RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD201000853 SEPARATION DATE: 20070626

BOARD DATE: 20111205

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SSgt/E-5 (3E751, Fire Protection Journeyman), medically separated from the Air Force in 2007 after nine years of combined service (eight years active duty). The medical basis for the separation was low back pain. The low back pain with right radicular symptoms began with a bomb explosion during a deployment to Iraq. Imaging demonstrated significant degenerative disk pathology that was managed surgically, but he did not respond adequately to perform within his Air Force specialty (AFS) or meet physical fitness standards; was issued a permanent L4 profile; and underwent a Medical Evaluation Board (MEB). “Chronic low back pain, recurrent lumbar disc herniation” was 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) packet will be discussed below. The Informal PEB (IPEB) adjudicated the “low back pain due to degenerative disc disease status post discectomy L4-5” condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed to Formal PEB (FPEB), and was then medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “After I separated, I received a VA disability rating, which resulted in a higher disability rating for my degenerative disk disease and a 50% rating for PTSD (previously undiagnosed by the Air Force). Per these facts, and Under SecDef, memo dtd 17 Jul 2009, Request for Correction of Records Relating to Disability Ratings for PTSD, request the PDDR increase my disability rating, rate/recognize my PTSD, & approve retirement.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20070507** | | | **VA (3 Mos. After Separation) – All Effective 20070627** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain w/ Sciatica | 5243 | 20% | DDD Lumbosacral Spine | 5243 | 20% | 20070912 |
| Radiculopathy RLE | 8520 | 10% | 20070912 |
| ↓No Additional MEB/PEB Entries↓ | | | PTSD | 9411 | 50% | 20070912 |
|  | | | Bilateral Tinnitus | 6260 | 10% | 20070829 |
| Migraine Headaches | 8100 | 10% | 20070912 |
| 0% x 1 / Not Service Connected x 3 | | | 20070912 |
| **Combined: 20%** | | | **Combined: 70%** | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 (VA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service connected conditions without regard to fitness for performance of military duties, and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board makes note that some of the CI’s contended conditions that were granted VA service connected ratings after separation, were not addressed by the PEB and were not in the DES file. By policy and precedent the Board has limited its jurisdiction for recommending unadjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core DES file. The core DES file consists of the MEB referral document, the PEB adjudication document, the NARSUM (including any addendums or referenced examinations), the MEB physical exam, the commander’s statement, the physical profile(s), and any written appeals or internal DES correspondence. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Air Force Board for Corrections of Military Records.

Low Back Pain Condition. There were two 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.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT ~ 4 Mos. Pre-Sep | VA C&P ~ 3 Mos. After-Sep |
| Flex (0-90) | 18cm (converts to 7 inches) | 60⁰ (pain throughout) |
| Ext (0-30) | WNL | 20⁰ |
| R Lat Flex (0-30) | 48cm | 30⁰ (pain throughout) |
| L Lat Flex 0-30) | 35cm | 30⁰ (pain throughout) |
| R Rotation (0-30) | 25% Limited | 40⁰ (pain throughout) |
| L Rotation (0-30) | WNL | 40⁰ (pain throughout) |
| COMBINED (240) |  | 200⁰ |
| Comment | Distances from finger tips to floor – flexion 18cm approximately 70-80⁰  Gait normal. | Position guarded. Gait- antalgic. Back brace during day. |
| §4.71a Rating | 10% | 20% |

The CI experienced onset of right thigh pain in February 2005 following return from deployment. The thigh pain persisted and the CI developed the onset of associated low back pain in June 2005 without history of trauma other than the normal physical demands that accompanied his firefighting duties (however later records cite back pain while deployed when he jumped off a truck to take cover during a bombing incident). MRI revealed a large herniated disc at L5-S1 impacting the right nerve root correlating with his leg pain. Non-surgical treatment was unsuccessful, and he underwent a micro-discectomy L5/S1 in October 2005. After surgery he had an improvement of his pain approximately 50 percent but was unable to return to full firefighter duties. He was assigned to non-strenuous duties and eventually referred for MEB due to persisting pain preventing vigorous physical activity. Repeat MRI scanning in May 2006 indicated recurrent disc herniation at the same location and he was offered another surgery but declined (due to concern regarding risk for recurrence after another surgery). At the time of the November 2006 MEB examination, right leg straight leg raising reproduced right leg pain (left leg raising was negative). The gait, stance, strength, and reflexes were normal. There was right foot numbness near the toes but sensation was otherwise intact. A physical therapy evaluation, 20 February 2007 records increased pain with bending over, sitting for more than 30 minutes, and pain relief by standing and walking. On examination, the gait was normal. Range of motion was recorded as distance between finger tips and floor. Flexion of 18cm (7”) approximates 70 degrees (for average height male; CI is 71” tall). Right rotation was limited by 25%. Left side bending of 35cm (14”) is normal, right side bending of 48cm (19”) is close to 30 degrees. Extension and left rotation were normal. Lower extremity strength was normal. Right straight leg raise reproduced pain (left leg raising was negative). In a 16 January 2007 letter to the PEB, the CI stated, “Although I have difficulty sitting for prolonged periods of time, I am able to relieve some of the pain with prescribed ibuprofen”, and requested either retention in a less strenuous job, or medical retirement. The CI appealed the IPEB 10% rating. The FPEB cited the forward flexion measurement as 16cm (however it appears to be 18cm) and concluded this represented a 25 % loss of flexion supporting a 20% rating in accordance with the VASRD. The Board noted that a 25 percent reduction from the normal thoracolumbar range of motion of 90 degrees would be 67 degrees. The VA adjudicated a 20% rating for the back condition based on the VA compensation and pension (C&P) examination, three months after separation. At that time, the CI reported continued daily pain without incapacitating episodes or flare ups. Flexion was limited to 60 degrees with pain. Gait was antalgic and leg raising of both legs reproduced pain. Strength, reflexes, and sensation were normal. Board members agreed, the preponderance of evidence supported a rating no higher than the 20% rating adjudicated by the FPEB. 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. The Board also considered if additional disability rating was justified for peripheral nerve impairment due to radiculopathy. The CI had a herniated disc with radicular pain. In the year leading up to the PEB, the pain was described as radiating into the thigh but not lower into the leg. Examinations indicated normal strength and reflexes including the right Achilles tendon reflex. The November 2006 family practice examination noted some numbness of the toes. The physical therapy evaluation, February 2007, attributed the radiating pain to a non-radicular process. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. While the CI may have suffered radiating pain, this is subsumed under the general spine rating criteria, which specifically states “with or without symptoms such as pain (whether or not it radiates).” Therefore the critical decision is whether or not there was a significant motor weakness which would impact military occupation specific activities. There is no evidence in this case that motor weakness existed to any degree that could be described as functionally impairing. The Board therefore concludes that additional disability rating was not justified on this basis. After due deliberation, in consideration of the totality of the evidence, and IAW §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the back condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD) which was undiagnosed while in service. PTSD was not documented in the DES file. At the time of the separation medical review, 24 May 2007, two weeks after the FPEB, the CI completed DD Form 2967, Report of Medical Assessment, and reported PTSD. The reviewing medical provider noted a history of back pain related to a bomb blast in Iraq (deployed to Kirkuk, Iraq September 2004 to January 2005), and indicated delayed onset of PTSD symptoms of recurrent dreams, and smells from Iraq. There was also complaint of frequent nighttime awakenings. There are no service treatment records documenting evaluation or treatment for symptoms of PTSD. There are no deployed medical encounters for injuries relating to bomb blast. The only medical document while deployed was a January 2005 encounter for ear wax. A 24 February 2005 clinic encounter included a review of systems indicating “no psychological symptoms.” A May 2005 periodic health assessment did not document any psychological problems. The CI was evaluated by Family Advocacy Program in January 2006. No details of that evaluation are present in the file, however the case was closed without referral for further evaluation or treatment. On a Post Deployment Health Assessment form completed 24 March 2006, over one year after returning from deployment, the CI endorsed symptoms of PTSD. Provider interview on the same date (24 March 2006) noted his back condition as the primary health concern and did not indicate PTSD to be a concern. No care for psychological symptoms was noted and no referral was made. No complaints or treatment for psychological symptoms is in evidence of the treatment record between March 2006 and the 24 May 2007 separation medical review. Enlisted performance reports for the periods of October 2004 to October 2005, and October 2005 to October 2006, reflect excellent duty performance and leadership abilities as NCOIC of the emergency communication center and as the web emergency operations center program coordinator. The commander’s letter, 27 November 2006, reports the CI was an excellent performer only limited by his back and recommended retention in the Air Force in a less physically demanding career field including a less demanding AEF tasking (deployment). A May 2007 statement by the Chief of the base fire and emergency services stated that the CI excelled at his assigned tasks and contributed significantly to major command’s first emergency operation center. Only his physical limitations due to his back were mentioned. The CI did not contend PTSD as an unfitting condition at the time of FPEB. His physical profile was S1 indicating no duty restrictions associated with psychological symptoms. Although 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, there was no evidence for concluding that PTSD or any psychological symptoms interfered with duty performance to a degree that could be argued as unfitting. The Board, therefore, has no reasonable basis for recommending PTSD as an additional unfitting condition for separation rating.

Remaining Conditions. No other conditions were noted in the NARSUM, or found elsewhere in the DES file. Although the CI listed hearing loss, tinnitus and left shoulder pain on the 24 May 2007 Report of Medical Assessment DD Form 2967, and the VA rating decision proximal to separation noted bilateral tinnitus, and migraine headaches, these conditions 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. Even if their presence in the DES file is conceded, there was no evidence for concluding that any of them interfered with duty performance to a degree that could be argued as unfitting. None of these conditions were clinically or occupationally significant during the MEB period, none were the basis for duty limiting profiles, and none were implicated in the commander’s statement. 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 condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation. The Board unanimously agrees that it cannot recommend radiculopathy as a separate unfitting condition for additional rating at separation. In the matter of the mental health condition, the Board unanimously agrees that it cannot recommend a finding of unfitting PTSD 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** |
| Low Back Pain with Sciatica | 5243 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100615, 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-2010-00853

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