RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100148 SEPARATION DATE: 20080228

BOARD DATE: 20120103

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SrA/E-4 (3E711, Fire Protection Helper), medically separated for low back pain (LBP) due to degenerative disc disease (DDD)*.* Onset of pain began on January 2007, subsequent to sustaining a fall down a flight of stairs. In October 2007, he underwent laminectomy, discectomy, and interbody fusion and was treated with physical therapy. He did not respond adequately to treatment and was unable to perform within his Air Force Specialty or meet physical fitness standards. He was issued a temporary P4 profile and underwent a Medical Evaluation Board (MEB.) LBP due to DDD was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB 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, S/P fusion L4-S1 condition as unfitting, rated 20%, with application of the Department of Defense Instruction (DoDI) 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 20% disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions under issues, but lists tendonitis right shoulder and depression on item 14. His VA individual unemployability letter is attached.

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20080122** | **VA (1 Mo. After Separation) – All Effective 20080409** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain Due to Degenerative Disc Disease | 5241 | 20% | Postoperative Herniated L4-L5 Disc with L4-S1 Fusion | 5241 | \*40% | 20090109 |
| Scarring, Residual Postoperative Disc Surgery | 7804 | 10% | 20090109 |
| Radicular Symptoms, Right Lower Extremity  | 8599-8526 | 10% | 20090109 |
|  ↓No Additional MEB/PEB Entries↓ | Depression | 9499-9434 | 30% | 20080229 |
| Tendonitis, Right Shoulder | 5099-5024 | 10% | 20080229 |
| 0% x 0/Not Service Connected x 2 | 2000512 |
| **Combined: 20%** | **Combined: 70%** |

\*VARD 20080409 rated 30% effective 20070707

VARD 200805016 rated 40% effective 20070707, then 20% effective 20080401 (after 6month 100% convalescence)

VARD 20090217 corrected awards based on error that CI reentered active duty 20070830 until 20080228, and adjudicated back rating of 40% effective 20080401 following a 100% rating 6 month convalescence based on C&P examination 20090109 10 months following separation. Granted individual unemployability.

ANALYSIS SUMMARY: The Board acknowledges the sentiment implied in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the 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 of Veterans' Affairs (VA), operating under a different set of laws (Title 38, United States Code). 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 for disability at the time of separation. The Board also acknowledges the CI’s contention suggesting that Service ratings should have been conferred for other conditions documented at the time of separation. 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. The VA, however, is empowered to compensate all 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.

Low Back Pain Due to Degenerative Disc Disease, Status Post Fusion L4-S1. On 19 January 2007, while on active duty for training (fire protection apprentice course), the CI slipped on a ladder and fell on his shoulder. There was no back pain at that time; however, he returned to the clinic four days later (23 January 2007) with back pain since the previous morning. The examination was unremarkable and he was released to usual care. His active duty tour ended 26 January 2007, but he was placed back on active status from 27 January 2007 to 6 July 2007. A magnetic resonance image accomplished on 27 February 2007 showed L4-5 degenerative disc disease with mild disc herniation and a small focal disc herniation at L5-S1 without significant spinal canal stenosis or foraminal stenosis. He was treated conservatively and his pain resolved during this period. He experienced return of pain in August 2007 and reentered active duty 30 August 2007. On 1 October 2007 underwent minimally invasive discectomy, laminectomy with posterior lumbar inter-body fusion of L4-5 and L5-S1. His post-operative course was unremarkable. Three post-operative goniometric range-of-motion (ROM) measurements were reviewed.

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| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT ~ 3 Mo. Pre-Sep | VA C&P ~ 2 Wks. Post-Sep | VA C&P ~ 10.5 Mo. Post-Sep |
| Flex (90⁰) | 45⁰ | 35⁰ | 30⁰ |
| Ext (30⁰) | 5⁰ | 0⁰ | 10⁰ |
| R Lat Flex (30⁰) | 15⁰ | 20⁰ | 10⁰ |
| L Lat Flex (30⁰) | 15⁰ | 20⁰ | 10⁰ |
| R Rotation (30⁰) | 20⁰ | 20⁰ | 10⁰ |
| L Rotation (30⁰) | 20⁰ | 20⁰ | 10⁰ |
| COMBINED (240⁰) | 120⁰ | 115⁰ | 10⁰ |
| Comment | Two months post-op | 4.5 months post-opNo change in ROM after repetitive movement.Antalgic gait. | 14 months post-op |
| §4.71a Rating | 20% | 20% | 40% |

The MEB exam was accomplished 23 November 2007, seven weeks after surgery and three months prior to separation. He was noted to have an obvious abnormal gait with minimal flexion and extension of the back and decreased strength in both lower extremities. There was loss of sensation of the lateral aspect of the right thigh, an L2-3 distribution that does not correlate with his back disease; however, the Board notes that he had stitches in the right thigh in childhood. The physical therapy range of motion examination was 1 December 2007, two months after surgery and three months before separation. The VA compensation and pension (C&P) examination on 12 March 2008 was two weeks after separation. As it is two months further from surgery and nearly at the time of separation, it is considered to have the higher probative value. The Board noted that there was both a general exam and an orthopedic exam the same day. Both examined the back and complemented each other. It was noted that he had persistent LBP and bilateral leg pain. An antalgic gait was present, but no assistive devices were used. Tender scars were noted from the laminectomy, but no limitation in function or motion was noted. Leg raising caused back pain bilaterally but no radicular pain. The orthopedist noted that sensation was diminished on the right leg compared to the left, but the general medical exam documented equal sensation to monofilament and vibration testing in both lower extremities. Strength and deep tendon reflexes were recorded as normal on both examinations. No incapacitating episodes requiring bed rest prescribed by a physician were noted. The IPEB adjudicated the LBP condition at 20% and coded it 5241, spinal fusion. It’s 20% rating was consistent with VASRD §4.71a standards based on the physical therapy range of motion examination results. The VA also coded it 5241, assigned 100% post-operative convalescence rating for six months, then awarded 20% effective 1 April 2008. The VA also awarded 10% each for residual scarring, coded 7804, and radicular symptoms, coded 8599-8526. The VA subsequently increased the disability for the back to 40%, retroactive to 1 April 2008, based on the 9 January 2009 exam, which was over 10 months after separation. The Board notes that the VA examiner specifically stated that the laminectomy scars did not limit function or motion. The Board also notes that, even though the VA awarded 10% for radicular pain, sensation was normal on one C&P exam to monofilament and vibratory testing and that the diminished right thigh pain was not documented to be dermatomal nor is the area of subjective loss consistent with the known degenerative disease. The range of motion limitations measured on the VA C&P exam within two weeks of separation support a 20% rating. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the low back pain condition.

Contended Conditions. The CI’s application asserts that compensable ratings should be considered for right shoulder tendonitis and depression. The CI fell on his right shoulder on 19 January 2007 during active duty training. Medical evaluation the day of the injury indicated there was no instability or locking. On exam, he had normal active and passive range of motion, sensory and motor exams. Edema and bruising were absent, but there was tenderness to palpation. At the time of the clinic appointment for back pain four days later (23 January 2007), there was no complaint of shoulder pain recorded. There are no further medical record entries, military or civilian, for shoulder pain until a 15 April 2008 private physician encounter, two months after separation, for “some shoulder pain; the physician wrote this was the first time he had complained of shoulder pain to his private physician who diagnosed subacromial bursitis. At follow up with his private physician 28 May 2008, the right shoulder was doing much better, range of motion was intact with minimal discomfort, and strength was normal. The original claim for VA compensation does not include shoulder pain and the March 2008 C&P examinations make no reference to complaint of shoulder pain. A 30 April 2008 VA primary care clinic encounter did not record shoulder pain as a complaint. The CI had a history of non-service connected depression in 2005 in the setting of a divorce. He experience recurrent symptoms of depression during his final period of active duty while undergoing surgery for back and the MEB. His private physician encounter 11 December, 2007 notes he is getting “a little depressed again” and noted he was in a new relationship (previously divorced) “he seems to be doing fine otherwise”. Diagnosed as situational depression related to back condition, and was started on medication. Both of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the 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 Service disability rating.

Remaining Conditions. The other condition identified in the DES file was hypertension. This condition was not clinically significant during the MEB period, did not carry an attached profile and was not implicated in the commander’s statement. This condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to separation rating. Additionally, healed stress fracture and several other non-acute conditions were noted in the VA rating decision proximal to separation, but 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. 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 chronic low back pain condition, condition and IAW VASRD §4.71a, the Board unanimously recommends no change from the PEB adjudication. In the matter of the hypertension, right shoulder tendonitis and depression or any other condition eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board 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** |
|  Low Back Pain, Degenerative Disc Disease, s/p Fusion L4-S1 | 5241 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110324 w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 XXXXXXXXXXXXX

 President

 DoD Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXXXXX :

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00148.

 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