RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100328 SEPARATION DATE: 20060710

BOARD DATE: 20111221

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSgt/E-5 (2E173, Ground Radio Communications Craftsman), medically separated for chronic low back pain associated with L4-5 disc disease. The CI underwent a L4-5 percutaneous disc decompression and L4-5 post decompression discography. The CI did not respond adequately to treatment and was unable to perform within her Air Force specialty (AFS) or meet physical fitness standards. The CI was issued a permanent L4 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded “chronic low back pain with occasional radiculopathy to bilateral lower extremities” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. The Informal PEB (IPEB) adjudicated the “chronic low back pain associated with L4-5 disc disease” as unfitting, rated 0%, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD), respectively. The CI appealed to the Formal PEB (FPEB) and was then medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “I feel that the disability rating I received is not accurate with the injury I sustained. I still experience chronic back pain to the extent that I am unable to stand for more than 20-30 minutes at a time and it has made trying to find employment extremely difficult. I received treatment from a chiropractor for approx. 6 months with slight relief.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20060524** | | | **VA** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Back Pain associated with L4-5 Disc Disease | 5243 | 10% | No VA Rating | | | |
| ↓No Additional MEB/PEB Entries↓ | | |
| **Combined: 10%** | | | **Combined: N/A** | | | |

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. 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 (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, 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. No VA disability rating records were available for Board review.

Back Condition. There was one goniometric range-of-motion (ROM) evaluation and one non goniometric ROM in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

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| Goniometric ROM - Thoracolumbar | MEB ~ 6Mo. Pre-Sep | PT ~ 2 Mo. Pre-Sep |
| Flex (0-90) | FROM at waist | 25⁰ |
| Ext (0-30) | No goniometrics | 20⁰ |
| R Lat Flex (0-30) | No goniometrics | 25⁰ |
| L Lat Flex 0-30) | No goniometrics | 30⁰ |
| R Rotation (0-30) | No goniometrics | 30⁰ |
| L Rotation (0-30) | No goniometrics | 30⁰ |
| COMBINED (240) |  | 160⁰ |
| Comment | Generalized tenderness lumbar region; L leg sensation intact | Pain at all end ROM |
| §4.71a Rating | 10% | 40% |
| §4.124 | 20% | 20% |

The CI has a long history of back pain associated with radicular symptoms that was well documented in the service treatment record (STR) going back to 2004. Initially the CI was seen at the time of her initial injury with low back pain (LBP), right hip pain, and shooting pain down the right leg. A magnetic resonance image (MRI) was done in September 2004 indicated L4-5 central disc protrusion and a small annular tear. In January 2005 the CI was seen by orthopedics with complaints of chronic LBP and pain that radiated to her legs with numbness and tingling in her feet. A repeat MRI showed no new pathology. The CI had a series of bilateral L4 and L5 selective nerve root blocks and bilateral L4-5 facet steroidal injections with only minimal improvement. A February 2005 orthopedic evaluation, noted chronic LBP with pain radiating to legs mostly on the left and numbness and tingling sensation on the right. In April 2005, the CI underwent a lumbar discography at L3-4, L4-5 and L5-S1. In May 2005, the CI was seen by a civilian physician who documented dull aching pain in the low back radiating into the back of both legs, standing and walking were limited to 20 minutes and sitting was limited to 15 minutes. The discogram was positive at L4-5. This examination noted forward flexion limited to 40 degrees and extension to 30 degrees with no spasm or deformity. Motor and sensory exams were normal, deep tendon reflexes were intact, and straight leg lifting was negative. Treatment options presented to the CI were fusion, total disc replacement, or live with the symptoms. The patient did not desire surgery at that time. Several STR entries noted chronic radicular pain although the motor and sensory exams were normal. The MEB examination six months prior to separation noted low back pain localized to the lumbar region with occasional pain radiation to bilateral lower extremities, terminating at the knees. The examiner opined that there was chronic LBP with occasional radiculopathy to the bilateral lower extremities. Later in the month the CI underwent another bilateral L4 and L5 selective nerve blocks and bilateral L4-5 facet injections which failed and she continued with radicular pain and tenderness to the sacroiliac (SI) joint and left upper buttocks. The CI was seen by physical therapy (PT) twice in May 2006, two months prior to separation. At the first initial PT screening, the CI indicated dull pain in the lower back and sharp pain in the posterior thighs which was sharp. At the second PT appointment, the physical exam the noted pain at all end ROM and the ROM measurements in the chart above.

Board precedent is that a functional impairment tied to fitness is required to support a recommendation for the 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 sensory component in this case had no functional implications. The motor impairment was intermittent and relatively minor and cannot be linked to significant physical impairment. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. The PEB coded the condition 5243 intervertebral disc syndrome and rated 10%. Although the PT exam was four months closer to the date of separation than the MEB examination, the majority of the Board opined this examination was an outlier and inconsistent with other evaluations. It was therefore considered to have less probative value than the MEB evaluation and other examinations in the STR which supported a 10% rating for painful motion. After due deliberation, considering all of the evidence, the Board recommends a separation rating of 10% for the chronic low back pain associated with L4-5 disc disease condition with no additional rating for radiculopathy.

Other PEB Conditions: The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were overweight and tobacco habituation. Neither of these 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 either of these conditions significantly interfered with satisfactory performance of AFS 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: No other conditions were noted in the narrative summary, identified by the CI on the MEB physical, or found elsewhere in the DES file.

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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 back pain associated with L4-5 disc disease condition, the Board by 2:1 vote, agreed upon a 10% rating. The single voter for dissent who recommended adopting a 40% rating did not elect to submit a minority opinion. In the matter of the radiculopathy, overweight, and tobacco habituation conditions the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Back Pain associated with L4-5 Disc Disease | 5243 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110301, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

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President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00328.

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,

R. PHILIP DEAVEL

Director

Air Force Review Boards Agency