RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1001040 SEPARATION DATE: 20040812

BOARD DATE: 20111208

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TSgt/E-6 (2A773, Aircraft Structural Maintenance Craftsman), medically separated for thoracic back pain secondary to compression fractures at T6 and T7. He did not respond adequately to treatment to perform within his Air Force specialty (AFS) or meet physical fitness standards. He was issued an L4 profile and underwent a Medical Evaluation Board (MEB). Central posterior back pain, high blood pressure and seasonal allergic rhinitis were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. The Informal PEB (IPEB) adjudicated the thoracic back pain condition as unfitting, rated 20% IAW DoD and Veterans Administration Schedule for Rating Disabilities (VASRD) guidelines. High blood pressure and seasonal allergic rhinitis were found to be category II conditions. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “Due to time and grade of member at the separation date, the need for re-evaluation for retirement is required. It was unjust and unfavorable for myself and family to be separated without retirement. Has created a great burden and life changing events took place for the worse, not the better to be separated instead of retired. I am not asking for full retirement, just what is deserved. I would be happy with 30% or more and privileges that accompany retirement from the USAF. Please reconsider the initial evaluation and give what is deserved for myself and family. A career to be cut short for a situation that was not foreseen or volunteered for is not the USAF way of life. I served my country and the duties of the USAF to the fullest. I followed the core values as a part of everyday culture and will do so until the day that I cannot take another breathe. Please do the right thing and give a fair rating for this former USAF member.” 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 20040518** | **VA (2 Mos. Pre-Separation) – All Effective 20040813** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Thoracic back pain, compressed fx T6 and T7 S/P vertebroplasty | 5235 | 20% | Compression fx of T6 | 5235 | 10%\* | 20040624 |
| Seasonal allergic rhinitis | 6522 | Cat II | Allergic rhinitis  | 6522 | 0% | 20040624 |
| Hypertension | 7101 | Cat II | Hypertension | 7101 | 0% | 20040624 |
| ↓No Additional MEB/PEB Entries↓ | De Quervain’s tenosynovitis right wrist | 5024 | 10%\* | 20040624 |
|  | 0% x 3 / Not Service Connected x 1 | 20040624 |
| **Combined: 20%** | **Combined: 20%** |

\* 5235 was increased from 10% to 20% based on examination 20040929 and to 40% based on testimony at a personal hearing 20041130; 5024 was increased from 10% to 20% on Notice of Disagreements.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his other conditions and for the gravity of his condition and predictable consequences which merit consideration for a higher separation rating. While the Disability Evaluation System (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 periodically re-evaluate Veterans for the purpose of adjusting the disability rating should his degree of impairment vary over time.

Thoracic back pain secondary to compression fractures T6 and T7. The CI was involved in a motorcycle accident on 16 May 2003 and sustained compression fractures of T6 and T7. He was treated with physical therapy and pain management measures. He underwent a vertebroplasty on 3 October 2003 that provided partial pain relief; however, he remained unable to perform within his AFS or meet physical fitness standards. Further aggressive surgical repair was unlikely to ameliorate current symptoms and therefore was not recommended. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these examinations are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB 20040325 ~ 5 Mo. Pre-Sep | VA C&P 20040624 ~ 2 Mo. Pre-Sep  | VA C&P 20040929 ~ 1 Mo. After-Sep |
| Flex (0-90) | No measurement provided | 90⁰ | 60⁰ |
| Ext (0-30) | 30⁰ | 10⁰ |
| R Lat Flex (0-30) | 30⁰ | 20⁰ |
| L Lat Flex 0-30) | 30⁰ | 20⁰ |
| R Rotation (0-30) | 30⁰ | 20⁰ |
| L Rotation (0-30) | 30⁰ | 20⁰ |
| COMBINED (240) | 240⁰ | 150⁰ |
| Comment | Decreased ROM secondary to pain, primarily in full extension. Moderate tenderness from T5 to T8. | Gait and posture WNL.No muscle spasms. Tenderness at T6. Neg straight leg raising bilaterally. | Increased thoracic kyphosisNormal GaitPain at extremes of ROM |
| §4.71a Rating | 20% | 10% | 20% |

The narrative summary (NARSUM) on 25 March 2004, five months pre-separation, noted decreased ROM due to pain, with tenderness from T5 to T8. The NARSUM refers to a neurosurgical consultation one month earlier that noted increased kyphosis and chronic thoracic back pain with a normal neurologic exam. No additional surgical procedures were recommended. The IPEB on 18 May 2004 found the thoracic back pain secondary to compression fractures at T6 and T7 condition unfitting, code 5235 for vertebral fracture, rated at 20%. No specific rationale is provided for the 20% rating.

The VA Compensation and Pension (C&P) examination on 24 June 2004, two months pre-separation, noted full ROM with no spasm or signs of intervertebral disk syndrome. There was no ankylosis and ROM was not additionally limited by pain, fatigue, weakness, lack of endurance or incoordination. He reported constant pain that increased with activity. The original VA Rating Decision (VARD) on 24 August 2004, two weeks after separation, rated the compression fracture of T6 condition at 10%, also coded 5235. The VA assigned a 10% evaluation based on VA examination findings of painful motion and tenderness of the thoracolumbar spine with full ROM. The CI submitted a notice of disagreement and another C&P examination was performed on 29 September 2004, one month post separation. ROM was painful and decreased in all planes as noted in the chart above, along with increased thoracic kyphosis. The VARD on 18 October 2004, two months post-separation, would add the T7 compression fracture and assigned a rating of 20% for the compression fractures at T6 and T7 condition, coded 5235.

The VA C&P examination on 29 September 2004 was comprehensive and most proximal to separation, thus having high probative value in the Board’s deliberations. The commander’s statement noted that he had been on medical profile since his injury in May 2003 and was not able to work in his career field. The Board first considered coding options noting that IPEB and the VA appropriately used the same code (5235) for the vertebral fractures. Under this code a 20% rating requires forward flexion of the thoracolumbar spine greater than 30 degrees, but not greater than 60 degrees; or, the combined range of motion of the thoracolumbar spine not greater than 120 degrees; or, muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis. The VA rating of 20% is supported by the thoracolumbar flexion of 60 degrees and the increased thoracic kyphosis. No evaluation in evidence supports a 40% rating which would require forward flexion of the thoracolumbar spine 30 degrees or less; or, favorable ankylosis of the entire thoracolumbar spine. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the IPEB’s rating decision of 20%, coded 5235, for the thoracic back pain secondary to compression fractures T6 and T7 condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the IPEB were hypertension and seasonal allergic rhinitis. Neither of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. Both were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory performance of AFS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the IPEB fitness adjudication for either of the stated conditions.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for right wrist and bilateral hearing loss. The NARSUM does note a history of two right wrist surgeries, one for De Quervain’s tenosynovitis (1998) and one for a ganglion cyst (2000). This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that this condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the stated condition was not subject to Service disability rating. Hearing loss in the left ear was service connected by the VA but his mild hearing loss was not compensable. Hearing loss in the right ear was not service connected and audiometric testing was normal. Additionally, hearing loss was not noted in the DES file and 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. Therefore the Board is not able to consider adding hearing loss as an unfitting condition for rating.

Remaining Conditions. No other conditions were noted in the NARSUM or found elsewhere 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. 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 thoracic back pain secondary to compression fractures T6 and T7 condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the hypertension, seasonal allergic rhinitis, right wrist, bilateral hearing loss or any other 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, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Thoracic Back Pain secondary to Compression Fractures T6 and T7 | 5235 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100909, 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-2010-01040.

 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