RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX. BRANCH OF SERVICE: air force

CASE NUMBER: PD1100242 SEPARATION DATE: 20070924

BOARD DATE: 20111208

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active Air National Guard member, SSgt/E-5 (2E071, Ground Radar System Craftsman), medically separated for chronic low back pain*.* The CI hurt his back in a motor vehicle accident in 2001. In April 2006 he started to feel the back pain again after a day of heavy lifting. The CI failed to respond to conservative treatment and was not a surgical candidate. He did not respond adequately to treatment and was unable to perform within his Air Force specialty (AFS) or meet physical fitness standards. He was issued a permanent L4 profile and underwent a Medical Evaluation Board (MEB). Chronic back pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated the chronic low back pain, with disc bulging of L5-S1 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% combined disability rating.

CI CONTENTION: “Was discharged for chronic back pain only. Migraines and depression were not looked at. Conditions have worsened since discharge.”

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20070529** | **VA (6 Mo. After Separation) – All Effective Date 20070925** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain  | 5243 | 10% | Osteoarthritis of the Lumbar Spine | 5242 | 10% | 20080311 |
| ↓No Additional MEB/PEB Entries↓ | Major Depression | 9434 | 30% | 20080305 |
| Tinnitus | 6260 | 10% | 20080311 |
| Headaches | 8100 | 0%\* |  |
| 0% x 3/Not Service Connected x 2 | 20080311 |
| **Combined: 10%** | **Combined: 40%** |

\*Headaches 0% from 20070925; VARD 20101019 increased to 30% effective 20100318 based on exam 20100708

ANALYSIS SUMMARY: The DES is responsible for maintaining a fit and vital fighting force. 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, and not based on possible future worsening. However the Department of Veteran Affairs (VA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service connected conditions without regard to fitness for military duties 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.

Chronic Low Back Pain Condition. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | PT – ~2 Mos Pre Sep | VA C&P – ~6 mos Post Sep |
| Flexion (90⁰ normal) | 100⁰ | 85⁰ |
| Combined (240⁰ normal) | 225⁰ | 225⁰ |
| Comments | ROM limited in rotation L 25⁰, R 20⁰.Normal gait | Pain at 75⁰ flexion.Flexion decreased from 90⁰ to 85⁰ after repetitive movement.Extension, lateral bending, and rotation normal. Gait normal |
| §4.71a Rating | 10% | 10% |

The CI’s past medical history included a history of intermittent low back pain since 2004 (or earlier following a motor vehicle crash in 2001). The CI had an acute episode of back pain in April 2006 following lifting heavy at work. This condition diagnosed as lumbago and was treated with medication, home physical therapy, and a profile. Because of persistent back pain with occasional radiation of pain (especially after long car rides), an MRI was done on 25 August 2006; it was essentially normal with minimal disc bulging at L5/S1. The CI was referred to a pain clinic for traction modalities and epidural steroid injections. He was unable to wear heavy gear or lift greater than 20 pounds, and he underwent an MEB. At the time of the MEB narrative summary (NARSUM) examination his gait was normal, observed movements during the examination were unremarkable, motor and sensory testing as well as deep tendon reflexes were normal. Straight leg raises were negative for nerve root irritation. No muscle spasm productive of abnormal contour or gait was noted. Physical therapy ROM two months before separation showed limitation of rotation. A physical therapy examination in April 2007, five months before separation, recorded normal range of motion (flexion 90 degrees, extension 30 degrees, lateral flexion 30 degrees each side, and rotation 100%). In the CI’s 1 May 2007 letter of exception to the PEB, he requests retention on active duty in a non-deployable status (Code C) within limits of his profile stating that he was limited only in the heavy lifting aspects of his job. The PEB found the CI’s back condition unfitting at 10% under 5243, intervertebral disc syndrome. At the VA Compensation and Pension (C&P) examination, six months after separation, the thoracolumbar flexion was less while rotation was normal; the combined motion was similar to the MEB. The gait was normal, observed movements during the examination were unremarkable, strength, sensory, and deep tendon reflexes were normal. No muscle spasm productive of abnormal contour or gait was noted. The VA used code 5242, degenerative arthritis of the spine, for a rating of 10%. There was no evidence on any examination of related and separate radiculopathy. Therefore, all evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the low back condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for migraines and depression. Neither condition was profiled, mentioned in the commander’s letter, or forwarded by the MEB to the PEB as not meeting retention standards.

The CI reported problems with headache on the report of medical assessment. The service treatment record shows occasional treatment for headache associated with sinusitis since 2000. Following an epidural injection for his back pain on 14 December 2006 by his civilian pain physician, the CI developed a post-dural puncture headache. He was treated with a blood patch procedure on 18 December 2006 with significant improvement in his headache. On 27 December 2006, the CI presented to his military physician complaining of migraine headaches for one week. The headache was described as mild and associated with frontal sinus pressure and nasal congestion. There is no mention of the recent post-dural headache or blood patch the week before. The next day at the 28 December 2006 pain clinic appointment, the headache was recorded to be essentially gone. He re-presented to military providers in January 2007 for daily headache that was considered to be likely due to analgesic rebound phenomenon. CT scanning was negative. Headaches were not a focus of clinical attention in service treatment records after January 2007. Headaches were not mentioned in the MEB NARSUM, and were not mentioned by the CI in his letter of exception to the PEB. The VA C&P examination, six months after separation indicated two to three more severe headaches in the previous two years with more frequent tension type headaches. A history of dysthymia was noted in the MEB NARSUM. The CI was treated with Zoloft in 2002 for adjustment disorder with anxiety and insomnia with good result. The C&P examination six months post-separation referred to treatment with Zoloft over the preceding five years by his civilian physician for which documentation is not present in the file. The CI presented to clinic 25 September 2006 (one year before separation) with recurrent depressed mood, anxiety and insomnia in the setting of recent family death. Treatment with Zoloft and a sleeping pill was initiated. No duty limitations were noted. At the time of a 21 May 2007 follow up appointment, the CI indicated the Zoloft and sleeping medication were “doing their job”, the examiner concluded the was doing well with no other concerns. A 17 August 2007 clinic encounter recorded chronic sleep problems but doing well otherwise with regard to depression (no loss of interest in activities or hobbies, guilt feelings, loss of energy, concentration problems, change in appetite, feelings of hopelessness or helplessness, suicidal or homicidal ideation). Mental status examination was normal with euthymic mood and normal affect. A change in sleep medication was helpful, sleeping 8 hours with the medication per the 17 September 2007 progress note. The commander’s letter, 25 April 2007 mentions only back pain, states that otherwise the CI was an outstanding airman without references to problems that would be attributable to depression or adjustment disorder. The C&P examination, six months after separation noted increased symptoms in the prior few months. In the CI’s 1 May 2007 letter of exception to the PEB, he mentions only back pain and requests retention on active duty. Neither the headache or depression conditions were occupationally significant during the MEB period, carried attached profiles or were implicated in the commander’s statement. 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 neither of the stated conditions was subject to Service disability rating.

Remaining Conditions. Other conditions identified in the DES file were gastroesophageal reflux disease, esophageal spasms, internal hemorrhoids, and tinnitus. None of these conditions were clinically or occupationally significant 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.

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 low back condition code 5243 IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the headaches, adjustment disorder/depressive mood, or any other medical conditions eligible for Board 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** |
| Chronic low back pain | 5243 | 10% |
| **COMBINED** | **10%** |

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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

 XXXXXXXXXXXXXXXXX

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXX:

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00242.

 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,

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Director

Air Force Review Boards Agency