RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100512 SEPARATION DATE: 20080224

BOARD DATE: 20120724

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (63B10/Wheeled Vehicle Mechanic), medically separated for lumbosacral strain. The CI initially injured his back during physical training in basic training. His symptoms increased over the next few years despite extensive conservative management. He did not improve adequately to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards with treatment. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). A scoliosis condition, identified in the rating chart below, was forwarded by the MEB as medically acceptable. The Physical evaluation board (PEB) adjudicated the lumbosacral back condition as unfitting, rated 20%, then 10%, and finally 20% with application of the US Army Physical Disability Agency (USAPDA) pain policy by different PEBs. The PEB determined the scoliosis condition to be not unfitting and to meet retention standards. The CI made no appeal; however, the Army Physical Disability Agency (USAPDA) reviewed and awarded a 20% disability rating following the passage of the 2008 National Defense Authorization Act (NDAA). The CI was separated after the 2008 NDAA passage and should not have been considered under the USAPDA pain policy.

CI CONTENTION: “Having to have a procedure done to cut nerves in my spin so I don’t have to feel certain pains which the doctor told me the pain would return and it was just a short term relief and the pain did return. All the rehab I received while still serving showed not a pain that was short term complaint. The nerves in my back were sending pain down through my hips and my knee. Me telling the doctors this issue they would mostly say they were focusing on the back and the VA would take care of the rest because will be released with some kind or rating through the Army and the VA would rate me higher.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The remaining conditions rated by the VA at separation and listed on the DD Form 294, such as the knee and hip pain, are not within the Board’s purview. Any contention not requested in this application, or otherwise outside the Board’s defined scope of review, remains eligible for future consideration by the Army Board for the Correction of Military Records (BCMR).

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RATING COMPARISON:

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| --- | --- |
| **Service Admin Corrected PEB** **Dated 20090317** | **VA (1 Mos. Pre -Separation) – All Effective Date 20080225** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbosacral Strain | 5299-5237 | 20% | Chronic Mid & Low Back Pain due to Mild Degeneration Changes\* | 5242 | 10% | 20080109 |
| Scoliosis | Medically Acceptable |
| ↓No Additional MEB/PEB Entries↓ | Bursitis, Rt Hip | 5252 | 10% | 20080109 |
| Bursitis, Lt Hip | 5252 | 10% | 20080109 |
| Patellofemoral Syndrome Lt  | 5257 | 10% | 20080109 |
| Patellofemoral Syndrome Rt  | 5257 | 10% | 20080109 |
| Headache Syndrome | 8100 | 10% | 20080109 |
| Right Wrist | 5215 | 10% | 20081020 |
| 0% X 2 / Not Service-Connected x 0 |  |
| **Combined: 20%** | **Combined: 50%** |

\*Scoliosis was not noted by C&P examination but referenced in the vocational rehab decision which cited the PEB and STR.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. 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 nor for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA) but not determined to be unfitting by the PEB. However, the (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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 role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Low Back Condition. There were two range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

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| Thoracolumbar ROM | PT ~5 Mo. Pre-Sep(20070816) | VA C&P ~1 Mo. Pre-Sep(20080109) |
| Flexion (90⁰ Normal) | 45⁰ (45, 45, 50) | 75⁰ |
| Extension (30⁰) | 20⁰ | 15⁰ |
| R Lat Flex (30⁰) | 25⁰ (25, 25, 30) | 25⁰ |
| L Lat Flex (30⁰) | 20⁰ (20, 20, 25) | 30⁰ |
| R Rotation (30⁰) | 40⁰ | 40⁰ |
| L Rotation (30⁰) | 40⁰ (35, 40, 40) | 40⁰ |
| Combined (240⁰) | 170⁰ | 205⁰ |
| Comment | + Tenderness; painful motionNo muscle spasm.Normal gait.Normal contour. | Pain on motion |
| §4.71a Rating | 20% | 10% |

The first documented visit for the low back pain (LBP) was on 8 November 2005 at sick call when the CI noted that he had first had LBP while in basic training doing sit-ups one year previously and now had recurrent pain doing sit-ups in physical fitness training (PFT). He subsequently also developed mid-thoracic pain, again without any specific acute trauma. He was noted to have minimal thoracic scoliosis on imaging. Magnetic resonance imaging (MRIs) of the lumbar and thoracic spine showed minimal disc bulging at L4-5 and minimal osteophyte formation in the thoracic spine without evidence of neural structure compromise. He was treated with non-steoridal anti-inflammatory medications (NSAIDs), muscle relaxants, Tramadol, TENS (transcutaneous electrical nerve stimulation), epidural steroid injections (ESI), chiropractic manipulation and physical therapy, and facet injection with radiofrequency (RF) ablation of the L3 and 4 medial branches and L5 dorsal rami. He noted resolution of the pain radiating to his leg, but there was persistent, although improved LBP. At the MEB exam, 5 months prior to separation, the examining physician reported the history as above and noted that the CI continued to have mid and LBP which prevented him from meeting his military duties including the inability to run, ruck, or jump. The MEB physical exam noted lumbar tenderness without spasm or abnormal curvature (the scoliosis was apparent on imaging). The Board notes that this exam was prior to completion of the RF ablation and that the LBP did improve after this.

At the VA Compensation and Pension (C&P) exam, a month prior to separation, the CI reported a similar history and that his mid and LBP had progressively worsened. He was noted to have an antalgic gait, but not to use an assistive device. On examination, he was noted to have guarding of the lumbar muscles, but spasm was not documented. Sensory, motor and deep tendon reflex exams were normal. ROM is charted above. The Board directs attention to its rating recommendation based on the above evidence. The ROM from the MEB exam supports the 20% rating awarded by the PEB and is in accordance with VASRD rating guidance. The CI did continue to receive treatment and stated that he had decreased symptoms after the RF ablation. His ROM is improved on the VA C&P examination, which is both more proximate to separation and done after the ablation. Hence, it probably better reflects his permanent condition and the Board concurs with the 10% rating, coded 5242, assigned by the VA. However, the Board is charged not to reduce a rating granted by the PEB. There was no evidence of incapacitating episodes due to intervertebral disc disease that would meet the criteria for a minimum rating under the alternative formula for incapacitating episodes due to intervertebral disease. There was no evidence of ratable peripheral nerve impairment in this case. Although there were symptoms of pain radiation, MRI examinations did not demonstrate nerve root impingement and examinations proximate to separation demonstrated intact strength, reflexes and sensation. 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 radiating pain from the back condition, 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. The PEB determined the spinal scoliosis was not separately unfitting. The scoliosis was very mild, and most likely developmental in nature rather than due to muscle spasm as muscle spasm was not documented to be present at the time X-rays were obtained. While scoliosis can cause pain, this cannot be separated from the underlying mid and LBP even if present and a separate rating is prohibited (§4.14, avoidance of pyramiding). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the LBP condition.

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, although the PEB initially relied on the USAPDA pain policy for rating, the final PEB determination was adjudicated independently of that policy. In the matter of the back condition, the Board unanimously recommends a disability rating of 20%, coded 5299-5237 IAW VASRD §4.71a. In the matter of the scoliosis condition, the Board unanimously recommends no change from the PEB determination as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Lumbosacral Strain | 5299-5237 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110714, 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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120014307 (PD201100512)

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 XXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA