RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX. BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100511 SEPARATION DATE: 20090629

BOARD DATE: 20120426

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized Reserve Cpl/E-4 (0352, Antitank Missleman) medically separated for low back pain (LBP). In August 2007, the CI experienced onset of LBP. Six months later, in February 2008, he underwent surgery. After surgery, he continued to have problems with LBP, and was unable to fully perform his military duties. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). One condition (lumbago) was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB found the LBP condition unfitting, and rated it 20%. The CI made no appeals, and was medically separated with a 20% rating.

CI’s CONTENTION: In item 3 of DD Form 294, the CI elaborates no specific contention regarding rating or coding, and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Navy PEB – dated 20090409** | **VA (7 mos. Post-Separation) – All Effective 20080617** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain (LBP) | 5237 | 20% | Degenerative Disc Disease (DDD) | 5237 | 10% | 20090603 |
| Radiculopathy, Right Leg | 8599-8520 | 10% | 20090603 |
| ↓No Additional MEB/PEB Entries↓ | Posttraumatic Stress Disorder | 9411 | 50% | 20090528 |
| Right Ankle Sprain | 5271-5024 | 10% | 20090603 |
| Tinnitus | 6260 | 10% | 20090528 |
| 0% x 4 / Not Service-Connected (NSC) x 6 | 20090603 |
| **Combined: 20%** | **Combined: \*70%** |

 \*VA Combined Rating of 70% is based on VA Rating Decision most proximate to date of permanent separation from service

ANALYSIS SUMMARY:

Low Back Pain (LBP). In August 2007, the CI experienced acute onset of LBP, while he was training for an upcoming deployment. The pain was associated with left-sided numbness and weakness. He was treated with physical therapy (PT), and epidural steroid injections. He got good relief, but it was only temporary. In February 2008, he underwent spinal surgery at two levels, L4-L5 and L5-S1. Post-operatively, he had excellent results. However, he continued to have problems with LBP, and an MEB was initiated. At his March 2009 MEB evaluation, the CI reported occasional pain with some minimal radicular symptoms after prolonged activity. He was working as a software developer and was taking no medications. He avoided heavy exercise, because that would cause his symptoms to recur. On examination, his gait and balance were normal. Toe walking and heel walking were normal. Neurological exam was normal. Range-of-motion (ROM) is summarized in the chart below. On 3 June 2009, he had a VA Compensation and Pension (C&P) exam. At that exam, his posture and gait were normal. Examination of the back revealed no spasm or tenderness. Straight leg raise (SLR) was negative. ROM of the thoracolumbar spine is summarized below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB – 15 wks. Pre-Sep(mid-March 2009) | VA C&P – 4 wks. Pre-Sep(3 June 2009) |
| Flexion (90⁰ is normal) | 80⁰ | 80⁰ |
| Combined (240⁰ is normal) | (n/a) | 195⁰ |
| §4.71a Rating | 10% | 10% |

The Board carefully examined all evidentiary information available. The Navy PEB and the Department of Veterans’ Affairs (DVA) chose different rating options for the LBP condition, but both used diagnostic code 5237 (lumbosacral strain). As noted above, the PEB assigned a disability rating of 20%. Following a thorough review of the record, the Board found no objective evidence that would justify a rating greater than 20%. The Board is not authorized to recommend a rating less than 20%. Therefore, after due deliberation, the Board unanimously agrees that there should be no change to the PEB adjudication of the LBP condition.

The Board then considered the matter of lumbosacral radiculopathy. Although the CI reported some radicular symptoms, examination revealed no motor weakness, or other objective evidence of a neurological deficit that would be separately unfitting. The only abnormal finding on neurological exam was a sensory deficit of right thigh and right lateral leg. Therefore, the Board unanimously agreed that there was insufficient evidence of an unfitting radiculopathy.

Remaining Conditions. Posttraumatic stress disorder (PTSD), blurred vision, ankle injury, septal deviaton, abdominal wound, buttock pain, burns to the leg, tinnitus, and several other conditions were also noted in the file. None of these conditions were clinically significant during the MEB/PEB period, and none were implicated in the non-medical assessment. 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. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for 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 VA Schedule for Rating Disabilities (VASRD) in effect at the time of the adjudication. In the matter of the LBP condition, the Board unanimously recommends no change to the PEB adjudication, IAW VASRD §4.71a. In the matter of the PTSD, blurred vision, ankle injury, septal deviaton, abdominal wound, buttock pain, leg burns, tinnitus, or any other conditions eligible for 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Low Back Pain, Status Post Spinal Surgery  | 5237 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110627, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

 XXXXXXXXXXXX

 President

 Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

 BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

 (b) CORB ltr dtd 2 May 12

 In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR the following individual’s records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

- XXXXXXXXXXXXXX former USMC

- XXXXXXXXXXXXXX former USMC

- XXXXXXXXXXXXXX, former USN,

- XXXXXXXXXXXXXX, former USN,

- XXXXXXXXXXXXXX former USMC

- XXXXXXXXXXXXXX former USN,

 XXXXXXXXXXXXXXX

 Assistant General Counsel

 (Manpower & Reserve Affairs)