RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100296 SEPARATION DATE: 20040801

BOARD DATE: 20120109

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard member, SGT/E-5 (88M, Heavy Wheeled Vehicle Operator), medically separated for a lumbar spine condition. He first experienced low back pain after a motor vehicle accident in September 2002. After mobilization in February 2003, he experienced an exacerbation of the pain after a training mishap. He was diagnosed with degenerative disc disease (DDD) and treated conservatively, but did not respond adequately to fully 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). Chronic low back pain secondary to DDD was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Six other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. An Informal PEB adjudicated the low back condition as unfitting, rated 10%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “Have continues [sic] pain down left leg only stopped with paralyzes [sic] in just the left leg. If I stand, sit or lay in one position for any length of time will become paralyzed from the waist down encompassing both legs. The need to carry pain killer medications and have a cane on hand at all times to help walk as pain and numbness increases leading to paralyzes [sic] of left leg unable to drive any vehicles with a clutch in it and if the pain increases to [sic] much have blacked out from the pain in the past thus leading me to have to stop doing anything and wait for the pain killers to work then to try and continue on with any activity I may be performing.”He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20040522** | **VA– All Effective 20040802** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain / DDD | 5237 | 10% | Low Back Injury with DDD | 5243 | 10% | STR\* |
| Mild High Frequency Hearing Loss | Not Unfitting | Hearing Loss Right Ear | 6100 | 0% | STR |
| Migraine Headaches | Not Unfitting | Migraine Headaches | 8100 | NSC | STR |
| Mild Hypertension | Not Unfitting | Hypertension | 7101 | 0% | STR |
| Mild Hyperlipidemia | Not Unfitting | No VA Entry |
| Left Knee Patellofemoral Pain | Not Unfitting | Left Patellofemoral Pain | 5257 | 10% | 19941123 |
| Right Shoulder Mild Rotator Cuff | Not Unfitting | Right Shoulder Rotator Cuff | 5201 | 0% | STR |
| No Additional MEB/PEB Entries | Not Service Connected x 8 | STR |
| **Combined: 10%** | **Combined: 20%** |

\*Service Treatment Record – Minimal VA ratings cited failure to present for VA exams and lack of VA ratable evidence.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). 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, 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.

Low Back Condition. In September 2002, the CI was in a motor vehicle accident. After mobilization in February 2003, the CI reported intermittent low back pain associated with certain movements. At the time, the CI denied any radiculopathy, numbness, or tingling. Radiographs taken April 2003 revealed DDD at L5-S1. Follow-up magnetic resonance imaging (MRI) supported the finding of DDD and noted a “transitional vertebra at L5, a rudimentary disc at L5-S1, and a large bulging disc at L4-L5 which causes some narrowing of the neural B foramina.” The CI also began reporting some numbness and tingling down both legs at this time. His symptoms worsened after another motor vehicle accident in June 2003. At the MEB exam 5 months prior to separation, the CI reported low back pain with intermittent radiation into the lower extremities down the posterior and lateral aspects to both feet. This was aggravated by prolonged periods of standing, sitting, or walking, and he was unable to bend or lift. There were two partial, non-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 | MEB ~5 Mo. Pre-Sep | STR ~3 Mo. Pre-Sep\* |
| Flexion (90⁰ Normal) | 50⁰ | 45⁰ |
| Combined (240⁰ Normal) | Incomplete | Incomplete |
| Comments | Abnormal gait and contour. | Abnormal gait. |
| §4.71a Rating | 20% | 20% |

 \* Following repeat injury.

The MEB examiner noted that the CI’s gait was mildly antalgic with forward trunk lean posture. Decreased lumbar lordosis was also noted. ROM was limited by pain in flexion, but reported as normal in all other planes. The motor exam of the lower extremities was normal, as were reflexes and the sensory exam. Two months after the MEB exam (3 months pre-separation) it is noted that the CI fell while exiting an automobile and exacerbated the left leg radicular pain. Besides the increased pain and a very minor change in the ROM, there were no other significant changes in the CI’s condition from that recorded in the MEB exam. Five months after separation a VA clinical exam noted “mild lumbar spinous process tenderness,” and “paralumbar tenderness with spasm.” No ROM measurements were recorded. The PEB and VA chose different coding options for the condition, but this did not bear on rating. Both the 5237 code (lumbar strain) and the 5242 code (degenerative arthritis of the spine) are appropriate to the CI’s underlying pathology. The PEB’s DA Form 199 reflected application of the USAPDA pain policy for rating, and its 10% determination was not consistent with §4.71a standards. Both the measured flexion ROM and the noted gait/contour abnormalities support a 20% rating under the General Rating Formula for Diseases and Injuries of the Spine. There is no evidence of incapacitating episodes to support a rating under the 5243 code (intervertebral disc syndrome), nor are there other reasonable coding options. There was no evidence of ratable peripheral nerve impairment in this case. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the low back condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were sensorineural hearing loss, migraine headaches, hypertension, hyperlipidemia, right shoulder rotator cuff syndrome and left knee patellofemoral pain. The CI first injured his knee while on active duty in 1993. He underwent an MEB hearing in 1994, but was adjudicated as fit for duty by the PEB. The CI was again seen for left knee pain after mobilization in 2003. He was placed on a temporary L2 profile for retropatellar knee pain in July 2003. In an exam 6 months prior to separation, the CI claimed that the knee pain limited his activity but that “he has been able to do his MOS without any difficulty.” His pain was exacerbated after the fall prior to separation as described above, but not to a degree that could be argued as unfitting. None of the other conditions were profiled, implicated in the commander’s statement, or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were anal fissure and mild tinnitus. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally 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. No other conditions were service connected with a compensable rating by the VA within 12 months of separation or contended by the CI. 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. As discussed above, PEB reliance on the USAPDA pain policy for rating low back pain was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the lumbar spine condition, the Board unanimously recommends a rating of 20% coded 5237 IAW VASRD §4.71a. In the matter of the hearing loss, migraine headache, hypertension, hyperlipidemia, right shoulder, and left knee conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain secondary to DDD | 5237 | 20% |
| **COMBINED** | **20%** |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110412, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for (PD201100296)

1. 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 to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

CF:

( ) DoD PDBR

( ) DVA