RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100426 SEPARATION DATE: 20040610

BOARD DATE: 20120104

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92D, Scout), medically separated for chronic low back pain (LBP). The CI initially presented with low back pain in March 2001 which progressed to include right leg numbness. In February 2003, the CI had a posterior spinal fusion and laminectomy. Despite surgery and extensive rehabilitation he continued to have low back pain and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. The CI was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded L3-L4 Grade 1 spondylolisthesis, status post in situ posterior spinal fusion and laminectomy with persistent back pain to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated the chronic LBP condition as unfitting, rated 10%, with application of the US Army Physical Disability Agency (USAPDA) pain rule and Department of Defense Instruction (DoDI) 1332.39, respectively. The CI initially concurred with the IPEB and waived a formal hearing; however he later requested a formal hearing. The USAPDA reviewed the case and stated that since the CI concurred with the PEB findings and waived his rights to a formal hearing, the CI’s case was administratively closed. Thus the CI was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “Medical rating of the applicant is rated unfairly low and undervalued at 10%. Hearing loss, persistent knee problems, and pain, numbness and radiating pain in legs was evident in prior physical examinations but was not included in MEB.” He additionally lists H1 hearing loss, knee injury, and pain, numbness and radiating pain in legs and requests the Board consider the “full clinical information of all medical conditions” in its determination of a final disability rating.

RATING COMPARISON:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| **Service IPEB – Dated 20040224** | **VA (1 Mo. After Separation) – All Effective Date 20040611** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic LBP | 5241 | 10% | Spondylolisthesis, L3-4 S/P Fusion | 5239-5241 | 20% | 20031216 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 0/Not Service Connected x 0 | 20031216 |
| **Combined: 10%** | **Combined: 20%** |

ANALYSIS SUMMARY: The Board notes that the presence of a diagnosis, in and of itself, is not sufficient to render a condition unfitting and ratable. While the military 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. However, the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate veterans for the purpose of adjusting the disability rating should his degree of impairment vary over time.

Back Condition. There were four goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. All four exams are summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB ~ 9 Mo. Pre-Sep | VA ~ 6 Mo. Pre-Sep | PT ~5 Mo. Pre Sep | VA ~ 15 Mo. After-Sep |
| Flex (0-90) | 35⁰ | 50⁰ | 60,60,55 | 40⁰ |
| Ext (0-30) | 10⁰ | 20⁰ | 5,5,5 | 10⁰ |
| R Lat Flex (0-30) | 30⁰ | 20⁰ | 20,25,25 | 20⁰ |
| L Lat Flex 0-30) | 30⁰ | 20⁰ | 20,20,20 | 20⁰ |
| R Rotation (0-30) | No goniometric | 30⁰ | 30,30,30 | 20⁰ |
| L Rotation (0-30) | No goniometric | 30⁰ | 45,40,45 | 20⁰ |
| COMBINED (240) |  | 170⁰ | 185⁰ | 130⁰ |
| Comment | Seven month post op; Waddell neg;5/5 strength; in L2-S1 bilat; 0/4 reflex in R patellar w/ 2/4 Achilles on R & 2/4 reflexes on L. Neg clonus; sensation intact bilat; On MEB H&P 20031029: SLR 80⁰/80⁰ | Antalgic gait; normal posture; motor/sensory intact and reflexes normal and symmetric; + (R) Straight leg raise;- (L) Straight leg raise; ROM of spine is limited by pain and additionally limited by pain after repetitive motion. No ankylosis, no intervertebral disc syndrome |  | Some paraspinal muscle spasm, & pain to palpation over para spinal muscles; gait normal;Reflexes 1+ bilat in Achilles and patellar + straight leg raise on left and in supine & sitting to 45⁰; 0/4 Waddell, DDD on x-ray & MRI |
| §4.71a Rating | 20% | 20% | 20% | 20% |

The CI’s LBP is well documented in the service treatment record (STR) starting in 2001. A magnetic resonance image (MRI) done in February 2002 found lumbar spine degenerative disc disease L3-4 with Grade 1 spondylolisthesis with moderate narrowing of the right L3-4 neural foramen. In December 2002, the CI was seen by orthopedics for LBP along with an eight months history of significant right hip pain, and occasional pain and numbness down the front of his thigh to the top of his foot. The CI was diagnosed with L3-4 spondylolisthesis with an L4 radiculopathy on the right side. A bone scan in January 2003 noted right vertebral body pathology secondary to spondylolisthesis due to either a calcification within a herniated disc or an osteophyte. In February 2003 the CI underwent an L3-4 posterolateral intertransverse process fusion with an open reduction of the spondylolisthesis and L3-4 pedicle screw instrumentation fix with local autograft and allografts. Post-operative care included a back brace, significant restrictions and extensive physical therapy. In September 2003, an MRI indicated minimal nerve root impingement. The MEB exam nine months prior to separation documented that there was activity related pain, inability to sit or stand for prolonged periods, a need to change positions frequently, and nightly pain which would cause occasional awakenings. This pain was more muscular and proximal to the fusion level and surgery. The CI was unable to lift heavy amounts, unable to run, jump, ruckmarch, or perform strenuous back activities. The MEB examiner found that the strength and sensation were intact, although the reflexes were absent in the right patella with 2/4 achilles on the right and 2/4 reflexes on the left. The VA compensation & pension (C&P) examination six months prior to separation noted that the CI had chronic squeezing, aching LBP several times a day at 7/10 level, elicited by physical activity and stress. The CI was limited in his daily activities and had functional impairment. This examiner opined that although the CI complained of intermittent right leg numbness, he had no symptoms or objective sensory deficits on exam. A C&P exam two years later also indicated that there was normal light touch sensation and normal gait.

The CI’s pain symptoms and pain radiculopathy is considered under the General Rating Formula for Diseases of the Spine “with or without symptoms such as pain (whether or not it radiates), stiffness or aching in the area of the spine affected by residuals of injury or disease.” Although the CI had a sensory radiculopathy with pain, there was no significant motor component to the radiculopathy. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for 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 has no functional implications. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. All exams proximate to separation and post-separation met the 20% rating criteria for “forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees.” The PEB coded 5241 (spinal fusion) rated at 10% and the VA coded 5239 (spondylolisthesis or segmental instability) to 5241 at 20%. After due deliberation, considering all of the evidence the Board recommends a separation rating of 20% for the chronic LBP condition absent the addition of any ratable radiculopathy.

Other Contended Conditions: The CI’s application asserts that compensable ratings should be considered for hearing loss, persistent knee problems, and radiating pain and numbness in legs. A radiculopathy with radiating pain and numbness is addressed above. Neither of the other conditions was mentioned in the DES file and both are therefore outside the scope of the Board. By policy and precedent the Board has limited its jurisdiction for recommending unadjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core DES file. The core DES file consists of the MEB referral document (DA Form 3947 for Army cases), the PEB adjudication document (DA Form 199 for Army cases), the narrative summary (including any addendums or referenced examinations), the MEB physical exam, the commander’s statement, the MEB physical profile(s), and any written appeals or internal DES correspondence. While both hearing loss and knee pain were documented in the service treatment record and the separation history and physical of 16 June 2004, these documents are not part of the DES file. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Army Board for Correction of Military Records (ABCMR).

Remaining Conditions: No other conditions were identified in the DES file. No other conditions were service connected with a compensable rating by the VA within twelve 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. In the matter of the chronic LBP condition, the Board unanimously recommends a rating of 20% coded 5241 IAW VASRD §4.71a. In the matter of the radiculopathy with radiating pain and numbness, mild high frequency hearing loss, and intermittent knee pain; 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** |
| Chronic Low Back Pain | 5241 | 20% |
| **COMBINED** | **20%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110518, 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 (PD201100426)

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