RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1001090 SEPARATION DATE: 20090422

BOARD DATE: 20111216

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11B, Infantry) medically separated for chronic back pain. He was treated, but did not respond adequately to fully perform his required military duties or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Chronic mid-back pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Posttraumatic stress disorder (PTSD) was listed on the DA Form 3947 as medically acceptable. The PEB found the chronic mid-back pain unfitting, and rated it 10% IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “Rating only is for back pain. Service member also has tinnitus; Dacosta syndrome, chronic knee pain, and adjustment disorder also TBI and foot fungus. Besides being only rated for my back, I feel the rating is much too low for that alone. I am 23 and walk with a cane and cannot lift over 20 lbs., let alone stand still for more than 5 minutes. When I got Med boarded out they pushed me through and I feel they did not look at everything and just kicked me out. I feel this is extremely unfair because all I wanted was help to get better. I have a huge list of problems that affect my everyday life that the Army just didn’t want to listen to me about or care about.”

RATING COMPARISON:

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| --- | --- |
| **Army PEB – dated 20090112** | **VA (2 mo. After Separation) – All Effective 20090423** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Mid-Thoracic Back Pain | 5237 | 10% | Thoracic Strain | 5237 | 10% | 20090624 |
| PTSD | Not Unfitting | Adjustment and Cognitive Disorders  | 9440 | 30% | 20090622 |
| ↓No Additional MEB/PEB Entries↓ | Tinnitus | 6260 | 10% | 20090623 |
| 0% x 1/Not Service Connected x 5 | 20090624 |
| **Combined: 10%** | **Combined: 40%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the significant impairment with which his conditions continue to burden him. The Board is subject to the same laws for Service disability entitlements as those under which the military Disability Evaluation System (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 Veterans’ Affairs (DVA). The Board evaluates VA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations at the time of separation. The Board also acknowledges the CI’s contention for Service disability ratings for other conditions. While the 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. The VA, however, is empowered to compensate service connected conditions 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.

Chronic back pain. The CI developed mid-thoracic back pain after a parachute landing in 2006. Radiographs were normal and he was treated with medication. The back pain worsened after the CI deployed to Afghanistan in May 2007. Medications, physical therapy (PT), and trigger point injections failed to improve his condition. After returning to his home station, the CI was treated with additional PT and trigger point injections. Due to the refractory nature of his back pain, the CI was given a permanent profile and an MEB was initiated. In the MEB narrative summary of 9 October 2009, six months prior to separation, the examiner noted mid thoracic back pain, which worsened with prolonged sitting or standing. On examination, there was tenderness to palpation (TTP) of the mid-thoracic paraspinal muscles, but no deformity. Thoracolumbar range-of-motion (ROM) was somewhat limited due to pain. At the June 2009 VA Compensation and Pension (C&P) examination, two months after separation, the CI complained of mid-thoracic back pain without radiation. There was no numbness, tingling or weakness in his extremities. The examiner noted moderate TTP in the thoracic paraspinal region with some muscle spasm. Posture, gait, and spinal contour were normal. ROM was mildly decreased. Signs of intervertebral disk syndrome were absent. Radiographs were normal. Two goniometric ROM evaluations were in evidence, which the Board weighed in arriving at its recommendation. These two exams are summarized in the chart below.

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| Goniometric ROM - Thoracolumbar | MEB – 6 mo. Pre-Sep (20081009) | VA C&P – 2 mo. Post-Sep(20090624) |
| Flexion (90⁰ is normal) | 75⁰ | 90⁰ |
| Combined (240⁰ is normal) | 215⁰ | 210⁰ |
| §4.71a Rating | 10% | 10% |

The Board carefully reviewed all evidentiary information available. The Board noted that both of the ROM evaluations fit the VASRD criteria for a 10% rating based on limitation of thoracolumbar motion. There was no evidence of incapacitating pain episodes that would warrant a higher rating under VASRD code 5243 (intervertebral disc syndrome). There was no evidence of ratable peripheral nerve impairment in this case. No exam in evidence documented an abnormal gait or spinal contour which would qualify for a §4.71a rating of 20%. All evidence considered, there is not reasonable doubt in the CI’s favor to justify a Board recommendation for other than the 10% rating assigned by the PEB for the back pain condition. After due deliberation, the Board unanimously recommends a rating of 10% for the back pain.

Other PEB Conditions. PTSD was adjudicated by the PEB as “not unfitting.” The CI sought mental health (MH) care for insomnia and nightmares after returning from Afghanistan in 2008. The CI’s psychiatric condition was variously diagnosed as anxiety disorder and PTSD. He was treated with medication and his symptoms improved. The psychiatric condition was not profiled, implicated in the commander’s statement, or noted as failing retention standards. At the VA C&P psychiatric examination, two months after separation, the examiner opined that “it is not at least as likely as not that the veteran meets full criteria for PTSD. . . He does appear to be experiencing a mild adjustment reaction.” The examiner opined that the CI’s “occupational functioning appears to have been very minimally impacted as a result of his symptoms.” The psychiatric condition was reviewed by the action officer and considered by the Board. There was no indication from the record that the psychiatric condition 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 adjudication for the psychiatric condition.

Other Contended Conditions. The CI asserts that compensable ratings should be considered for tinnitus, Dacosta syndrome, chronic knee pain, traumatic brain injury (TBI) and foot fungus. All these conditions were reviewed by the action officer and considered by the Board. There was no evidence that any of these conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to disability rating.

Remaining Conditions. Chronic cough, left foot nerve damage, hearing loss, and several other conditions were also noted in the DES file. None of these conditions were clinically significant during the MEB/PEB period, none carried profiles 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. 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 chronic mid-thoracic back pain and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the PTSD, tinnitus, Dacosta syndrome, knee pain, TBI, foot fungus, chronic cough, left foot nerve damage, hearing loss, 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Mid-Thoracic Back Pain | 5237 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100817, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

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 (PD201001090)

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

CF:

( ) DoD PDBR

( ) DVA