RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD1100404 SEPARATION DATE: 20041218

BOARD DATE: 20120314

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (11B, Airborne Infantry) medically separated for back pain. In December 2002, he injured his back during a parachute landing fall (PLF). He was treated, but did not respond adequately to fully perform within his Military Occupations Specialty (MOS) or meet physical fitness standards. The CI was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Back pain with malunion of T12 compression fracture was the sole MEB condition, and was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The PEB found the back pain condition unfitting, and rated it 0%. The CI made no appeals, and was thus medically separated with 0% disability.

CI’s CONTENTION: In block 3 of DD Form 294, the CI elaborates no contention regarding rating or coding, and he mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army PEB – Dated 20041018** | **VA (3 Mo. After Separation) – All Effective Date 20041219** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Back Pain  | 5235 | 0% | Pain, Thoracolumbar Spine  | 5235 | 10% | 20050307 |
| ↓No Additional MEB/PEB Entries↓ | Posttraumatic Stress Disorder | 9411 | 30% | 20050310 |
| Traumatic Arthritis, Left Knee | 5257-5010 | 10% | 20050307 |
| Patellofemoral Pain, Right Knee | 5257-5019 | 10% | 20050307 |
| Tinnitus | 6260 | 10% | 20050309 |
| 0% x 1 / Not Service Connected (NSC) x 3 | 20050307 |
| **Combined: 0%** | **Combined: 60%** |

ANALYSIS SUMMARY:

Back Pain. In December 2002, the CI injured his back during a parachuting mishap when his canopy collapsed. He hit the ground hard, and suffered a T12 compression fracture. He had no associated neuropathy symptoms and was returned to full duty. In October 2003, while deployed to Iraq, he was injured when an anti-tank mine exploded nearby. This resulted in a transient left-sided hemiparesis, and caused worsening of his back pain. He was unable to return to his MOS and an MEB was initiated. At his September 2004 MEB exam, his gait was normal and there was no tenderness to palpation (TTP) of his back. Neurological exam was normal. Thoracolumbar range-of-motion (ROM) was measured by the physical exam service and is summarized below. Then, in March 2005, the CI had a Department of Veterans’ Affairs (DVA) Compensation and Pension (C&P) exam. He reported that his back pain severity was eight out of ten. The pain was elicited by physical activity, and relieved by rest. On examination, muscle spasm was absent, but there was some TTP at the level of T12. Straight leg raise (SLR) was negative bilaterally. ROM is summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM – Thoracolumbar | MEB – 11½ wks. Pre-Sep(20040928) | VA C&P – 11½ wks. Post-Sep(20050307) |
| Flexion (90⁰ is normal) | 120⁰ | 85⁰ |
| Extension (30⁰ is normal) | 25⁰ | 30⁰ |
| Combined (240⁰ is normal) | 230⁰ | 185⁰ |
| Comment | Pain at the limits of ROM | Pain at the limits of motion |
| §4.71a Rating | 10% | 10% |

The Board carefully reviewed all evidentiary information available. IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD), the PEB and VA had both coded the CI’s back condition as 5235 (vertebral fracture). The PEB rated him 0%, but the VA assigned a rating of 10%. The Board unanimously agreed that the VA had appropriately rated the back condition. The CI clearly met the 10% rating criteria based upon his combined ROM greater than 120⁰ but not greater than 235⁰. The Board could not find objective evidence in the record that would justify a disability rating greater than 10%. There was no evidence of spasm or guarding severe enough to cause abnormal gait or abnormal spinal contour. After due deliberation, the Board unanimously recommends a disability rating of 10% for the back pain condition. The Board then considered the matter of intervertebral disc syndrome (IVDS) and lumbar radiculopathy. Both of the CI’s neurological examinations failed to show objective evidence of IVDS, or ratable neuropathy. After reviewing all of the information, there was insufficient evidence of IVDS, or clinically significant radiculopathy that interfered with performance of military duties.

Remaining Conditions. Knee pain, shoulder pain, hemorrhoids, depression, cough, insomnia, and several other conditions were also noted in the DES file. None of these conditions were clinically significant during the MEB/PEB period, none carried 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; tinnitus, posttraumatic stress syndrome (PTSD) and other conditions were noted in the VA rating decision (VARD), but were not documented in the DES file. The Board does not have the authority to render fitness or rating recommendations for any conditions not considered by the Disability Evaluation System (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 back pain condition, the Board unanimously recommends a rating of 10%, IAW VASRD §4.71a. In the matter of the knee pain, shoulder pain, hemorrhoids, depression, cough, insomnia, 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Back Pain | 5235 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110505, 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)