RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100497 SEPARATION DATE: 20040920

BOARD DATE: 20120201

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SFC/E7 (63H, Track Vehicle Repairer), medically separated for a lumbar spine condition*.* In 2004 the CI experienced an onset of back pain with lifting; and was diagnosed with Scheuermann's disease (acquired abnormal curvature, i.e., kyphosis) of the lumbar spine. The condition was not operative; and, despite extensive conservative therapy, he did not respond adequately to fully perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). Lumbar Scheuermann's Disease 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 chronic back pain condition as unfitting, rated 10%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20040802** | **VA (~1 Mo. Before Separation) – All Effective 20040921** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbar Scheuermann's | 5299-5237 | 10% | Lumbar Scheuermann's | 5243-5237 | 10% | 20040802 |
| ↓No Additional MEB/PEB Entries↓ | Complex Migraines | 8199-8100 | 30% | 20040802 |
| Residuals Left Ankle Sprain | 5299-5271 | 10% | 20040802 |
| 0% x 2 / Not Service Connected x 1 | 20040810 |
| **Combined: 10%** | **Combined: 40%** |

ANALYSIS SUMMARY:

Lumbar Spine Condition. The acute onset of back pain was nine months prior to separation, with radiation and numbness of the left leg. Imaging revealed degenerative changes of the spine consistent with Scheuermann’s kyphosis; but, without evidence of herniated disc or surgical indications. The CI’s symptoms gradually improved with activity limitation, physical therapy and medication; but not sufficiently to allow for the rigors of his MOS. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | MEB ~4 Mo. Pre-Sep | VA C&P ~1 Mo. Pre-Sep |
| Flexion (90⁰ Normal) | 50⁰ | 80⁰ |
| Combined (240⁰)  | 175⁰ | 190⁰ |
| Comments | Neg. DeLuca. | Nl. Gait; neg. DeLuca. |
| §4.71a Rating | 20% | 10% |

The MEB’s narrative summary (NARSUM) provides scant ratable data. ROM measurements conducted by physical therapy (PT) specified that the values were “limited by pain & represents patient’s willingness to move through pain;” therefore, they were not VASRD compliant. There was no mention of muscle spasm or abnormal gait. A Physical Medicine and Rehabilitation (PM&R) examination contemporary with the PT evaluation noted that the CI’s trunk mobility was “very limited” with flexion to 50⁰. There was paraspinal tenderness, but a normal motor and sensory exam of the lower extremities. One month prior to separation a Department of Veterans’ Affairs (DVA) Compensation & Pension (C&P) examiner documented a normal gait and paraspinal tenderness without spasm. Flexion was decreased to 80⁰ with pain beginning at 70⁰. The lower extremity motor exam was normal without atrophy or loss of strength. The neurologic exam was notable for normal reflexes, but decreased sensation in a non-dermatomal pattern of the “entire lower extremity.” The earliest follow-up evaluation by the VA was 20 months after separation, and thus is not directly probative; but, it did document similar findings to the C&P evaluation proximate to separation. The PEB and VA chose similar coding options for the condition. The PEB’s DA Form 199 reflected application of the USAPDA pain policy for rating, and its 10% determination was not consistent with §4.71a standards based on the available evidence. The VA correctly rated the back condition based on the C&P data. Board deliberation centered on the assignment of probative value to the disparate MEB PT and VA goniometric evaluations. The Board noted that, although the MEB PT measurements were likely not VASRD compliant, a similar ROM was corroborated by the PM&R examination one month earlier. The Board also discussed the apparent trend toward improvement of the CI’s symptoms with conservative measures, and noted that the C&P exam three months after the PT measurements may well have reflected this improvement, especially considering the downstream VA evidence suggesting that the condition was stable at the time of separation. The Board agreed therefore that the VA evidence, which was closest to separation, was likely most reflective of the overall clinical course; and, therefore most probative to the Board’s recommendation regarding disability at separation. There was no evidence of ratable peripheral nerve impairment in this case, since no motor weakness was present and the sensory component had no functional implications. There was no evidence of intervertebral disc disease or incapacitating episodes which would provide for higher rating under the 5243 code. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s adjudication of the lumbar spine condition.

Remaining Conditions. Other conditions identified in the DES file were chronic cough, a positive tuberculin skin test, left side pain, and numbness of all extremities. 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. Complex headaches, residuals of left ankle sprain, and several other non-acute conditions were noted from the VA C&P evaluation proximal to separation, but were 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.

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. As discussed above, PEB reliance on the USAPDA pain policy for rating back pain was operant in this case and the condition was adjudicated independently of that policy by the Board. 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Scheurmann's Disease, Lumbar Spine | 5299-5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110706, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for (PD201100497)

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

CF:

( ) DoD PDBR

( ) DVA