RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100439 SEPARATION DATE: 20030406

BOARD DATE: 20120424

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (31R Multichannel Transmission System Operator/Maintainer), medically separated for chronic low back pain (LBP) and chronic right shoulder pain*.* The CI reported onset of LBP in 1999 when performing PT with a log carry when some members of the team dropped their end of the log before he did and it caused him to strain his low back. The shoulder dislocation took place in 1996 while playing basketball, according to the CI. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3/L3 profile and underwent a Medical Evaluation Board (MEB). LBP, right shoulder pain and weakness with decreased grip strength were forwarded 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 PEB adjudicated the back and right shoulder conditions as unfitting, rated 10% and 0% respectively. The back condition was adjudicated IAW DoDI 1332.39 and the US Army Physical Disability Agency (USAPDA) pain policy was used to adjudicate the right shoulder condition. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “All injuries rendered unfit were not correctly listed from medical records.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20030128** | **VA (1 Mo. After Separation) – All Effective Date 20030407** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5299-5295 | 10% | Lumbar Spondylosis and Spondylolisthesis | 5292 | 10% | 20030522 |
| Chronic Right Shoulder Pain | 5099-5003 | 0% | Residuals Right Shoulder Injury Status Post Surgery | 5201 | 20% | 20030522 |
| ↓No Additional MEB/PEB Entries↓ | Residuals Right Knee Injury | 5299-5024 | 10% | 20030522 |
| Pseudofolliculitis Barbae | 7813-7806 | 10% | 20030522 |
| **Combined: 10%** | **Combined: 40%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the DES operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Back Condition. There were two range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT ~ 8 Months Pre-Separation(20020726) | MEB NARSUM ~6 Months Pre-Separation(20021009) | VA C&P ~ 1 Month Post-Separation(20030522) |
| Flex (0-90) | 20⁰ | No goniometric measurements | 90° (95⁰) with pain at full range |
| Ext (0-30) | 10⁰ | 30° (35⁰) |
| R Lat Flex (0-30) | 25⁰ | 30° (40⁰) |
| L Lat Flex 0-30) | 20⁰ | 30° (40⁰) |
| R Rotation (0-30) | 30° (35⁰) | 30° (35⁰) |
| L Rotation (0-30) | 30⁰ | 30° (35⁰) |
| COMBINED (240) | 135⁰ | 240⁰ |
| Comment | Increased lumbar lordosis; increased pain with running and long distance driving; back pain with radiculopathy to bilateral lower extremities; One episode of five minutes loss of motor function | Normal range of motion; no assessment of pain with motion; intermittent bilateral lower extremity radiculopathy; no muscle atrophy or neurologic compromise below the waist; unable to wear a flak vest without pain; MEB DD2808: negative SLR; motor 4/4 at knees, 3/4 at ankles; IPEB stated pain on motion | Pain with flexion; muscle spasm and tenderness around the paralumbar area; radiation of pain on movement; Straight leg raising test was negative; no sign of radiculopathy; range of motion was normal; range of motion was additionally limited by pain but not fatigue, weakness, lack of endurance, or incoordination; no ankylosis; motor, sensory, and reflexes were normal in upper and lower extremities; X-rays show spondylolisthesis of L5-S1, grade I and spondylolysis |
| §4.71a Rating |  | 10% assigned | 10% assigned |
|  2002 VASRD 5295 |  | 10% | 10% |
| 2002 VASRD 5292 | 40% if severe |  |  |

The MEB narrative summary (NARSUM) exam was completed in October 2002, 6 months prior to separation. The CI’s back pain started after doing log physical training in 1999. He was treated conservatively with nonsteroidal anti-inflammatory medications and physical therapy but his pain did not resolve. The examiner stated orthopedic consults and magnetic resonance imaging (MRI) results were “unrevealing.” No MRI reports are present in the record for review but a December 2004 VA Compensation and Pension (C&P) examination noted MRI results showing spondylolysis and spondylolisthesis. An X-ray from November 2000 noted a second degree spondylolisthesis with a very prominent neural arch defect and narrowing of the L5-S1 disc space due probably to secondary disc degeneration. Flexion and extension views did not show instability. Repeat X-rays from May 2003 and December 2004 have similar findings. Review of outpatient visit notes revealed intermittent radiation of pain down right leg and numbness down both legs into his feet. However an EMG was normal in July 2002.

A VA C&P examination was completed a month after separation noted the same history as the MEB NARSUM examination. The CI reported low back pain shooting down both legs but more on the right side and also spasm. Pain was constant and he sometimes had numbness at the back of his right leg. This occurred when he was sitting and then tried to straighten his leg causing a tingling sensation. The examiner noted muscle spasm and tenderness to palpation around the paralumbar area and radiation of pain with movement. Straight leg testing was negative and the examiner stated there was no sign of radiculopathy. ROM was noted to be normal with pain noted at full flexion. Neurologic examination was normal. The examination completed by physical therapy 2 months prior to the MEB NARSUM examination noted a much greater limitation of motion. However this examination has less probative value because it is further away in time from the date of separation and is inconsistent with the rest of the medical record.

The 2002 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were modified on 23 September 2002 to add incapacitating episodes (5293 intervertebral disc syndrome), and then changed to the current §4.71a rating standards on 26 September 2003. The 2002 standards for rating based on ROM impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. When older cases have goniometric measurements in evidence, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation. For the reader’s convenience, the 2002 rating codes under discussion in this case are excerpted below.

5295 Lumbosacral strain:

 Severe; with listing of whole spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteoarthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion........................................................................................................... 40

 With muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position......................................................................................................................... 20

 With characteristic pain on motion........................................................................................... 10

 With slight subjective symptoms only........................................................................................ 0

5292 Spine, limitation of motion of, lumbar:

 Severe............................................................ 40

 Moderate....................................................... 20

 Slight.............................................................. 10

The PEB on 28 January 2003 rated the back condition: “chronic LBP, without neurologic or electrodiagnostic abnormality, without neurologic abnormality or documented chronic paravertebral muscle spasms on repeated examinations, with characteristic pain on motion” at 10% analogous to the 2002 VASRD code 5295 lumbosacral strain. The VA applied a 10% rating under 5295 spine, limitation of motion of, lumbar for slight limitation of motion. Although not specifically mentioned this rating decision likely involved considering § 4.59 painful motion.

While the MEB NARSUM examination does not specifically mention painful motion, it is documented in the service treatment record (STR) and on the VA C&P examination a month after separation. However, while there is no evidence that documents any actual decrease in ROM at the time of separation, the intent of §4.59 is to recognize actually painful, unstable, or malaligned joints as entitled to at least the minimum compensable rating for the joint. A rating of 10% for painful motion is therefore appropriate. This same rating would also be applied if the current day VASRD rating criteria were applied. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the back condition.

The record indicates the CI did have intermittent bilateral lower extremity radiculopathy with intermittent symptoms of radiating pain and altered sensation. 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. While the CI had intermittent pain and numbness and tingling, no neurologic examination noted any sensory abnormalities and no motor impairment was documented. Also, EMG study was normal. As no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment.

Right Shoulder Condition. There were two ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM –Right Shoulder | MEB NARSUM ~6 Months Pre-Separation(20021009) | Orthopedics ~ 1 Month Pre-Sep(20030307) | VA C&P ~ 1 Month After-Sep(20030522) |
| Flexion (0-180) | No assessment | 180⁰ | 180⁰ pain at 80⁰ |
| Abduction (0-180) | No assessment | 180⁰ | 180⁰ |
| Internal Rotation (0-90) | 30° (No goniometer) | L-1 | 90° with pain and popping at 50° |
| External Rotation (0-90) | No assessment | 45° | 90° with pain and popping at 70° |
| Comment | Grip strength in right hand “significantly deceased compared to the left”; no muscle atrophy in right upper extremity; only able to lift 20 pounds with his right arm; | Pain was 7/10 when active; pain occurred twice a week and was intermittent throughout the day; normal cuff strength noted, bilaterally; negative Spurling, ulnar tunnel, and compression test; right upper extremity radicular pain.; motor 4/5 1st interosseus right hand. | General appearance was normal. Noted pain and popping with external and internal rotations. The range of motion was additionally limited by pain, fatigue, weakness, and lack of endurance, but no incoordination. The was no ankylosis of the shoulder joints. |
| §4.71a Rating | 10% (§4.59) | 10% (§4.59) | 10% (§4.59) |

The MEB NARSUM exam was completed in October 2002, 6 months prior to separation. It documents that the CI initially injured his right shoulder in 1996 while playing basketball. His shoulder was dislocated and after it was reduced he continued to have clunking and instability. The examiner noted that despite two surgeries in 1998 and 1999, he continued to have shoulder pain and right hand weakness. Review of the record reveals these surgeries were in 1997 and 1998 and both were SLAP repairs. He was noted to be right hand dominant. The physical examination noted internal rotation was limited to 30 degrees and that right hand grip strength was significantly decreased as compared to the left side. No muscle atrophy was noticeable. The NARSUM notes the restriction of lifting only 20 pounds was due to his right shoulder condition. The STR contains an evaluation completed by occupational therapy in July 2002. This examination documents decreased strength of 4/5 throughout the entire right upper extremity but no difference in muscle mass circumference between the right and left upper extremities. It also documents internal rotation limited to 30 degrees and the examiner opined this was moderate. The CI was also noted to have tingling in the T1 dermatome that increased with lateral neck flexion. This tingling causes the CI to stop or avoid activities that cause this tingling. It was felt that this was probably a result of scar adhesions from the 1997 surgery. The VA C&P examination completed a month after separation noted a functional impairment of very painful extension of the right arm and the inability to lift more than 20 pounds overhead. There was no limitation in the ROM but motion was painful. ROM was additionally limited by pain, fatigue, weakness, and lack of endurance. Both service and VA x-rays were normal.

The PEB stated it rated the “chronic pain right shoulder, weakness and decreased grip strength post-surgical procedure” IAW the US Army Physical Disability Agency (USAPDA) pain policy and assigned a 0% rating for slight intermittent pain. The rating was assigned analogous to 5003 degenerative arthritis. The CI had submitted a letter of appeal stating his pain should be characterized as slight frequent. The VA used VASRD code 5201 arm, limitation of motion of and rated the right shoulder at 20% for pain-limited range of motion. This rating was continued through its December 2005 rating decision, the latest rating noted in the record.

The Board notes that VA standard practice is to rate painful motion of a joint at 10%. A 20% rating for limited motion of the shoulder is normally reserved for cases where pain results in an actual limitation of ROM. Full ROM that is painful is generally rated at 10% for painful motion. While the CI had painful motion, he was able to move his arm throughout the full range of flexion and abduction at the shoulder. Therefore, a 10% rating is warranted based on painful motion. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the right shoulder condition.

Contended Conditions. While the CI did not specifically mention any contended conditions he stated, “all injuries rendered unfit were not correctly listed from medical records.” Other conditions identified in the DES file were pseudofolliculitis barbae, right knee pain, bronchitis, chronic cough, ear infection, heel pain, chronic ankle sprains, left knee fracture, fractured xyphoid process, severe heartburn, sexually transmitted disease, headaches, elevated blood pressure, head injury requiring sutures, headaches, and stress/anxiety. None of these conditions were significantly clinically or occupationally active during the MEB period, none carried attached 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. 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. As discussed above, PEB reliance on DoDI 1332.39 for rating the back condition and the USAPDA pain policy for rating the right shoulder condition was operant in this case and the condition was adjudicated independently of these policy regulations by the Board. In the matter of the chronic LBP and IAW the 2002 VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the chronic right shoulder pain condition, the Board unanimously recommends a permanent service disability rating of 10%, coded 5099-5003 IAW the 2002 VASRD §4.71a. In the matter of the pseudofolliculitis barbae, right knee pain, bronchitis, chronic cough, ear infection, heel pain, chronic ankle sprains, left knee fracture, fractured xyphoid process, severe heartburn, sexually transmitted disease, headaches, elevated blood pressure, head injury requiring sutures, headaches, and stress/anxiety conditions, the Board unanimously agrees that it cannot recommend any additional unfitting conditions for 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 | 5299-5295 | 10% |
| Chronic Right Shoulder Pain | 5099-5003 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110411, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 XXXXXXXXX

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXX, AR20120008200 (PD201100439)

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 XXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA