RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1100521 SEPARATION DATE: 20080725

BOARD DATE: 20120113

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SGT/E-5 (42A, Human Resources) medically separated for chronic low back pain (LBP). The CI has had a long history of LBP. He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Chronic LBP was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions (lateral epicondylitis and insomnia) were listed on the DA Form 3942 as medically acceptable. The PEB found the LBP unfitting, and rated it 20% IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was thus medically separated with a 20% disability rating.

CI’s CONTENTION: “My original evaluation and physical was deemed inadequate and incomplete. The VA has since completed another evaluation and my rating is 40% for my back and another 10% for the nerve damage in my legs caused by the back surgery. Thus making me eligible for Medical Retirement.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army PEB – dated 20080428** | **VA (1 mo. Pre Separation) – All Effective 20080726** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain  | 5241 | 20% | Intervertebral Disk Herniation  | 5243 | 20%\* | 20080606 |
| Left Lateral Epicondylitis | Not Unfitting | Left Lateral Epicondylitis | 5208-5024 | 10% | 20080606 |
| Insomnia | Not Unfitting | Insomnia | 9499-9411 | NSC | 20080606 |
| ↓No Additional MEB/PEB Entries↓ | Not Service Connected (NSC) x 3 | 20080606 |
| **Combined: 20%** | **Combined: 30%** |

\*VA rating for the low back pain condition was later increased to 40%, based on a subsequent VA Rating Decision (20101103)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the significant impairment with which his conditions continue to burden him. The Board is subject to the same laws for Service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board’s authority resides in evaluating the fairness of DES fitness decisions and rating determinations at the time of separation. The Board also acknowledges the CI’s contention for Service ratings for other conditions, and notes that its recommendations in that regard must also comply with the same governance. While the DES considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a service member’s career, and then only to the degree of severity present at the time of separation. The DVA, however, 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 his degree of impairment vary over time.

Low Back Pain (LBP). The CI developed low back pain in July 2004 while lifting a heavy crate. His symptoms improved within a week. In January 2005, he re-injured his back while playing with his daughter. Magnetic resonance imaging (MRI) revealed L4-L5 disc herniation. He was treated with oral medication, physical therapy (PT), and epidural steroids, but did not have significant improvement. In May 2006 he had Intradiscal Electrothermal (IDET) therapy. The IDET made him worse. In March 2007, he underwent discectomy and fusion at L4-L5 and L5-S1. After surgery, despite intensive rehabilitation, the CI’s LBP persisted and an MEB was initiated.

At his March 2008 MEB evaluation, four months prior to separation, the CI complained of low back pain, worse with prolonged sitting. On examination, he walked without difficulty. There was normal strength and sensation. Reflexes were normal except for the left Achilles which was present but slightly diminished. Straight leg raise (SLR) test was negative. Waddell signs were negative. Signs of intervertebral disk syndrome (IVDS) were absent. Thoracolumbar range-of-motion (ROM), measured by PT a week earlier, was somewhat limited (see chart below). There was localized tenderness, muscle spasm and abnormal gait, but no abnormal spinal contour. At the June 2008 VA Compensation and Pension (C&P) evaluation, six weeks prior to separation, the CI was having back pain, with occasional leg pain. There was normal posture, normal gait, some muscle tenderness, and some lumbar flattening. The examiner specifically stated that there was no muscle spasm or guarding severe enough to cause abnormal gait or abnormal spinal contour. Thoracolumbar ROM was restricted (see chart below). Sensation, strength, and reflexes were all normal. Waddell’s signs were negative. Signs of IVDS were not present. Two goniometric ROM evaluations were in the record, and are summarized in the chart below.

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| Goniometric ROM Thoracolumbar | MEB/PT – 19 wks. Pre-Sep(20080314) | VA C&P – 6½ wks. Pre-Sep(20080609) |
| Flexion (90⁰ is normal) | 40⁰ | 40⁰ |
| Combined (240⁰ is normal) | 160⁰ | 155⁰ |
| §4.71a Rating | 20% | 20% |

The Board carefully reviewed all evidentiary information available. The PEB and the VA had used different codes for the low back pain condition, but both had assigned a disability rating of 20%. The two ROM evaluations were very similar. Thoracolumbar ROM measured by both the MEB/PT and the C&P exams fit the VASRD criteria for a 20% rating based on forward flexion greater than 30 degrees but not greater than 60 degrees. The Board determined that there was no path to a rating higher than 20% for the back condition. No exam in evidence documented spinal ankylosis. There was no evidence that the CI was having incapacitating episodes that would warrant a higher rating under code 5243 (intervertebral disc syndrome). Additionally, there was no evidence of ratable peripheral nerve impairment in this case. All evidence considered, there is not reasonable doubt in the CI’s favor to justify a Board recommendation for other than the 20% rating assigned by the PEB for the low back pain condition. After due deliberation, the Board unanimously recommends a rating of 20%. It is appropriately coded 5241, and meets criteria for the 20% rating level.

Other PEB Conditions. Lateral epicondylitis of the left elbow and insomnia were adjudicated by the PEB as “not unfitting.” Neither of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. They were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory performance of required military duties. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for either of the stated conditions.

Remaining Conditions. Lumbar radiculopathy, chronic obstructive pulmonary disease (COPD), scars, hearing loss, and several other conditions were also reviewed by the action officer and considered by the Board. None of these conditions were clinically significant during the MEB/PEB period, none carried profiles and none were implicated in the commander’s statement. There was no evidence for concluding that any of these conditions interfered with duty performance to a degree that could be argued as unfitting. No other conditions were service connected with a compensable rating by the VA within twelve months of separation. 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the low back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the left lateral epicondylitis, insomnia, lumbar radiculopathy, COPD, hearing loss, scars, 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5241 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110713, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 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 MrXXXXXXXXXXXX (PD201100521)

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:

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA