RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1100476 SEPARATION DATE: 20060401

BOARD DATE: 20120417

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member; E-6/SSG (11B/Infantryman) medically separated for a neck (cervical) and back (lumbar) condition. He did not respond adequately to treatment and was unable to fulfill the physical demands 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). Chronic neck pain and chronic low back pain (LBP) 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 chronic neck pain condition and chronic LBP condition as unfitting, rated each 10% for a combined rating of 20%, with application of the US Army Physical Disability Agency (USAPDA) pain policy.The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “According to AR 40-501 once VA replaced the disc C6-7 in my neck I was no longer fit for duty and unable to get waivers to join the Army.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060214** | | | **VA (1 Mo. Pre Separation) – All Effective Date 20060402** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic neck pain | 5299-5237 | 10% | DDD… Cervical Spine | 5242 | 10%\* | 20060321 |
| Chronic low back pain | 5299-5237 | 10% | DDD… Lumbar Spine | 5242 | 10% | 20060321 |
| Left Lower Radiculopathy also claimed as Sacroiliac Pain | 8520 | 10% | 20060321 |
| ↓No Additional MEB/PEB Entries↓ | | | Osteoarthritis… Left Knee | 5003 | 10% | 20060321 |
| Painful Scar, Left Inguinal Hernia Repair | 7804 | 10% | 20060321 |
| Ulnar Neuropathy, Left Elbow | 8516 | 10% | 20060321 |
| 0% x 3/Not Service-Connected x 1 | | | 20060321 |
| **Combined: 20%** | | | **Combined: 50%** | | | |

\*increased to 100% 20080509 then back to 10% 20080801 due to surgical procedure

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current inability to obtain a waiver to enlist in the Army thus impacting his current earning ability and quality of life. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation.

Neck and Low Back Condition: The CI began having neck and low back pain in 2004 after intensifying his physical training in order to meet the physical stamina requirements to become a drill sergeant. He ceased training after a month but continued to have neck pain that radiated to the top of his scalp with associated headaches and non radiating LBP. Physical exam and radiographic exams were consistent with degenerative disc disease (DDD) of the cervical spine (C-spine) at C6-7 with mild neural foraminal narrowing secondary to a bulging disc and arthritic changes and mild DDD of the lumbar spine (L-spine) with facet arthropathy most prominent at the L3-4 level. The CI underwent multiple physical therapy and pain management modalities to alleviate his pain without success. Conduction studies, (electromyelogram ((EMG)), of the neck and the back were normal yet there was muscle testing showing denervation of the L5-S1 root. A spine surgeon consultation, which included only a review of his service treatment records (STR), deemed they did not need to see him as he was a non surgical candidate. There were four goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. All of these exams are summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM –Lumbar & Cervical | MEB ~ 3 Mo. Pre-Sep | | VA C&P ~ 1 Mo. After-Sep | |
| Lumbar | Cervical | Lumbar | Cervical |
| Flexion | 100⁰(0-90) | 40⁰(0-45) | 80⁰ | 45⁰ |
| Combined | 315⁰(240) | 270⁰(340) | 230⁰ | 310⁰ |
| Comment |  |  |  | Painful lateral flexion l/r |
| §4.71a Rating | 0% | 10% | 10% | 10% |

The narrative summary (NARSUM), completed for the MEB 4 months prior to separation, historically documented the above historical review and the exam demonstrated C-spine pain to palpation with full ROM, and L-spine tenderness to palpation with full ROM with discomfort with forward flexion. The remainder of the exam was noncontributory. A physical therapy exam completed 3 months prior to separation demonstrated the above ROM’s for the MEB, in addition, demonstrated a normal gait, no radicular, hip or sacroiliac signs (SLR and FABER negative), and a neuromuscular intact exam. X-rays were consistent with DDD of the C-spine and L-spine. The NARSUM examiner notated his limitations to include inability to run or ruck, move with a fighting load for at least two miles, construct an individual fighting position, do 3-5 second rushes and prevented the soldier from future deployments. The commander’s statement corroborated these limitations noting how it especially impacts his duties as an infantryman.

The VA Compensation and Pension exam (C&P), completed a month after separation, historically corroborated the NARSUM and documented these additional symptoms for the C-spine; constant daily pain, positional radiating pain and numbness with head movements to the top of the head, left elbow, left forearm, fifth finger and ulnar half of fourth finger; increase ache if doing pushups or putting pressure on left arm; and chronic headaches. The historical review of the L-spine was also similar to the NARSUM and documented these additional symptoms for the L-spine; aching, stiffness, and pain without bowel or bladder impairment with worsening of symptoms with prolonged sitting or driving radiating to the left leg, lifting of greater than 20 lbs, bending, and household chores and additionally documented no use of canes or braces. The physical exam demonstrated, painful ROM’s of the C-spine especially with arm movements with no deduction in ROM’s with repetitive testing (Deluca negative), no spasm, no abnormal posture, normal motor exam of the left upper extremity with positive findings for sensory and vibration deficits. The L-spine exam demonstrated a straight spine without spasm, tenderness to palpation of the sacroiliac joints, tightness and normal motor exam of the left lateral thigh with positive findings for vibratory and sensory deficits. There was no reference made regarding his gait and there were no new x-rays or EMG’s for review.

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB and VA chose different coding options for the cspine and L-spine condition, but this did not bear on rating. The PEB’s DA Form 199 reflected application of the USAPDA pain policy for rating, but its 10% for determination for the neck and back respectively, were consistent with §4.71a standards. The PEB chose the 5237 analogous code (lumbosacral or cervical strain) and the VA chose the code 5242 (degenerative arthritis of the spine (see also diagnostic code 5003)) which both follow the ratings per the general rating formula for diseases and injuries of the spine. The ROM’s for the C-spine met the 10% compensable spine rating for both the MEB and VA exams. The Board noted however the ROM’s for the L-spine MEB exam did not meet the compensable general spine ratings and likely the PEB invoked painful motion to warrant the 10% rating received although this was not clear. The Board looked for higher ratings using theformula for rating intervertebral disc syndrome for both the C-spine and the L-spine based on incapacitating episodes but did not find any evidence to meet this criteria. The VA awarded a 10% rating for the sensory deficits of the left upper extremity and left lower extremity. 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. The motor impairment of the lower extremity was relatively minor and cannot be linked to significant physical impairment. 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 evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the chronic neck pain condition and chronic LBP condition.

Remaining Conditions. Other conditions identified in the DES file were a history of GERD, periodic left knee pain and s/p left inguinal hernia repair. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period, the left knee was added identified on his final profile but the evidence reflected only carrying one temporary in April 2003, none of the other conditions 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 12 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. As discussed above, PEB reliance on the USAPDA pain policy for rating chronic neck pain condition and chronic LBP condition was operant in this case and theses conditions were adjudicated independently of that policy by the Board. The Board prefers the 5242 coding route, but sees no point in recommending a change in code since rating is unaffected. In the matter of the neck and LBP condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the GERD, periodic left knee pain and s/p left inguinal hernia repair conditions or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. 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 neck pain | 5299-5237 | 10% |
| Chronic low back pain | 5299-5237 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110701, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

XXXXXXXXXXX

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, AR20120007685 (PD201100476)

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 XXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA