RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100489 SEPARATION DATE: 20071220

BOARD DATE: 20111215

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SSgt/E-5 (3M071, Services Craftsman), medically separated for low back pain due to degenerative disc disease status post fusion L4-S1. He did not respond adequately to treatment and was unable to perform within his Air Force Specialty (AFS) or meet physical fitness standards. He was issued a permanent L4 profile and underwent a Medical Evaluation Board (MEB). Lumbago secondary to herniated intervertebral disc with spinal fusion of L4-L5, L5-S1 was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated the low back pain due to degenerative disc disease status post fusion L4-S1 condition as unfitting, rated 20% with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “I believe the rating for my condition should have been more than the 20% they gave me. I had a major surgery that was unsuccessful. I gave the military just short of 14 years. When I was given the choice to go in front of a board, I was told I would not get the board in my favor due to the fact than according to the paperwork in order to get a rating higher than 20% I would have to be bedridden for a certain period of time. The fact is, is that doctors want you to try and get up and move around. I was out of work for almost six months. I am really upset the most because (I) gave almost 14 years of my life to the military and 6-7 deployments to some of the worst places to go and this is the way I get thanked, by being medically discharged instead of retiring me. Since I have been out I am unable to work because of my back and I my legs are getting worse and to the point that I have a cane. I am submitting some information talking about my injury (degenerative disc disease) and I am hoping the board or whomever evaluates my appeal will reconsider the decision that was made in 2007.” He additionally remarks, “I just want to say that I was planning on making the military a career. I was just shy of my 14 year and I would have 6 years left until I could retire. I miss being a part of the best military in the world. I loved being deployed even though I had to be away from my wife and kids but I felt like I was doing something for our country. I don't feel that anymore. I hope you will reevaluate the decision that was made and retire me like I thought I should have been. Thank you.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20071001** | **VA (# Mo. Pre/After Separation) – All Effective Date 20071221** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain  | 5243 | 20% | Degenerative Disc Disease | 5242 | 10% | 20080416 |
| ↓No Additional MEB/PEB Entries↓ | Acne Rosacea | 7806 | 30% | 20080416 |
| Major Depressive Disorder | 9434 | 30% | 20080416 |
| Left Knee Degenerative Arthritis  | 5010 | 10% | 20080416 |
| Hypertension | 7101 | 10% | 20080416 |
| 0% x 2/Not Service Connected x 1 | 20080416 |
| **Combined: 20%** | **Combined: 60%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred conditions have had on his quality of life. However, the military Services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. The Department of Veterans’ Affairs (VA) however can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time.

Low Back Pain. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM – Thoracolumbar | MEB ~ 4 Mo. Pre-Sep | VA C&P ~ 4 Mo. After-Sep |
| Flex (0-90) | 57⁰ | 65⁰ |
| Ext (0-30) | 15⁰ | 20⁰ |
| R Lat Flex (0-30) | 27⁰ | 30⁰ |
| L Lat Flex 0-30) | 20⁰ | 30⁰ |
| R Rotation (0-30) | 21⁰ | 30⁰ |
| L Rotation (0-30) | 20⁰ | 30⁰ |
| COMBINED (240) | 160⁰ | 205⁰ |
| Comment | No spasm, normal gait | No spasm, normal gait. |
| §4.71a Rating | 20% | 10% |

The CI’s history of low back pain dates from October 2000 after pushing his car to start it. He was treated with epidural injections and physical therapy with moderate success. He had 2-3 exacerbations per year until 2005. In 2005, the exacerbations of pain increased in frequency and duration to seven to eight times per year requiring emergency treatment. After consultation with Neurosurgery at Washington University, the CI underwent discectomy and fusion of L4 to S1 on 10 August 2006 for disc herniation and desiccation L4/L5 and L5/S1. The CI was granted six months of post-operative convalescent leave and returned to duty 15 January 2007. Because of continued pain and inability to perform other than sedentary work, he was referred for MEB. His surgeon, 8 August 2007 (one year after surgery), noted that the CI had overall done well, with markedly improved back pain compared to pre-op, but there was some intermittent right leg pains. The CI declined recommended injections. Examination showed full range of lumbosacral motion without pain, a negative straight leg raising test, and normal motor function. The right leg pain was felt to be from epidural scar tissue in the surgical area rather than from further disc disease (MRI of the lumbar spine on 21 May, 2007 revealed post surgical changes from fusion of L4-L5 and mild to moderate canal narrowing of L3/L4). At the time of the MEB narrative summary (NARSUM) examination 14 August 2007, the CI continued to have L5 pattern right lower extremity pain however, there were no physical findings of radiculopathy. There was limitation of thoracolumbar motion. There was no tenderness and the gait was normal. The PEB found the back condition unfitting and rated the back condition 20% (coded 5243, intervertebral disc syndrome) using the general rating formula for diseases and injuries of the spine that was consistent with MEB NARSUM range of motion examination. At the VA compensation and pension (C&P) examination, 16 April 2008, four months after separation, there was no radiating pain. The CI had some painful limitation of range of motion but no physical findings of radiculopathy. There was no spasm, curvature was normal, and gait was normal. The VA rated the condition 10% coded 5242 for degenerative arthritis of the spine based on thoracolumbar flexion greater than 60 degrees. The Board agreed that the evidence at the time of separation did not support a rating higher than 20%. The Board also considered a rating using the VASRD formula based on incapacitating episodes due to intervertebral disc syndrome. The criteria are based on the number of incapacitating episodes in the prior 12 months requiring bed rest prescribed by a physician. The CI’s six months of post-operative convalescent leave does not meet the definition of an incapacitating episode since the recuperation and rehabilitation did not require bed rest or ongoing treatment by a physician. He returned to work January 2007 and no service treatment records were identified that documented physician directed bed rest. The Board concluded the preponderance of evidence did not support a higher rating using this alternate formula providing no additional benefit to the CI. The Board also considered if additional disability rating was justified for peripheral nerve impairment due to radiculopathy. The CI had a herniated disc with radicular pain treated with surgery. There was recurrent symptom of radiating pain documented in the treatment records attributed to scarring by the treating surgeon. Examinations indicated normal strength and reflexes. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. While the CI may have suffered additional pain from the nerve involvement, this is subsumed under the general spine rating criteria, which specifically states “with or without symptoms such as pain (whether or not it radiates).” Therefore the critical decision is whether or not there was a significant motor weakness which would impact military occupation specific activities. There is no evidence in this case that motor weakness existed to any degree that could be described as functionally impairing. The Board therefore concludes that additional disability rating was not justified on this basis. Therefore, all evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the low back condition.

Remaining Conditions. Other conditions identified in the DES file were major depressive disorder, left knee condition, hypertension and hyperlipidemia. The left knee condition, hypertension and hyperlipidemia were not clinically or occupationally significant during the MEB period, none were profiled, and none were implicated in the commander’s statement. The CI presented for care of depressive symptoms at the end of July 2007 in setting of the MEB process and was treated with antidepressant medication and therapy. Symptoms included depressed mood, low interest and energy and difficulty sleeping (although insomnia was a chronic problem documented in the service treatment for ten years). Mental health clinic progress notes from September and October 2007 indicate continued symptoms of low interest and energy with a normal mental status examination, and a 5 September 2007 primary care clinic encounter records euthymic (normal mood) with normal affect. Mental health clinic encounters up to 5 October 2007 reflect no duty limitations and assign a physical profile of S1 for worldwide qualified. The depression was noted in the MEB NARSUM but was not referred to the PEB as a possible unfitting condition. 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. Additionally acne rosacea was noted in the VA rating decision proximal to separation, but was not documented in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating. Even if acne rosacea’s presence in the DES file is conceded, there was no evidence for concluding that it interfered with duty performance to a degree that could be argued as unfitting.

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 low back condition and code 5243 IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. The Board unanimously agrees that it cannot recommend radiculopathy as a separate unfitting condition for additional rating at separation. In the matter of the mental health condition 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.

**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** |
| Low Back Pain Due to Degenerative Disc Disease Status Post Fusion L4-S1 | 5243 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100615, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 XXXXXXXXXXXXXXX

 President, Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXX:

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00489

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

 Sincerely,

XXXXXXXXXXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings