RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100149 SEPARATION DATE: 20050629

BOARD DATE: 20120321

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized National Guard SSG/E-6 (13B, Cannon Crewmember) medically separated for low back pain (LBP)*.* In January 2004, he fell on ice and injured his back. He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Chronic LBP was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions (obesity and tinea corporis) were listed on the DA Form 3947 as medically acceptable. The PEB found the LBP condition unfitting and rated it 10% IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The other two MEB conditions were found to be not unfitting and therefore not ratable. The CI made no appeals, and was thus medically separated with 10% disability.

CI CONTENTION: The CI states, “I was not properly rated while getting out. I received a lump sum severance and a rating of 10% from the Army. I am currently rated at 80% SC with pending issues to be claimed/rated.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army PEB – dated 20050613** | **VA (2 mo. after Separation) – All Effective 20050630** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic LBP | 5243 | 10% | Low Back Strain  | 5237 | 10% | 20050903 |
|  | Not Unfitting | Osteoarthritis, Both Ankles | 5003 | 20% | 20050903 |
|  | Radiculopathy, Left Leg  | 8620 | 10% | 20050903 |
| Tinea Corporis  | No Corresponding VA Entry for Tinea |  |
| Exogenous Obesity | No Corresponding VA Entry for Obesity |  |
| ↓No Additional MEB/PEB Entries↓ | Not Service Connected (NSC) x 3 | 20050903 |
| **Combined: 10%** | **Combined: 40%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI in item 3 of the DD Form 294. The Board wishes to clarify that the Disability Evaluation System (DES) is subject to certain laws and rules under which it must operate. 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 (DVA). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation. The Board also acknowledges the CI's contention that service ratings should have been conferred 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 rating should the degree of impairment vary over time.

Low Back Pain (LBP). In January 2004, the CI injured his back when he slipped and fell on ice. He was treated with pain medication, physical therapy (PT) and stretching exercises. Magnetic resonance imaging (MRI) showed multilevel degenerative disc disease (DDD). In spite of treatment, his LBP persisted and an MEB was initiated. At his May 2005 MEB examination, his gait was normal and he was in no acute distress. There was some tenderness to palpation (TTP), but no muscle spasm. Neurological exam was normal. As noted above, the PEB found him unfit due to LBP, and he was separated with 10% disability. On 3 September 2005, 9 weeks after separation, he had a VA Compensation and Pension (C&P) exam. At that time, he reported intermittent LBP with intermittent left-sided radicular pain and numbness. His gait was normal, with normal toe raise/heel raise. Back exam revealed some mild TTP, but no muscle spasm. Neurological exam showed some dysthesia of the left thigh, but motor exam was completely normal. Two goniometric range-of-motion (ROM) evaluations were in evidence and are summarized below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT – 6 wks. Pre-Sep(20050516) | VA C&P – 9½ wks. Post-Sep(20050903) |
| Flexion (90⁰ is normal) | 30⁰ | 75⁰ |
| Combined (240⁰ is normal) | 125⁰ | 225⁰ |
| Comment | Pain with motion | Normal gait, no spasm |

The Board carefully reviewed all evidentiary information available. The PEB and the VA used different diagnostic codes for the LBP condition, but both assigned a 10% rating. The Board noted the significant disparity between the two ROM exams. There were inconsistencies noted with the May 2005 PT exam, which caused the Board to question its validity and probative value. A 30⁰ limitation of forward flexion would preclude certain activities of daily living, such as dressing oneself or riding in a car. The record does not indicate that the CI was unable to dress himself or ride in a car. There is also no evidence that he was unable to sit in a chair, or to sit on the examination table. Additionally, there were other factors associated with the PT exam, which caused further diminution of its probative value. In contrast, the September 2005 C&P exam was performed by a physician. The examiner documented a normal gait. He also commented on the CI’s ability to toe raise, heel raise, and rise from a seated position. A detailed motor examination of the lower extremities is documented. In addition, the C&P examination was more consistent with other outpatient notes, and more reflective of the anticipated severity suggested by the clinical pathology. After due deliberation, the Board decided to assign greater probative value to the September 2005 C&P examination, because of the factors elaborated above. Based on ROM measured at the September 2005 C&P exam, the CI clearly fits the 10% criteria in VASRD §4.71a due to flexion greater than 60⁰ but not greater than 85⁰, and combined thoracolumbar ROM greater than 120⁰ but not greater than 235⁰. After due deliberation, and consideration of all the evidence, the Board determined that the preponderance of the evidence supported a rating of 10%. There was not sufficient evidence to justify a Board recommendation for a greater percentage than 10%. The CI had a normal gait and normal spinal contour. There was no evidence of incapacitating episodes. The Board unanimously recommends a rating of 10% for the LBP condition.

The Board then considered the matter of lumbosacral radiculopathy. Although the CI reported some intermittent left-sided radicular symptoms, examination revealed no motor weakness, or other objective evidence of a focal neurological deficit that would be separately unfitting. The only finding on neurological exam was some mild dysthesia of the left thigh. Therefore, the Board unanimously concluded that there was insufficient evidence of an unfitting peripheral neuropathy (radiculopathy).

Other PEB Conditions. Exogenous obesity and tinea corporis were adjudicated by the PEB as not unfitting. Neither of these conditions was profiled, nor implicated in the commander’s statement. They were reviewed by the action officer and considered by the Board. There was insufficient evidence in the record that either of these conditions significantly interfered with satisfactory performance of military duties. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB’s fitness adjudication for either of the stated conditions.

Remaining Conditions. Shoulder pain, knee trouble, ankle pain, and several other conditions were also noted in the DES file. None of these conditions were clinically significant during the MEB/PEB period, none were profiled, 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. Additionally, other 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 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 conditions for 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 LBP condition, the Board unanimously recommends no change to the PEB adjudication. In the matter of the obesity and the tinea corporis conditions, the Board unanimously recommends no change to the PEB adjudication. In the matter of the shoulder pain, knee trouble, ankle pain, 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:

|  |  |  |
| --- | --- | --- |
| **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 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

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)