RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100196 SEPARATION DATE: 20020726

BOARD DATE: 20111207

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Air Force Reserve TSGT/E-6 (3P071, Security Forces Craftsman) medically separated for low back pain. The CI first started experiencing symptoms when he injured his back during a training mission in 1991. A scan demonstrated herniated discs at L4-L5 and L5-S1. He separated from active duty in 1993, receiving a 20% disability rating from the VA, and joined the Reserve in 1996. He was activated in 2001 and re-injured his back while carrying equipment. He was treated conservatively but did not respond adequately to treatment; and, was unable to perform within his career field or meet physical fitness standards. He was issued a temporary L4 profile, placed on light duty, and underwent a Medical Evaluation Board (MEB).Low back pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. A PEB adjudicated the lumbar spine condition as unfitting, rated 10%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “I have never stopped having pain in my back from this injury. I have had a lifetime so far using anti-inflammatory medication which has caused other problems in my stomach. The same issues that I wrote in my “Letter of Exception” continue today to include problems I have being intimate with my wife to sleeping on the floor from back pain and tossing and turning at night due to spasms and stiffness. The VA rated this with a 60% rating.” He goes on to describe additional bureaucratic challenges he still faces in correcting his military records. He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20020524** | | | **VA (8 Mo. Post Sep) – All Effective 20020727** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain … | 5295 | 10% | Lumbar Herniated Disc… | 5293 | 60%\* | 20030307 |
| No additional MEB/PEB conditions | | | No additional VA conditions | | | 20030307 |
| **Combined: 10%** | | | **Combined: 60%** | | | |

\* Rating under VASRD criteria not in effect at separation, to be elaborated.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current earning ability and quality of life. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (VA). The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

The 2002 VASRD coding and rating standards for the spine, which were in effect at the CI’s separation, were updated 23 September 2002 for code 5293 (rating based on incapacitating episodes) and changed to the current §4.71a rating standards on 26 September 2003. The 2002 standards for rating based on range of motion (ROM) impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. The Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current §4.71a general rating formula for the spine.

Lumbar Spine Condition. Although there is a large amount of medical information about the CI’s back condition in the 1990s, there is a paucity of documentation between the CI’s activation in 2001 and his final separation. There are no medical entries documenting a complaint of low back pain, no radiographic studies, and no documentation that the CI was ever confined to quarters for treatment. The narrative summary included the history that the CI had difficulty performing his duties, specifically carrying equipment on and off transport aircraft and sitting for long periods during regular flights. He had occasional radiation of his back pain to the left leg. The ROM evidence available to the Board in arriving at its rating recommendation is summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Thoracolumbar ROM | MEB (4 Mo. Pre-Sep) | Chiropractor (2 Mo. Pre-Sep) | VA C&P (8 Mo. Post-Sep) |
| Flexion (0-90⁰) | ‘Fingers to knees’ (~45⁰) | ‘Full’ | 75⁰ |
| Combined (0-240⁰) | Incomplete | ‘Full, painless’ except flex/ext. | 225⁰ |
| Comments | Normal contour. | Pain at end ROM flex/ext. | Normal gait, posture. |

The MEB examiner described ROMs that were clearly worse than those measured by a contracted chiropractor two months later, or by the VA examiner post-separation. He noted paraspinal tenderness and a positive straight leg raise. The CI was able to heel and toe walk, but had some limited ROM due to pain. The examiner commented on imaging studies from 1993, showing evidence of disc herniations at L4-L5 and L5-S1. The chiropractic exam (the most proximate to separation of all clinical evidence) recorded the CI’s symptoms as longstanding and intermittent. There were no concurrent symptoms of sciatica or lower extremity weakness. The ROM was described as full, with end-range pain on flexion and pain at 15⁰ of extension. The sensory and reflex exams were normal. The VA compensation and pension (C&P) examiner noted normal gait and posture, but also recorded a positive right straight leg raise, equivocal signs of radiculopathy (by tendon reflex disparity only), marked spinal tenderness, pain radiating down the left leg, and some lack of endurance and weakness. No examiner noted muscle spasm, abnormal gait, or abnormal spinal contour.

The Board must correlate the above clinical data with the 2002 VA rating schedule. For convenience the applicable codes are excerpted below:

**5292** Spine, limitation of motion of, lumbar:

Severe ……………………………………………………..………………….. 40

Moderate ...………………………………….……………….…….………... . 20

Slight .……………………………………………………..…………………...10

**5293** Intervertebral disc syndrome:

Pronounced; with persistent symptoms compatible with: sciatic

neuropathy with characteristic pain and demonstrable muscle

spasm, absent ankle jerk, or other neurological findings appropriate

to site of diseased disc, little intermittent relief ..……………..….……….….. 60

Severe; recurring attacks, with intermittent relief ……………..…….……….….…40

Moderate; recurring attacks ……………………………………………............…..20

Mild ……………………………………………………………..……………….…10

Postoperative, cured ……………………………………………..……………....…..0

**5295** Lumbosacral strain:

Severe; with listing of whole spine to opposite side, positive

Goldthwaite's sign, marked limitation of forward bending in

standing position, loss of lateral motion with osteo-arthritic

changes, or narrowing or irregularity of joint space, or some

of the above with abnormal mobility on forced motion …………………..….. 40

With muscle spasm on extreme forward bending, loss of lateral spine

motion, unilateral, in standing' position ……………...…………..……….…. 20

With characteristic pain on motion ………………………………..……...………. 10

With slight subjective symptoms only ……………………...………………..……. 0

The Board notes that the MEB exam was sufficiently well documented in terms of ratable data for the VASRD in effect at the time, but the VA exam was more complete and better documented. The PEB and VA chose different coding options for the condition and the VA applied the updated option of rating 5293 for incapacitating episodes that was not in effect at the time of separation. The Board considered additional rating under a peripheral nerve code, but there was no preponderant neurologic evidence supporting the presence of peripheral neuropathy. Furthermore, the Board must establish a functional impairment linked to fitness in order to recommend separate service rating for radiculopathy associated with unfitting spine conditions, a threshold clearly not reached by the evidence in this case.

The Board considered the 5293 code for intervertebral disc syndrome as referenced by the VA in its rating, noting that the rating criteria for the 5293 code had changed from the 2002 VASRD criteria applicable at separation (and mandated for Board recommendations IAW DoDI 6040.44). No data in evidence suggested that the CI suffered any incapacitating episodes per the VASRD definition in effect, i.e., “a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician.” Furthermore, the VA rating decision in support of its 60% determination referenced a statement from the VA C&P examination that the CI “has lost approximately 10 months from work.” There is no service documentation of work loss, and the civilian interval to the C&P examination was only eight months. Subsequent VA evidence, in fact, references continuous employment with US Capitol law enforcement since separation. The Board thus found no justification for the VA’s 60% rating for code 5293 under the updated rating formula and the clinical parameters described for code 5293 (effective at separation) for the higher 60% rating were clearly not in evidence. Likewise, the Board considered a rating under the PEB’s 5295 code. The >10% rating criteria for 5295 are explicitly defined as noted above, and are not supported by the evidence. Finally, the Board considered a rating under the 5292 code for limitation of spine motion. The minimally impaired ROM documented by the VA would justify a “slight” 10% rating under that code. In comparison, application of the current VASRD §4.71a criteria for rating of the spine, which went into effect soon after separation, would also have yielded a 10% rating based on ROM. However, the less accurate, more subjective ROM referenced by the MEB examiner could be considered “moderate” under the 5292 code. Board consensus, however, was that the MEB chiropractic and VA C&P measured ROMs were most probative, and could only support the “slight” 10% criterion under 5292. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the chronic low back pain condition.

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 condition and IAW VASRD §4.71a, the Board, by a 2:1 vote, recommends no change in the PEB adjudication. The single voter for dissent (who recommended a 20% rating under VASRD code 5292) did not elect to submit a minority opinion. 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Low Back Pain Secondary to Degenerative Disc Disease | 5295 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110329, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXX :

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00196

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