RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100483 SEPARATION DATE: 20080804

BOARD DATE: 20120523

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (25B, Signal Corps) medically separated for lumbar degenerative disc disease (DDD). The CI has had a long history of low back pain (LBP). He was treated, but did not respond adequately to fully perform his military duties, or meet physical fitness standards. He underwent a Medical Evaluation Board (MEB). Lumbago was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Four other conditions, identified below, were listed on DA Form 3947 as medically acceptable. The PEB found the lumbar DDD unfitting, and rated it 10%. The other four MEB/PEB conditions were right hamstring pain, tinea versicolor (TV), pseudofolliculitis barbae (PFB), and major depressive disorder (MDD). These four conditions were all adjudicated as not unfitting. The CI made no appeals, and was thus medically separated with a 10% disability rating.

CI’s CONTENTION: “I think the issue should be changed because I do not believe that my conditions was not evaluated accurately and it was not fair across the board. I had a condition that was consider fit, major depression disorder, with PTSD symptoms that I am currently rated at 70% alone from the VA. My back injury with lower extremity radiculopathy is what the Army granting me unfit for. However my major depression disorder should of been unfit which it would of found to be so if the Army took more time evaluating me.” In addition, the CI has also submitted a one-page memo, which was reviewed and considered by the Board.

SCOPE OF REVIEW: The Board’s scope of review, as defined in DoDI 6040.44, is limited to those conditions which were determined by the PEB to be unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” Any conditions outside the Board’s defined scope of review remain eligible for future consideration by the Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Army PEB – dated 20080611** | | | **VA (1 mo. After Separation) – All Effective 20080805** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbar DDD | 5299-5242 | 10% | LBP, with Right Flank Pain | 5299-5242 | 10%\* | 20080809 |
| Right Hamstring Pain | Not Unfitting | | Right Hamstring Pain | 5399-5318 | NSC | 20080809 |
| Tinea Versicolor | Tinea Versicolor and PFB | 7820-7806 | 10% | 20081031 |
| PFB |
| Major Depression | Major Depression | 9434 | 10%\* | 20080809 |
| ↓No Additional MEB/PEB Entries↓ | | | Not Service-Connected (NSC) x 1 | | | 20080809 |
| **Combined: 10%** | | | **Combined: 30%\*** | | | |

\*VA Ratings shown above are based on the VA Rating Decisions of 20081016 & 20081113 (most proximal to separation)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the significant impairment with which his conditions continue to burden him. However, the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA 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’s authority resides in evaluating the fairness of DES fitness and rating decisions at the time of separation. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Low back pain (LBP). The CI has had a long history of LBP. Magnetic resonance imaging (MRI) showed evidence of DDD at L4-L5 and L5-S1. He was treated with physical therapy (PT), chiropractic manipulation, and epidural steroid injections. In spite of treatment, his problems with LBP persisted, and an MEB was initiated. At his February 2008 MEB exam, he reported that the pain was exacerbated by activities such as standing, jumping, running, or prolonged sitting. He denied any lower extremity (LE) weakness. The CI was using Meloxicam (Mobic) to help control the pain. On examination of the back, there was some tenderness to palpation (TTP) but no spasm or guarding. His gait was normal, and straight leg raise (SLR) was negative. In August 2008, 5 days after separation, the CI had a VA Compensation and Pension (C&P) exam. His gait was normal and there was no spasm, guarding, or TTP. Sensation, motor function, reflexes, and SLR were normal. Range-of-motion (ROM) is summarized below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT ~ 6 mo. Pre-Sep  (20080201) | VA C&P ~ 6 mo. Pre-Sep  (20080128) | VA C&P ~ 5 days Post-Sep  (20080809) |
| Flexion (90⁰ is normal) | 40⁰ | 90⁰ | 90⁰ |
| Extension (30⁰ is normal) | 15⁰ | 30⁰ | 30⁰ |
| Combined (240⁰ is normal) | 160⁰ | 240⁰ | 220⁰ |
| §4.71a Rating | 20% | 0% | 10% |

The Board carefully reviewed all evidentiary information available. After consideration of the three ROM exams, it was determined that the August 2008 C&P exam had greatest probative value. This was a very thorough examination, and was performed just 5 days after separation. Based on that exam, and IAW the VA Schedule for Rating Disabilities (VASRD) §4.71a, a disability rating of 10% is warranted due to combined thoracolumbar ROM greater than 120 degrees but not greater than 235 degrees. The evidence in the treatment record does not show sufficient justification for a rating greater than 10%. After due deliberation, the board unanimously recommends a rating of 10% for the LBP condition IAW VASRD §4.71a.

The Board then directed its attention to the matter of the lumbar radiculopathy. Although the CI reported occasional radicular symptoms, there was no objective evidence of a ratable neurologic deficit. At the August 2008 C&P exam, just 5 days after separation from service, his gait was normal and there was no spasm, guarding, or TTP. Sensation, motor function, reflexes, and SLR were all normal. The Board unanimously agreed that the radiculopathy was not unfitting at the time of separation.

Mental Condition. The CI contends that his mental condition (MDD) was misdiagnosed, and should have been found unfitting. This matter was carefully reviewed by the action officer and considered by the Board. The treatment record does not show sufficient evidence that the mental condition caused any significant interference with the satisfactory performance of military duties. Even if it had been diagnosed differently, his mental disorder did not make him unfit to be a Soldier. After due deliberation, and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously agreed that the mental condition was not unfitting, and therefore not ratable.

Other PEB Conditions. Right hamstring pain, tinea versicolor (TV), and pseudofolliculitis barbae (PFB) were all adjudicated by the PEB as not unfitting. None of these conditions were implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was insufficient evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for any of these conditions.

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 LBP condition, the Board unanimously recommends no change in the PEB adjudication. In the matter of the MDD, hamstring pain, TV, and PFB; the Board unanimously recommends no change in the PEB adjudication as not unfitting.

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** |
| Lumbar DDD, without Motor Neurologic Deficit | 5299-5242 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110612, 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXX, AR20120010148 (PD201100483)

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 XXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA