provided documentation I have highlighted the areas which clearly show evidence of nerve damage/impingement affecting my left leg. This is even evident in my initial LOD determination. Subsequent diagnostic testing confirmed this as well, as is highlighted. The provided copies were made from my original MEB package. Not only did the Department of Veterans Affairs pick up on this, they also evaluated and confirmed this condition and provided a rating for it.” He also contended for “patellofemoral syndrome with DJD, left knee and migraine headaches.”

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20090928** | **VA (6 Mo. after AD Separation) – All Effective 20090204** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5243 | 20% | Herniated disc L5-S1 | 5242 | 20% | 20090826 |
| LLE Radiculopathy…HNP L5-S1 | 8520 | 10% | 20090826 |
| ↓No Additional MEB/PEB Entries↓ | L PFS w/DJD | 5261 | 10% | 20090826 |
| Migraine Headaches | 8100 | 0% | 20090826 |
| **FINAL Combined: 20%** | **TOTAL Combined: 40%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his LBP condition and from his service-incurred musculoskeletal conditions which have worsened over time. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions incurred in service or resulting in medical separation. The Board’s authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. Moreover, the Board notes that the mere presence of a diagnosis is not sufficient to render the condition unfitting. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member's career, and then only to the degree of severity present at the time of final disposition. However, the Department of Veterans Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate veterans for the purpose of adjusting the disability rating should the degree of impairment vary over time.

Chronic Low Back Pain. The CI first injured his back when he dove for cover during a mortar attack in Iraq in September 2008. He self-medicated with Motrin and continued his duties. In February 2009 his back began to bother him; he was seen by both acute care and a chiropractor without significant improvement. Additional treatment included ESI and facet joint injections. He responded well to these treatments and was released to full duty on 9 June 2009.

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.

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| --- | --- | --- |
| Goniometric ROM – Thoracolumbar | MEB <3 Mo. Pre-Sep | VA C&P 2 Mo. Pre-Sep |
|  |  |  |
| Flex (0-90) | 55⁰ w/ pain | 50⁰ (36⁰ w/ pain)  |
| Ext (0-30) | 25⁰  | 25⁰  |
| R Lat Flex (0-30) | 25 (23)⁰ w/ pain | 30 w/ pain |
| L Lat Flex 0-30) | 20⁰ w/ pain | 30⁰ w/ pain |
| R Rotation (0-30) | 30⁰  | 30⁰  |
| L Rotation (0-30) | 15⁰ w/ pain | 10⁰ w/ pain |
| COMBINED (240) | 170⁰ | 175⁰ |
| Comment | Normal neuro | Spasm & tenderness on exam; weakness LLE |
| §4.71a Rating | 20% | 20% |

A magnetic resonance imaging (MRI) on 23 March 2009, six weeks after release from active duty, showed L4-5 disc bulging and L5-S1 disc protrusion without nerve root compression or canal narrowing. On plain films, L5-S1 mild degenerative joint disease (DJD) was noted. An electromyography/nerve conduction velocity (EMG/NCV) study, accomplished on 29 April 2009, two months after release from active duty and six months before separation from the Reserve, was normal. A second MRI done on 20 August 2009, after the MEB exam and two months before separation from the Reserve, showed that, at L5-S1, there was now extrusion (herniation) of nucleus pulposus (HNP) impinging the left proximal S1 nerve root and indenting the thecal sac on the left. A second EMG/NCV on the next day showed “some mild chronic denervation likely secondary to lumbar polyradiculopathy on the left.” The examiner also noted “focused exam was then performed which revealed a concerning hyper-reflexia throughout the left hemisoma with slightly decreased sensation throughout the arm and leg; however, there is also concomitant hyperesthesias in the left leg as well…sural sensory responses were normal…some mild evidence of chronic denervative changes in the rectus femoris and peroneus longus muscles and abnormal electrical discharges in the lower lumbar paraspinals.” The MEB exam was accomplished on 7 August 2009, over three months prior to separation from the Reserve and prior to the second MRI and EMG/NCV study. The examiner noted the CI “contacted me again in late July, stating that his back was again bothering him and he felt that he would not be able to do his job…” His LBP was noted to be without radiculopathy. On exam, no sensory deficits were noted and he had normal strength and reflexes. The examiner noted that he had reinjured his back at his civilian job during a code blue the day before the appointment. He required trigger point injection that day and ESI the day of the exam for severe pain; ROM is above.

At the VA compensation and pension exam performed on 29 August 2009, two months before separation from the Reserve, he was noted to have a history of pain radiating from his back to his left lower extremity and to have had decreased pinprick sensation in the left lower extremity on two separate exams. The CI noted a history of LBP radiating to the left side, with shooting pains down his left leg to the lateral calf and foot over the past three weeks, roughly the length of time since the MEB exam. He stated that he had fallen twice from pain since the previous March and that he had difficulty dressing from pain and stiffness if he sat too long. On exam, he was noted to carry a heavy box under his arm while walking at a rapid pace without antalgic gait and to have an erect posture with normal lumbar lordosis and without scoliosis. No ambulatory aids were used. Deep tendon reflexes were noted to be normal in the upper and lower extremities. Hypersensitivity to monofilament testing was noted in the left upper and lower extremities, but was decreased over the lateral and medial calf. Strength in the left lower extremity was noted to be reduced. Straight leg raise was negative. DeLuca criteria were negative except for pain. No incapacitating episodes were documented. The CI was seen by a VA neurologist on 7 October 2010, a little less than one year after separation from the Reserve, for his history of migraine headaches. Motor exam and deep tendon reflexes were noted to be normal. Sensation was significant for diminished pin prick in the left foot compared to the right, but proprioception was normal. The Board notes that the CI had a crush injury to the left foot in September or October 2008. Straight leg raise and ROM values were not recorded. The Board notes that the CI contends that the left lower radiculopathy, abnormal MRI and EMC/NCV were overlooked by the PEB. In fact, the MRI available to the PEB did not show impingement of the nerve roots or spinal cord and the EMG/NCV was normal. Left sciatica and altered sensation in the left lower extremity were noted on an exam at the spine clinic by the physiatrist, over two months after release from active duty, but no comment was made on a radicular distribution. An exam at a pain clinic, three weeks later, showed normal sensory and motor exams with normal deep tendon reflexes. The EMG/NCV and MRI used by the VA in its rating decision were both after the MEB exam and after an injury at his civilian job in a non-duty status. The PEB and the VA both rated the back condition at 20% and coded it 5243 (intervertebral disc syndrome) and 5242 (degenerative arthritis of the spine), respectively.

The Board considered the addition of radiculopathy which was awarded by the VA at 10% disability coded 8520. It noted that, while there had been evidence of radiculopathy in the spring, it had apparently resolved and was not evident on exam at the time of the MEB. It also noted the significant change in both the MRI and EMG findings after the 5 August 2009 re-injury at his civilian employment and that, finally, the neurological exam proximate to separate was nearly normal with normal deep tendon reflexes and motor exam. After due deliberation, in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend the addition of radiculopathy or a change from the PEB fitness adjudication for the LBP condition. The radiculopathy did not cause separately unfitting disability. There is not reasonable doubt in the CI’s favor therefore to justify a Board recommendation for other than the 20% rating assigned by the PEB for the chronic LBP condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for patello-femoral syndrome (PFS) with DJD left knee and migraine headaches. These conditions were reviewed by the action officer and considered by the Board. The Board notes that the CI was air evacuated out of theater for what was eventually diagnosed as a migraine headache condition. However, he was returned to full duty and was headache free at the time of the MEB. There is no documentation of care for the left knee condition in the record. There was no evidence therefore to conclude that either of the conditions interfered with duty performance to a degree that could be argued as unfitting. Therefore, the Board determined that neither of the stated conditions was subject to service disability rating.

Remaining Conditions. Another condition identified in the DES file was insomnia. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically significant during the MEB period, none carried attached profiles or were the basis for limited duty, 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. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. 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. In the matter of the chronic LBP condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the radiculopathy, left knee PFS with DJD or migraine headache conditions or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional 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** |
| Lower Back Pain | 5243 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100402, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00383.

 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,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings