**RECORD OF PROCEEDINGS**

**PHYSICAL DISABILITY BOARD OF REVIEW**

**NAME: BRANCH OF SERVICE: ARMY**

**CASE NUMBER: PD1000774 SEPARATION DATE: 20070501**

**BOARD DATE: 20120104**

**SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (13B, Cannon Crewmember-Paratrooper) medically separated for low back pain (LBP).** He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He underwent a Medical Evaluation Board (MEB).  **Chronic LBP due to degenerative disc disease (DDD) was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Four other conditions, identified in the rating chart below, were listed on the DA Form 3947 as medically acceptable. The PEB found the chronic LBP condition unfitting and rated it 10%. The CI made no appeals, and was thus separated with a 10% disability rating**.

**CI CONTENTION: The CI states, “Initial requests had been made to continue service contract. Option of reclass was not given, and rating decision of 10% was assigned. Veteran was unaware of PTSD and various other physical ailments that were not addressed at the time, and should be considered.”**

**RATING COMPARISON:**

|  |  |
| --- | --- |
| **Army PEB – dated 20070315** | **VA (1 mo. After Separation) – All Effective 20070502** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| **Chronic Low Back Pain** | **5243** | **10%** | **Mild DDD, with Spondylosis**  | **5237** | **10%** | **20070606** |
| **Sleep Apnea**  | **Not Unfitting** | **Sleep Apnea** | **6847** | **0%** | **20070606** |
| **Chronic Insomnia** | **Not Unfitting (EPTS)** | **No Corresponding VA Entry for Insomnia** |
| **Bilateral Ankle Pain** | **Not Unfitting (EPTS)** | **Bilateral Ankle Condition** | **5271** | **NSC** | **20070606** |
| **Elevated BP**  | **Not Unfitting** | **No VA Entry for Elevated Blood Pressure** |
| **↓No Additional MEB/PEB Entries↓** | **Radiculopathy of Right Leg** | **8520** | **10%** | **20070606** |
| **Traumatic Brain Injury (TBI)**  | **8045** | **10%** | **20070606**  |
| **0% x 1 / Not Service Connected (NSC) x 3** | **20070606** |
| **Combined: 10%** | **Combined: 30%\*** |

**\* Combined VA disability rating was later increased to 50%, and then to 80% (based on subsequent VA Rating Decisions)**

**ANALYSIS SUMMARY:**

The Board acknowledges the CI's contention that service disability ratings should have been conferred for other conditions. While the Disability Evaluation System (DES) considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a service member’s career, and then only to the degree of severity present at the time of separation from service. However, the Department of Veterans’ Affairs (VA) is empowered to compensate service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the disability rating, should the degree of impairment vary over time.

**Low Back Pain (LBP). In December 2004, the CI developed LBP following a parachute landing fall (PLF). The pain lasted two weeks and he did not seek medical care. He re-injured his back in Afghanistan while lifting a 350 lb. generator. Again, the symptoms resolved without medical care. A third back injury occurred in June 2006. After several weeks he sought medical evaluation. Magnetic resonance imaging (MRI) revealed mild degenerative disc disease (DDD), disc protrusion at L4-L5, impingement of the right L5 nerve root, disc protrusion at L5-S1, and impingement of the right S1 nerve root. The CI was placed on a profile, but was permitted to complete one last parachute jump in August 2006. During that last PLF, he fell backward and hit his head. After that jump, he had increased LBP. The CI was referred to orthopedics, and then to a spine surgeon in October 2006. Back surgery was recommended, but he chose not to have surgical intervention. After three months, with no significant improvement in his LBP, an MEB was initiated. At his February 2007 MEB evaluation, nine weeks prior to separation, the CI reported pain in his lower back, with some radiation into his right leg, and occasional right leg numbness. He was on no pain medication at that time. There was some tenderness to palpation (TTP) in the lower back region. Three out of eight Waddell’s signs were positive. His range-of-motion (ROM) measurements are shown in the chart below. As noted previously, the Army PEB found him unfit due to chronic LBP, and he was separated on 1 May 2007.**

**Five weeks later, at his June 2007 VA Compensation and Pension (C&P) exam, the CI reported persistent LBP, which radiated into the right leg. He denied fatigability or weakness, and was able to function in his job as a postal worker. He could walk indefinitely with no limitation. However, after sitting or standing for 15-20 minutes, he then needed to move. He did not use any assistive devices and was on no medication. He denied any incapacitating episodes or flare-ups over the course of the previous year. On exam, the CI had a normal gait. He had no difficulty rising from a chair or changing positions on the exam table. He was able to heel-toe walk without difficulty. Lumbar lordosis was normal. There was some mild TTP over the right paraspinous muscles. His neurological exam revealed some decreased sensation of his right lateral calf and right foot, but there was no motor weakness or abnormal deep tendon reflexes.** Two ROM evaluations were evident in the record, and they are summarized in the chart below.

|  |  |
| --- | --- |
| Thoracolumbar | Separation Date: 20070501 |
| Goniometric ROM | MEB – 9 weeks Pre-Sep(20070226) | VA C&P – 5 weeks Post-Sep(20070606) |
| Flexion (90⁰ is normal) | 20⁰ | 80⁰ |
| Combined (240⁰ is normal) | 140⁰ | 220⁰ |
| §4.71a Rating  | 40% | 10% |
| Comments | ROM limited by pain  | No pain with ROM |

The PEB and the VA used different codes for the back pain condition, but they both assigned a 10% rating. The Board noted the significant disparity between the two ROM exams. There were inconsistencies noted with the February 2007 MEB exam, which caused the Board to question its validity and probative value. A 20⁰ limitation of forward flexion would preclude certain activities of daily living, such as dressing oneself or riding in a car. The record does not indicate that the CI was unable to dress himself or ride in a car. There is also no evidence that he was unable to sit in a chair, or to sit on the examination table. In addition, there were other factors associated with the MEB exam, which caused further diminution of its probative value. The June 2007 C&P exam was done closer to the actual date of separation and was not associated with positive Waddell’s signs. The C&P examination was more consistent with outpatient notes, and more reflective of the anticipated severity suggested by the clinical pathology. After due deliberation, the Board decided to assign greater probative value to the June 2007 C&P examination, because of the factors elaborated above. Although the CI complained of some subjective weakness in his right leg, examination revealed minimal sensory deficits without any objective evidence of motor weakness. The Board concluded that there was insufficient evidence of a significant neuropathy that would be separately unfitting. The CI had a normal gait and normal spinal contour. After careful consideration of all the evidence, the Board unanimously determined that the preponderance of the evidence supported a disability rating of 10%. There was not sufficient evidence (nor reasonable doubt in the CI’s favor) to justify a Board recommendation for greater than 10%. The Board therefore recommends a rating of 10% for the low back pain condition.

**Other PEB Conditions. Mild OSA, chronic insomnia, ankle pain/instability, and elevated blood pressure were all adjudicated by the Army PEB as “not unfitting.” None of these conditions were profiled, or implicated in the commander’s statement. 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 required military duties. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB’s fitness determination for any of the stated conditions.**

**Remaining Conditions. Headaches, head trauma, hemorrhoids, pes planus, toe fracture, and several other conditions were noted in the DES file. None these conditions carried profiles or were implicated in the commander’s statement. They were all 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, PTSD and other conditions were noted in the VA rating decisions but were not in the DES file.** The Board does not have the authority 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.** In the matter of the low back pain condition, the Board unanimously recommends no change in the PEB adjudication. In the matter of the **mild OSA, chronic insomnia, bilateral ankle problem, elevated blood pressure, headaches, head trauma, hemorrhoids, pes planus, toe fracture,** or any other conditions eligible for 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, as follows:**

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Diskogenic Low Back Pain | **5243** | **10%** |
| **COMBINED** | **10%** |

**The following documentary evidence was considered:**

**Exhibit A. DD Form 294, dated 20100608, w/atchs**

**Exhibit B. Service Treatment Record**

**Exhibit C. Department of Veterans' Affairs Treatment Record**

 President

 Physical Disability Board of Review

**SFMR-RB**

**MEMORANDUM FOR Commander, US Army Physical Disability Agency**

 **Crystal Drive, Suite 300, Arlington, VA 22202**

**SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for**

**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**

 **Deputy Assistant Secretary**

 **(Army Review Boards)**

**CF:**

**( ) DoD PDBR**

**( ) DVA**