RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD1100279 SEPARATION DATE: 20070711

BOARD DATE: 20120328

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SPC/E-4 (63M, Bradley Fighting Vehicle Systems Maintainer) medically separated for chronic low back pain status post (S/P) laminectomy and discectomy for large herniated disc at L5/S1*.* He did not respond adequately to treatment, including surgery, and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Degenerative disc disease (DDD) of the lumbar spine with a large herniated nucleus pulposa at the L5-S1 level requiring discectomy and laminectomy complicated by recurrent lower back and left leg pain and by reduced sensation on the lateral aspect of the foot was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501, chapter 3, paragraphs 3-39e and 3-30j. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated chronic low back pain S/P laminectomy and discectomy for large herniated disc at L5/S1 as unfitting, and rated it 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: The CI states: “Injury was 06 Feb 06 during OIF deployment, Herniated Disk (L .5,S I). At time of injury: Lower-Back pain level 10+, Groin area was "Numb", downward through Left-Foot, "Numb." Sharp shooting pain from Lower-Back through Left-Foot occurred during movement. Discectomy (L5,SI) wasn't performed until 3 weeks later 28 February 2006 at Landstuhl Regional Medical Center (LRMC), Germeny [sic]. I was originally rated for Lower-Back injury, and Erectile Dysfunction, 20%. The rating was raised to 30%, because "Numbing" still exists on Outer-Side(Left) of Left-Foot. I'm still being treated by Ann Arbor, MI -- VA Health Care System, concerning unsolved Urinary "Voiding" issues (nerve damage) from OIF injury. Running, Jumping, Climbing, Crawling, Bending, and Lifting, Muscle Cramping (Leg) are already "Employment" concerns, but Dating, Social and Sexual Activities are challenged as well with, 10% and (2) Levitra pills a month, and an unsolved "Voiding" concern is still unanswered. I feel these ratings should be reconsidered. I was enlisted for 10 years, as a Track Mechanic.” He mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20070405** | | | **VA (4 Mo. After Separation) – All Effective Date 20070712** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain post Laminectomy and Discectomy for Large Herniated Disc at L5/S1 | 5243 | 10% | Status post Lumbar Laminectomy, Diskectomy, and Foramenotomy with Erectile Dysfunction | 5243 | 10% | 20071204 |
| ↓No Additional MEB/PEB Entries↓ | | | Neurogenic Bladder associated with status post Lumbar Laminectomy and Foramenotomy with Erectile Dysfunction | 7542 | 10% | 20071204 |
| Hypertension | 7101 | 0% | 20071204 |
| Neurologic Symptoms in Left Lower Extremity associated with 5243 and 7542 | 8621 | 10% | 20071204 |
| Not Service Connected x 1 | | | |
| **Combined: 10%** | | | **Combined: 30%\*** | | | |

\*Entitled to SMC due to loss of use of a creative organ.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed 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 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 Veteran’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA 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 further acknowledges the CI’s contention for service ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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 DVA, however, is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Chronic LBP S/P Laminectomy and Discectomy for Large Herniated Disc at L5/S1. The CI injured his low back in February 2006 while in Iraq, was medevaced from theater to Landstuhl where he underwent a laminotomy L5/S1 on the left, foraminotomy S1 on the left, and a discectomy, open, L5-S1 disc on the left side. Although he did well for 4 months, his symptoms would recur and he was unable to perform within his MOS or meet physical fitness standards. He was issued a permanent L3 profile and underwent a MEB. There are two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both are summarized in the chart below.

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| Goniometric ROM - Thoracolumbar | MEB ~ 4 Mo. Pre-Sep  20070321 | VA C&P ~ 5 Mo. After-Sep  20071204 |
| Flex (0-90) | 95/95/95⁰ (90°) | 70⁰ |
| Ext (0-30) | 30/35/30⁰ (30°) | 20⁰ |
| R Lat Flex (0-30) | 35/35/35⁰ (30°) | 25⁰ |
| L Lat Flex 0-30) | 30/30/30⁰ (30°) | 25⁰ |
| R Rotation (0-30) | 30/30/30⁰ (30°) | 25⁰ |
| L Rotation (0-30) | 35/35/35⁰ (30°) | 25⁰ |
| COMBINED (240) | 240⁰ | 190⁰ |
| Comment | Moderate pain with motion; Normal motor function | Normal gait; no atrophy; normal motor and reflexes; decreased sensation |
| §4.71a Rating | 10% | 10% |

The narrative summary (NARSUM), 4 months prior to separation, documented full ROM with motion being moderately painful. Motor function was normal and there was some tenderness to palpation. The examination documented eight negative Waddell signs. Straight leg raising and sciatic tension tests were negative. Dysesthesia and hyperesthesia was noted in the left S1 dermatome. The MEB physical completed on 21 March 2007 also noted painful ROM and decreased sensation in the left lateral foot. The VA Compensation and Pension (C&P) examination, 5 months after separation, noted decreased ROM with slightly decreased sensation in the lateral left foot with normal gait. There was no spasm or tenderness. There is no evidence for spasm or guarding severe enough to cause abnormal gait or spinal contour, which would allow a 20% rating. The painful motion and limitation of motion noted above support the 10% ratings given by the PEB and the VA. Both the PEB and VA assigned the same code, 5243 for intervertebral disc syndrome, with no evidence for incapacitating episodes. Given the evidence in the record, no higher than minimal compensatory rating could be achieved through application of 5243 (incapacitating disc), §4.59 (painful motion), §4.40 (functional loss) or §4.45 (DeLuca). 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 S/P laminectomy and discectomy for large herniated disc at L5/S1 condition.

Neurologic symptoms in left lower extremity, associated with the low back condition. The Board considered at length whether the neurologic symptoms in left lower extremity, associated with the low back condition, were unfitting. Left leg pain and reduced sensation on the lateral aspect of the foot, as complications of his low back condition, were forwarded to the PEB as medically unacceptable IAW AR 40-501. The CI mentioned left leg pain and left foot numbness in his contention. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a.

The NARSUM examination, 4 months prior to separation, noted the CI’s complaint of radicular pain in the left leg. However, physical findings noted normal motor function with decreased sensation in the left lateral foot, but no significant neurological weakness documented. An MRI performed in November 2006 revealed post-surgical changes and encasement of the left S1 exiting nerve by enhanced scar tissue. There was no significant recurrent protrusion of the disc at the L5-S1 level. None of the limitations described in the current functional status portion of the NARSUM can be directly related to leg or foot sensory abnormalities. This section does mention the inability to wear body armor, rucksack, load bearing equipment, and Kevlar but there is no mention of any restriction related to footwear. The commander’s statement noted that the CI’s medical condition restricted him from performing all required tasks, with specific limitations due to low back and leg pain but none related to his sensory loss. The VA C&P examination, 5 months after separation, noted slightly decreased sensation in the lateral left foot with normal gait. No electrodiagnostic testing is in evidence. The original VA rating decision dated 6 months after separation, did not address the neurologic symptoms in left lower extremity condition. However, upon later review, the VA service-connected the neurologic symptoms in left lower extremity, associated with the low back condition, code 8621 (for neuritis, external popliteal [common peroneal] nerve), at 10% for mild symptoms effective the day after separation from service. This decision was based upon review of the original VA C&P examination of 4 December 2007 by the same examining physician. This review was performed 23 March 2009.

The sensory component in this case does not appear to have significant functional implications. As discussed above, pain (whether or not it radiates) is considered under the above back coding and rating. As no evidence of functional impairment due to peripheral nerve impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. All evidence considered there is not reasonable doubt in the CI’s favor supporting addition of the neurologic symptoms in left lower extremity, associated with the low back condition as an unfitting condition for separation rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for erectile dysfunction and voiding issues due to nerve damage. Erectile dysfunction is noted in the commander’s statement but not elsewhere in the DES file. Erectile dysfunction was reviewed by the action officer and considered by the Board. There was no evidence for concluding that this condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that erectile dysfunction was not subject to service disability rating. The voiding issues condition was not addressed 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.

Remaining Conditions. Other conditions identified in the DES file were knee pain, fracture 5th finger, and hypertension. None of these conditions were clinically active 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. Additionally, neurogenic bladder was service-connected and bad eyesight was not service-connected in the VA rating decision proximal to separation; however, neither condition was documented in the DES file. The VA also granted entitlement to special monthly compensation for loss of use of creative organ; however, this was not addressed in the DES file. While the CI made no specific contention regarding a left shoulder condition, he submitted documentation of a VA claim related to this condition. There is no VARD or C&P examination related to this condition in the record available for review and this condition is not addressed 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. Contended conditions which are not eligible for Board consideration on this basis remain eligible for submission to the Army Board for Corrections of Military Records (ABCMR).

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 S/P laminectomy and discectomy for large herniated disc at L5/S1 condition, the Board unanimously recommends no change in the PEB adjudication. In the matters of the neurologic symptoms in left lower extremity, erectile dysfunction, knee pain, fracture 5th finger, and hypertension conditions, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain post Laminectomy and Discectomy for Large Herniated Disc at L5/S1 | 5243 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110408, 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)