RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1001269 SEPARATION DATE: 20050719

BOARD DATE: 20120209

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (21B, Combat Engineer) medically separated for a lumbar spine condition. He injured his back in a fall associated with physical training during a 2004 deployment to Iraq. Following redeployment, his back pain worsened and he was diagnosed with non-surgical lumbar disc disease. Despite aggressive conservative therapy, including epidural steroid injections, he did not improve adequately to fully perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and referred to a Medical Evaluation Board (MEB). “Chronic low back pain with disc protrusion” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Four other conditions, as identified in the rating chart below, were forwarded by the MEB as medically acceptable conditions. An additional condition, “partner relationship problems,” was also forwarded on the DA Form 3947, but is not a ratable condition IAW DoD and VA regulations, and will not be discussed further. The PEB adjudicated the chronic low back pain condition as unfitting, rated 10%, citing criteria from the Veterans Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I am requesting a new review into my disability rating for my back, which I was awarded 10% from the United States Army. And I am now receiving 20% from the Veteran’s Affairs”. 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 PEB – Dated 20050608** | **VA (1 Mo. After Separation) – All Effective 20050720** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5243 | 10% | DDD Lumbosacral Spine | 5299-5242 | 10% | 20050816 |
| Adjustment Disorder… | Not Unfitting | Adjustment Disorder w/ Depressed Mood and Insomnia | 9440 | 10% | 20050816 |
| Insomnia | Not Unfitting |
| Recurrent Headaches | Not Unfitting | Tension Headaches | 8199-8100 | 0% | 20050816 |
| Tinnitus | Not Unfitting | Bilateral Tinnitus | 6260 | 10% | 20050816 |
| Partner Relationship Problems | Not Unfitting | No VA Entry |
| No Additional MEB/PEB Entries | No Additional VARD Entries | 20050816 |
| **Combined: 10%** | **Combined: 30%** |

ANALYSIS SUMMARY: The Board notes the current VA ratings listed by the CI for all of his service connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The VA ratings which it considers in that regard are those rendered most proximate to separation. 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 resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans Affairs.

Lumbar Spine Condition. The CI reported that his back pain, associated with numbness and tingling of the left leg, became worse with prolonged sitting or standing, bending, and lifting. Imaging studies showed bulging discs at L4-5 and L5-S1, without nerve root impingement. The orthopedic consultant recommended non-surgical management and opined, “At this point he has been given a reasonable course of conservative treatment but has failed to get significant relief…his overall prognosis for complete relief at this point I think is very guarded.” There were two goniometric range of motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. The same MEB examiner documented separate measurements a month apart which were quite similar. The measurements he recorded in the narrative summary (NARSUM) and those recorded by the VA proximal to separation are reflected in the chart below.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | MEB ~2 Mo. Pre-Sep | VA C&P ~1 Mo. Post-Sep |
| Flexion (90⁰ Normal) | 75⁰ | 80⁰ |
| Combined (240⁰) | 210⁰ | 230⁰ |
| Comments | Both noted spasm, but normal gait and contour. |
| §4.71a Rating | 10% | 10% |

The MEB and VA Compensation and Pension (C&P) exams closely flanked separation and recorded very similar physical findings. The MEB examiner noted a normal gait, normal strength in the lower extremities, no sensory deficits, and no signs of radicular symptoms. The ROM was mildly diminished, with pain noted in several planes of motion. An orthopedic addendum noted palpable muscle spasm in the left lumbosacral region, with normal gait and no mention of abnormal spinal contour. The C&P examiner likewise noted a normal motor and sensory exam, as well as paraspinal muscle spasm, but normal gait, posture and stance (contour). ROM was minimally impaired, with pain noted through much of the range in several planes. There was no incoordination, weakness or change in ROM with repetitions (no positive DeLuca findings). The PEB and VA chose different coding options for the condition, but this did not bear on rating. Both codes are appropriate to the underlying pathology. Both exams are appropriately rated 10% IAW VASRD §4.71a. There was no evidence of ratable peripheral nerve impairment in this case since there was no motor weakness demonstrated, and the sensory component had no functional implications. There was no documentation of incapacitating episodes which would provide for a higher rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the lumbar spine condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were adjustment disorder with depressed mood, insomnia, recurrent headaches, and tinnitus. A MEB psychiatric consultant three months prior to separation addressed the adjustment disorder and insomnia conditions. The examiner assigned a Global Assessment of Functioning (GAF) of 80 (transient symptoms with no more than slight impairment) and opined that (other than referral to a support group) no “other treatment is needed at this time. No psychiatric profile is warranted. There are no compensable diagnoses. This service member's prognosis is favorable.” The VA C&P psychiatrist made no Axis I diagnosis. The CI described his headaches as “annoying” but not incapacitating. He also had normal hearing with better than 95% speech discrimination in both ears. None of these conditions were profiled, implicated in the commander’s statement, or noted as failing retention standards. 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 MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change in the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were pseudofolliculitis barbae and seasonal allergies. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period; none carried attached 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 12 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 lumbar spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the adjustment disorder, insomnia, recurrent headaches, and tinnitus, the Board unanimously recommends no change from the PEB adjudications as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for 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 Low Back Pain | 5243 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101126, 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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)