RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100121 SEPARATION DATE: 20090327

BOARD DATE: 20120120

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (74D, Chemical Operations) medically separated for degenerative arthritis of the lumbar spine, and left shoulder pain. The CI developed back pain, with associated right leg pain, in August 2005 while deployed to Iraq. In July 2006 he had an acute exacerbation of back and leg pain. Magnetic Resonance Imaging (MRI) revealed a herniated disc at L5-S1. In spite of surgical intervention and physical therapy (PT), the CI continued to have back pain. He developed left shoulder pain with overhead activities in October 2008. MRI revealed rotator cuff tendonitis and a probable labrum tear. The CI did not respond adequately to treatment for either the back pain or shoulder pain. He was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Low back pain (LBP), patellofemoral syndrome and left shoulder pain were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions (left Achilles tendonitis and left sensorineural hearing loss) were listed on the MEB submission as medically acceptable. The PEB originally found the CI fit for duty, but on reconsideration adjudicated degenerative arthritis of the lumbar spine and left shoulder pain as unfitting conditions, rated 10% each IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI accepted the PEB findings, and was thus medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states, “I feel that my records should have been looked at more carefully and I should have been awarded a higher rating then 20%.” He additionally lists his VA conditions and ratings. A contention for their inclusion in the Service separation rating is therefore implied.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Army PEB – dated 20090203** | | | **VA (2 weeks After Separation) – All Effective 20090328** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbar Spine Arthritis | 5242 | 10% | Lumbar Spine Arthritis | 5242 | 10% | 20090409 |
| Left Shoulder Pain | 5099-5003 | 10% | Left Shoulder Labral Tear | 5201-5024 | 10% | 20090409 |
| Left Achilles Tendonitis | Not Unfitting | | Left Ankle, Achilles Tendonitis | 5271 | 10% | 20090409 |
| Patellofemoral Syndrome | Not Unfitting | | Chondromalacia Patellae | 5099-5014 | 0% | 20090409 |
| Hearing Loss Left Ear | Not Unfitting | | Hearing Loss Left Ear | 6100 | 0% | 20090409 |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20090409 |
| Hypothyroidism | 7903 | 10% | 20090409 |
| Not Service Connected (NSC) x 1 | | | 20090409 |
| **Combined: 20%** | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI, that he should have been awarded a higher rating. The Board examined his record very carefully, to determine whether or not a higher rating would be justified.

Low back pain. As noted above, the CI developed LBP and right leg pain in August 2005, during a deployment to Iraq. He was treated with medication, and was able to complete his deployment. In July 2006, he had an acute exacerbation of his back and leg pain. MRI revealed a disc herniation at L5-S1 and the herniated disc was surgically removed. Postoperatively, his symptoms resolved. However, a short time later while doing field training, the LBP returned. Repeat MRI showed no evidence of a recurrent disc herniation. In February 2007, he was issued a permanent profile for chronic LBP. In 2008, he met a Medical MOS Review Board (MMRB). The MMRB recommended reclassification, and his MOS went from Combat Engineer to Chemical Operations. He continued to have LBP, especially with running or lifting. He was unable to wear chemical gear. A profile was issued in October 2008 that prohibited running, carrying a rucksack, or lifting over 30 pounds. At that point, an MEB was initiated. At his December 2008 MEB evaluation, three months prior to separation, there was moderate tenderness to palpation (TTP) but no guarding or spasm. Gait, spinal contour, and neurologic examination were all normal. Waddell’s signs were absent. Range-of-motion (ROM) was measured and is shown in the chart below. No signs of intervertebral disk syndrome (IVDS) were present. On 9 April 2009, two weeks after separation, the CI had a VA Compensation and Pension (C&P) evaluation. At that time, he complained of LBP with intermittent numbness in the posterior right thigh. He was able to walk one to three miles. The examiner noted normal posture, normal gait, and normal spinal contour, without muscle spasm. Reflexes, strength and sensation were normal. Straight leg raise testing was negative. Signs of IVDS were not present. Thoracolumbar ROM is shown in the chart below.

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| --- | --- | --- |
| Thoracolumbar | Separation Date: 20090327 | |
| Goniometric ROM | MEB/PT – 4 mo. Pre-Sep | VA C&P – 2 wks. Post-Sep |
| Flexion (90⁰ is normal) | 80⁰ | 80⁰ |
| Combined (240⁰ is normal) | 225⁰ | 200⁰ |
| §4.71a Rating | 10% | 10% |

The Board carefully reviewed all evidentiary information available. Thoracolumbar ROM measured by both the MEB/PT exam and the VA C&P exam, fits VASRD criteria for a 10% rating based on forward flexion and also combined motion. There was no evidence that the CI was having incapacitating episodes that would warrant a higher rating under code 5243 (intervertebral disc syndrome). There was no objective evidence of ratable peripheral nerve impairment in this case. His right leg radicular symptoms were sensory only. On multiple exams, there was no documented, objective evidence of unfitting motor weakness. 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. After due deliberation, the Board unanimously recommends a rating of 10% for the back pain condition. It is appropriately coded 5242 and, as explained above, meets criteria for the 10% rating level.

Left shoulder pain. The CI developed left shoulder pain in 2008. Examination revealed crepitus, and a positive apprehension sign. MRI showed rotator cuff tendinosis, with possible labral tear. He was issued a permanent profile for his shoulder condition, with restrictions to include no carrying a rucksack and no lifting more than 30 pounds. At his December 2008 MEB evaluation, three months prior to separation, the CI complained of left shoulder pain and “catching.” On examination, there was some crepitus, pain with motion, and TTP. Shoulder ROM is summarized in the chart below. Two weeks after separation, at his VA C&P evaluation, he was having daily shoulder pain. There was no history of locking, subluxation or dislocation. There was some guarding and motion was slightly restricted due to pain. Radiographs were normal. Two goniometric ROM evaluations were in evidence and these two exams are summarized in the chart below.

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| --- | --- | --- |
| Goniometric ROM  Left Shoulder | PT – 4 mo. Pre-Sep | VA C&P – 2 wks. Post-Sep |
| Flexion (180⁰ is normal) | 125⁰ | 180⁰ |
| Abduction (180⁰ is normal) | 110⁰ | 170⁰ |
| §4.71a Rating | 10%\* | 10%\* |
| Comment | Painful Motion | Painful Motion |

\*10% based on §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all the evidence. The left shoulder limitation of motion was essentially non-compensable based on VASRD §4.71a shoulder and arm codes (5200 through 5203). However, IAW VASRD §4.40, §4.45, and §4.59; a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. There was no path to a rating higher than 10% for the left shoulder since there was no evidence in the treatment record of ankylosis, loss of the humeral head, nonunion, malunion, fibrous union, deformity, ligamentous instability, recurrent dislocation, scapular impairment, or other significant left shoulder joint abnormality at the time of separation from service. 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 left shoulder. The Board unanimously recommends 10% for the left shoulder pain condition.

Patellofemoral syndrome. The CI developed knee pain in 2003. An MRI in August 2008 documented early changes consistent with patellar chondromalacia, and the CI was treated with PT and medication. Right knee pain was included on his profile dated 28 October 2008. At his December 2008 MEB evaluation, three months prior to separation, the CI complained of knee pain with activity, especially running or climbing stairs. The pain responded well to rest and medication. On exam, there was minimal crepitus and no effusion. ROM was equal in both knees, and there was no pain with motion. Two weeks after separation, at his VA C&P evaluation, the CI complained of right knee pain with climbing stairs, running, and prolonged sitting. There was no locking, swelling or giving way. On examination there was some crepitus, no instability, and no meniscal or patellar abnormalities. There was no pain with motion, and motion was full. Radiographs of the right knee were normal. The Board carefully reviewed all the evidence, and determined that the knee pain was not unfitting. It had been present since 2003, and there was insufficient evidence that it caused any interference with the performance of his required military duties. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of right knee pain as an unfitting condition for separation rating.

Other PEB Conditions. Achilles tendonitis and sensorineural hearing loss (SNHL) were both adjudicated by the PEB as not unfitting. Neither condition was 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 duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for either of the stated conditions.

Remaining Conditions. Tinnitus, and other conditions were also noted in the Disability Evaluation System (DES) file. These conditions were reviewed by the action officer and considered by the Board. There was insufficient evidence for concluding that any of them interfered with duty performance to a degree that could be argued as unfitting. Additionally, hypothyroidism and posttraumatic stress disorder were noted in the VA rating decision but were not documented 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. 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 arthritis, and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the left shoulder pain, and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right knee patellofemoral syndrome, left Achilles tendonitis, left ear SNHL, tinnitus, 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** |
| Lumbar Spine Arthritis | 5242 | 10% |
| Left Shoulder Pain | 5099-5003 | 10% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110323, 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 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)