RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100399 SEPARATION DATE: 20030616

BOARD DATE: 20120329

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Army Reservist, PFC/E-3 (92R, Parachute Rigger) medically separated for chronic low back pain (LBP). He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He underwent a Medical Evaluation Board (MEB). Chronic LBP was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the DA Form 3947. The PEB found the LBP condition unfitting, and rated it 0%. The CI made no appeals, and was thus medically separated with a 0% disability rating IAW applicable Army and DoD regulations.

CI’s CONTENTION: In Item 3 of DD Form 294, he elaborates no specific contention regarding rating or coding.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army PEB – dated 20030303** | **VA (7 mos. Post-Separation) – All Effective 20030623** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic LBP | 5299-5295 | 0% | Lumbar Strain | 5243 | 10%\* | 20030821 |
|  | Radiculopathy, Right Leg | 8599-8529 | 10%\*\* | 20030821 |
| 0% x 2 | 20030821 |
| **Combined: 0%** | **Combined: 10% initially (later increased to 30%)** |

 \*VA Rating for Lumbar Strain was increased to 20%, after the September 2003 VASRD spine rule change

 \*\*VA Rating for Radiculopathy was added, after the September 2003 VASRD spine rule change

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the CI'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 separation. However, the Department of Veterans’ Affairs 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.

Low back pain (LBP) and Degenerative disc disease (DDD) of the spine. In October 2001, the CI injured his back during training. He was able to continue training, but sought medical care the next day. X-rays were normal and the CI was treated conservatively. In May 2002, magnetic resonance imaging (MRI) showed a minimal disc bulge at L5-S1 without evidence of neural foraminal narrowing. Despite medications and physical therapy (PT), the LBP persisted. He was issued a permanent profile and an MEB was initiated. At his December 2002 MEB exam, 7 months prior to discharge, the CI reported LBP with intermittent right leg pain and numbness. On examination, the CI had tenderness to palpation (TTP) in the lower lumbar region. Muscle strength, sensation and reflexes were normal. Straight leg raise (SLR) was negative. The CI’s gait was normal. He was able to rise from a chair and from the supine position without difficulty. Range-of-motion (ROM) is summarized in the chart below. At his August 2003 VA Compensation and Pension (C&P) exam, 2 months after separation, the CI reported LBP, with pain radiating down right leg, and numbness of his right foot. On exam, he walked normally without assistive devices and his posture was normal. There was no radiating pain with lumbar spine motion. No muscle spasm or TTP was noted. The examiner stated that there were no signs of radiculopathy except for a decreased deep tendon reflex (DTR) of the right knee. Motor function of the legs was normal. X-rays of the lumbar spine were normal, with well preserved disc spaces. The diagnosis was lumbosacral strain. Two ROM evaluations were used by the Board in arriving at its rating recommendation, and are summarized below.

|  |  |
| --- | --- |
| Thoracolumbar | Separation Date: 20030616 |
| Goniometric ROM | MEB PT – 7 mo. Pre-Sep(20021121) | VA C&P – 2 mo. Post-Sep(20030821) |
| Flexion (90⁰ is normal) | 95⁰ | 50⁰ |
| Combined (240⁰ is normal) | 230⁰ | 190⁰ |
| Comments | No mention of pain | ROM limited due to pain |

The Board carefully examined all evidentiary information available. The VA Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in September 2003. The older standards for rating were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in actual degrees of ROM impairment. The Board must comply with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation from service. The Army PEB and the VA chose different coding options for the LBP condition. The VA used diagnostic code (DC) 5243 (intervertebral disc syndrome). The PEB used DC 5299-5295 (low back condition analogous to lumbosacral strain). The Board determined that the PEB coding option (5299-5295) was more appropriate than the VA coding option (5243). Furthermore, all Board members agreed that the November 2002 MEB goniometric ROM evaluation was more consistent with outpatient notes, more reflective of the anticipated severity suggested by the clinical pathology, and less vulnerable to the undue influence of secondary gain. After due deliberation and consideration of all the evidence, the Board unanimously recommends a rating of 10% for the LBP condition. It is appropriately coded 5299-5295, and IAW VASRD §4.71a, meets criteria for the 10% rating level due to characteristic pain on motion. The Board did not find sufficient reasonable doubt in the CI’s favor for recommending a rating higher than 10% for the LBP and spinal DDD.

The Board then directed its attention to the issue of peripheral neuropathy (radiculopathy). The CI did report subjective complaints of radicular symptoms. However, neither of his neurological exams showed evidence of motor weakness or muscle disability. Both exams documented normal muscle strength of the lower extremities. Therefore, the Board determined that there was insufficient evidence of a disabling, unfitting radiculopathy. After due deliberation, and consideration of all the evidence, and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends that the lumbar radiculopathy was not unfitting at the point of separation from service.

Remaining Conditions. Pes planus, pseudofolliculitis barbae (PFB), hallux valgus deformity, keloid scar of the right ear, and other conditions were also noted in the DES file. These conditions were not clinically significant during the MEB/PEB period, did not carry profiles and were not implicated in the commander’s statement. These conditions were all reviewed by the action officer and considered by the Board. It was determined that there was insufficient evidence for concluding that any of these conditions interfered with duty performance to a degree that could be argued as unfitting. 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 LBP and DDD, and IAW VASRD §4.71a, the Board unanimously recommends a rating of 10%. In the matter of the pes planus, PFB, hallux valgus deformity, keloid scar, or any other conditions eligible for consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5299-5295 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110512, 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 10% 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)