RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100368 SEPARATION DATE: 20050629

BOARD DATE: 20120315

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SPC/E-4 (92Y, Unit Supply Specialist), medically separated for chronic mechanical low back pain (LBP)*.* The CI had been in pain since September 2001, but denied history of trauma to lower back other than aggravation from physical fitness training. He did not respond adequately to conservative treatment 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). The mechanical LBP condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the chronic mechanical LBP condition as unfitting, rated 10%, with application of the Department of Defense Instruction (DoDI) 1332.39 and 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 had a 10% rating from the military and took the option of severance pay. I was never offered or considered for military retirement for my disabilities for being unfit for duty. I am currently rated at 40% for my service connected disabilities through Dept. Veteran Affairs. Back Injury and Knee Injuries,”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050511** | | | **VA (4 Mo. After Separation) – All Effective Date 20050630** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Mechanical Low Back Pain without Neurologic Abnormality | 5299-5237 | 10% | Low Back Strain | 5237 | 20% | 20051103 |
| Bilateral Patellofemoral Pain | Not Unfitting | | Patellofemoral Syndrome, Left Knee | 5099-5020 | 0%\* | 20051103 |
| Patellofemoral Syndrome, Right Knee | 5099-5020 | 0%\* | 20051103 |
| Left Dorsal Ganglion Cyst | Not Unfitting | | Ganglion Cyst, Left Wrist (non-dominant) | 5015-7819 | 0% | 20051103 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 1 other/Not Service Connected x 2\*\* | | | 20051103 |
| **Combined: 10%** | | | **Combined: 20%\*** | | | |

\*VA increased rating to 10% each with a combined rating of 40% effective 20080206.

\*\*As per the 20111103 VARD.

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 Disability Evaluation System (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 Veterans’ 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 also acknowledges the CI’s contention suggesting that service ratings should have been conferred for other conditions documented at the time of separation. 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.

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Mechanical Low Back Pain. 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 | Separation Date: 20050629 | |
| Goniometric ROM | MEB  3 Months Pre-Separation | VA C&P  4 months Post-Separation |
| Flexion 0-90⁰ normal | 90⁰ | 70° (50⁰ with repetition) |
| Combined 240⁰ normal | 230⁰ | 170⁰ (145⁰ with repetition) |
| Comments | ROM measurements not distinguished as active or passive; lumbar tenderness; normal motor, sensory, and reflex exam; normal x-rays; Combined ROM >120⁰ but <235⁰ | No spasms; no neurologic deficit; range of motion is not painful; Combined ROM >120⁰ but <235⁰ |
| §4.71a Rating | 10% painful motion 4.59 with 4.3 | 20% (50° flexion) |

The CI was first evaluated for low back pain (LBP) in 2001 when he stated that he had injured it during physical fitness training. He was managed conservatively and continued his duties. He next presented in December 2003 with recurrent symptoms. He was again treated conservatively including physical therapy. Other than persistent pain, his examination was unremarkable. Plain film x-rays were normal. He was administratively returned early from Korea and placed in Medical Hold. An MEB examination was performed on 11 March 2005, three and ½ months prior to separation. It was noted that a prior history of left sciatica had resolved. Lumbar tenderness was noted, but the sensory, motor, deep tendon reflexes (DTRs) and gait examinations were all normal. No assistive devices were used. Straight leg raise (SLR) was negative and Waddell’s absent. No incapacitation was documented.

The VA Compensation and Pension (C&P) examination was on 3 November 2005, four months after separation. Repeated and resisted motion lead to an additional 20° reduction in flexion shown in the chart above and also an additional loss of 5° of extension, decreasing it from 20° out of 30° to 15° out of 30°. Bowel or bladder incontinence was denied. Again, the sensory, motor and DTR examinations were normal. Gait was normal and no assistive device or brace was required. Spasm was absent. No incapacitation was documented. The VA rated this at 20% based on the objective evidence of functional loss due to pain, weakened movement, excessive fatigability with use, incoordination, and flare-ups along with the additional limitation of ROM after repeated motion. The CI appealed this decision multiple times but the VA continued the 20% rating through the latest VARD available for review, dated 3 November 2011.

The PEB and VA both coded the LBP condition as 5237, lumbosacral strain, but rated it 10% and 20%, respectively, consistent with the different exams. The MEB NARSUM examination did not include ROM testing after repetitive motion and did not specify if the measurements were made with active or passive motion. The ROM recorded by the VA C&P examiner was more limited than that at the MEB exam and included additional loss after repetitive motion. Both are equally proximate to separation and there is nothing in the record to support further deterioration in the back to account for the different measurements. As the VA examination is more complete, the Board places a higher probative value on this examination. Review of the record does not reveal other ROM measurements prior to separation. However, a C&P examination dated 6 February 2008, more than two years after separation, documents normal flexion and extension, consistent with the MEB examination. 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 LBP condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were bilateral knee pain and left dorsal hand ganglion cyst. Neither of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. Both conditions 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 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. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical, or found elsewhere 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.

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 condition, the Board unanimously recommends a service disability rating of 20%, coded 5237 IAW VASRD §4.71a. In the matter of the bilateral patellofemoral pain syndrome and left wrist ganglion cyst, the Board unanimously recommends no change from the PEB adjudications as not unfitting.

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 | 5237 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110426, 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

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

Deputy Assistant Secretary

(Army Review Boards)