RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100449 SEPARATION DATE: 20070515

BOARD DATE: 20121005

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (11B1P/Infantryman), medically separated for chronic low back pain, sciatica, and lumbar neuritis after a gunshot wound while deployed to Afghanistan. Despite extensive surgery and rehabilitation, the CI did not improve adequately and was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile for status post gunshot wound--lower back and right hip pain, nerve injury and was referred for a Medical Evaluation Board (MEB). Sciatica, lumbar neuritis, and anxiety disorder were also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the chronic low back pain, sciatica, and lumbar neuritis after a gunshot wound condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Service connected injury is still physically challenging for some everyday tasks. Injury has caused recent pulled muscles in back, constant nerve spasms, and uncomfortable living for the last 4 years. Even with keeping my body in good condition, my pain gets worse with age, regardless.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (DoDI) 6040.44, Enclosure 3, paragraph 5.e. (2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20070301** | | | **VA ~7 Months Post-Separation – All Effective Date 20070516** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain, Sciatica, and Lumbar Neuritis after a Gunshot Wound | 5235 | 10% | Degenerative Changes of the Sacral Spine with History of Fracture | 5236 | 10% | 20071211 |
| Right Sacroiliitis | 8599-8520 | 10% | 20071211 |
| Residuals of Gunshot Wound, Muscle Group XVII | 5317 | 40% | 20071211 |
| Residuals of Gunshot Wound, Muscle Group XVIII | 5318 | 20% | 20071211 |
| Scar of Sacral Area and Left Buttock | 7801 | 10% | 20071211 |
| Scar of the Right Hip | 7804 | 10% | 20071211 |
| Anxiety Disorder | Not Unfitting | | Post Traumatic Stress Disorder | 9411 | 50% | 20071211 |
| ↓No Additional MEB/PEB Entries↓ | | | Abdominal Surgical Scar | 7801 | 10% | 20071211 |
| 0% X 1 | | | 20071211 |
| **Combined: 10%** | | | **Combined: 90%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of his condition and predictable consequences merit consideration for a higher separation rating. 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. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veteran 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 his degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Low Back Pain with History of Sacral Fracture Condition. The CI developed chronic back pain after a gunshot wound to the right hip and back that occurred while he was deployed to Afghanistan. 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; as summarized in the chart below. The VA Compensation and Pension (C&P) examination and the MEB left and right rotation measurements were obtained using a goniometer. The remaining MEB ROM measurements were obtained using an inclinometer.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | MEB ~7 Months Pre-Separation | VA C&P ~7 Months Post-Separation |
| Flexion (90⁰ Normal) | 85⁰ (83, 85, 85) | 80⁰ |
| Ext (0-30) | 20⁰ (20, 22, 21) | 25⁰ |
| R Lat Flex (0-30) | 30⁰ (42, 40, 38) | 30⁰ |
| L Lat Flex 0-30) | 30⁰ (35, 35, 34) | 30⁰ |
| R Rotation (0-30) | 30⁰ (27, 29, 29) | 30⁰ |
| L Rotation (0-30) | 30⁰ (28, 29, 28) | 30⁰ |
| Combined (240⁰) | 225⁰ | 225⁰ |
| Comments | Gait normal; well healed scars slightly tender to palpation; discomfort with palpation in left lumbosacral area; mild discomfort with piriformis stretch test; right straight leg raise causes right buttock and hamstring pain at 70 degrees, left straight leg raise negative; normal strength of bilateral lower extremities, including normal toe stands bilaterally and normal heel and toe walk; diminished sensation right buttock, hamstring, popliteal area, calf, and posterior heel as well as right base of penis and right side of scrotum. All Waddell signs negative. X-rays and CT scan document severely comminuted sacral fracture, right side dominant and involving the neural foramina from S2 to S5 along with retained metallic fragment; no nonunion. | Residual limp favoring the right leg noted in history but exam documents normal posture and gait but abnormal wear on the outer heel of the left shoe; normal and symmetrical spinal curvature; no spasms; positive straight leg raise on the right; normal reflexes except absent right ankle reflex; motor function 5/5, normal sensation to light touch, pain, and vibration. No change to any ROM with repeated motion. No nonorganic physical signs observed. X-rays show old fracture but do not show nonunion. |
| §4.71a Rating | 10% | 10% |

The MEB narrative summary (NARSUM) exam performed on 1 December 2006, with ROM measurements from 13 November 2006, and the C&P examination of 11 December 2007 show very similar ROM measurements. Neither examination contains any findings that would support a rating greater than 10%. Both examinations document a right-sided peripheral nerve injury that was most likely due to the initial gunshot injury. However, neither examination documents decreased muscle strength.

The Board directs attention to its rating recommendation based on the above evidence. Both the NARSUM and C&P examinations document similar findings, were completed equidistant from the date of separation (the NARSUM approximately 7 months prior to and the C&P exam approximately 7 months after separation), and do not contain any positive Waddell signs or nonorganic signs. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the Chronic Low Back Pain with History of Sacral Fracture condition.

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. While the CI did have muscle atrophy and lack of endurance, no permanent decrease in muscle strength was documented in the record. The CI was unable to sustain strenuous physical activity and was not able to run for any extended distance or walk one mile. The Board determined this degree of functional impairment did not render the CI unfit and the Board cannot support a recommendation for additional rating based on peripheral nerve impairment.

Scars.

Neither the NARSUM nor the VA C&P examinations documented any functional impairment related to any of the scars that resulted from the CI’s injuries and surgeries. The Board concluded therefore that this condition could not be recommended for additional disability 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 disability rating of 10%, coded 5235 IAW VASRD §4.71a. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain after a Gunshot Wound | 5235 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110614, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

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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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXX, AR20120018607 (PD201100449)

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 and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA