RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100453 SEPARATION DATE: 20020718

BOARD DATE: 20120208

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SGT/E-5 (13B, Cannon Artillery Crewmember), medically separated for a lumbar spine condition. He developed back pain in 1998 which persistently recurred. He was subsequently diagnosed with spinal stenosis (narrowing of spinal canal) which was not amendable to surgical remedy; and, underwent a protracted trial of conservative management. He did not improve adequately to fully perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L4 profile and referred for a Medical Evaluation Board (MEB). “Low back pain without objective evidence of radiculopathy” was 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) file will be discussed below. The PEB adjudicated the low back condition as unfitting, rated 10%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Spinal stenosis L-4, L-5. Have submitted paperwork for an increase in my VA disability to 100% because of my condition. I am no longer able to work the job I was working, had to take job to make a income to the household till the VA or this is taken care of.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20020603** | **VA (9 Mo. Post-Separation) – All Effective 20020719** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5295 | 10% | Spinal Stenosis, L4-L5 | 5295 | 10% | STR\* |
| No Additional MEB/PEB Entries | No Additional VA Entries |
| **Combined: 10%** | **Combined: 10%** |

\* STR = Service Treatment Record; CI failed to present for VA exam.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his Service-incurred back condition continues to burden him. It is a fact, however, that the DES has neither the role nor the authority to compensate Service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), 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. 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 6044.40, 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.

Lumbar Spine Condition. After a 1998 strain injury, the CI was treated conservatively with resolution of the condition. In 1999 he re-injured his back while lifting, reporting pain in his back radiating to both legs. Radiographs were normal and he was referred to physical therapy; but, he did not improve and continued to have exacerbations of pain which resulted in a temporary profile in 2001. He underwent specialty and ancillary evaluations, with more aggressive treatment modalities to include epidural steroid injections. Imaging revealed spondylitic changes with mild neural foraminal stenosis at L4-L5 but no nerve impingement; and, a nerve conduction study of the lower extremities was normal. Neurosurgery opined that the CI was not a surgical candidate; and, orthopedics diagnosed low back pain without radiculopathy, noting positive 3/5 Waddell’s signs. In the narrative summary (NARSUM), the CI reported a “steady pressure” pain which he rated 6 of 10. He also reported bilateral leg pain with numbness and tingling. The physical examination noted a “severely limited range of motion in all directions secondary to pain;” but, was otherwise within normal limits and documented normal neurological findings. The examiner documented some signs of exaggerated symptoms (pain elicited by axial pressure; disappearance of pain with distraction); and, frankly stated that the CI had previously provided erroneous information for purposes of obtaining a permanent profile to avoid a return to his duty station in Korea. The diagnosis was “low back pain without objective evidence of radiculopathy.” ROM measurements performed by physical therapy two months prior to separation showed normal left and right rotation (40⁰); mild loss of extension (10⁰); and, mild to moderate diminished flexion (to inferior poles of patellae). No additional ratable parameters were recorded. There is no probative VA evidence in this case, since the CI repeatedly failed to present for scheduled VA evaluations through 2005.

The VASRD coding and rating standards for the spine, which were in effect at the time of the CI’s separation, were changed to the current §4.71a rating standards on 26 September 2003. The 2002 standards for rating based on range-of-motion (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. The two potentially applicable codes from the 2002 VASRD are excerpted below:

**5292** Spine, limitation of motion of, lumbar:

Severe ……………………………………………………..……………………………...... 40

Moderate ...………………………………….………………………….…….……….....…. 20

Slight .……………………………………………………..……………………………..…..10

**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 osteo-arthritic

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

Both the PEB and the VA rated the CI’s lumbar spine condition at 10%, coded 5295 (lumbosacral strain). It is reiterated that the VA rating was based on the Service evidence. The 20% rating for 5295 is fairly specifically defined as noted above. The CI’s condition clearly did not meet the criteria for a rating higher than 10% under the 5295 code based on either the MEB or the PT examinations. The Board also considered a rating under the 5292 code for limitation of spine motion. The mildly impaired ROM documented by the PT exam would justify a “slight” 10% rating under that code; and, the qualitatively more severe ROM referenced in the NARSUM was significantly mitigated by the probative value concerns which the examiner himself documented (elaborated above). Furthermore, the action officer opines that the pathology in evidence does not correlate with an anticipated limitation of ROM appropriately characterized as “moderate” or “severe.” There was no evidence of ratable peripheral nerve impairment which would provide for additional or higher rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s or VA’s rating determination for the lumbar spine condition (or change in the designated code).

Remaining Conditions. Other conditions identified in the DES file were adjustment disorder, headaches, multiple joint pain and ankle pain. Several additional non-acute conditions or medical complaints were also documented. 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. 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the lumbar spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110531, 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

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

 Deputy Assistant Secretary

 (Army Review Boards)