RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100543 SEPARATION DATE: 20030616

BOARD DATE: 20120321

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, Staff Sergeant/E-6 (92Y20/Unit Supply Specialist), medically separated for chronic low back pain (LBP). The CI reported that his initial onset of lower back pain occurred after he lifted a heavy object and that his pain has been both continuous and progresses in nature. Despite extensive physical therapy, chiropractic care and epidural steroid injections, the CI did not respond adequately to treatment and was unable to fully perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. The CI was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded “R S1 Radiculitis with Chronic LBP” 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) packet will be discussed below. The PEB adjudicated the “chronic LBP in the S1 dermatome” condition as unfitting, rated 10%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. Initially the CI appealed the PEB ruling and requested a Formal (FPEB) and then withdrew his request and accepted the IPEB’s decision. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “I was rendered Non-Deployable due to my medical conditions. Tear in lower back L-4, L-S and degenerating disk disorder.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20030213** | **VA (2 Mo. Pre Separation) – All Effective Date 20030617** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic LBP in the S1 Dermatome | 5299-5295 | 10% | Degenerative Disease Lumbar Spine | 5292-5242 | 40%\* | 20030421 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 6\*\*/Not Service Connected x 5 | 20030423 |
| **Combined: 10%** | **Combined: 40%\*\*** |

\*Degenerative Disease Lumbar Spine increased to 40% from initial rating of 20% effective from 20030617 after Board of Veterans’ Appeals Decision dated October 3, 2007 per Decision Review Officer. Rating continued through 20100901.

\*\*Mixed Tension Headaches 8199-8100, Left Hand Carpal Tunnel Syndrome 8515, Right Hand Carpal Tunnel Syndrome 8515 were all increased to 10% from 0% all effective from 20080116.

\*\*\*Current combined evaluation 60% effective from 20080116 with temporary increases related to bilateral carpal tunnel surgeries.

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ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Chronic Low Back Pain: There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams, as well as the MEB narrative summary (NARSUM) exam are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB ~6 Mo. Pre-Sep(20021219) | Physical Therapy ROM ~5 Mo. Pre-sep20030116 | VA C&P ~ 2 Mo. Pre-Sep(20030421) |
| Flex (0-90) | About 45⁰\* | 29° | 45⁰ |
| Ext (0-30) | Full | 7° | 10⁰ |
| R Lat Flex (0-30) | Full | 10° | 20⁰ |
| L Lat Flex 0-30) | Full | 8° | 20⁰ |
| R Rotation (0-30) | No comment | No comment | No comment |
| L Rotation (0-30) | No comment | No comment | No comment |
| COMBINED (240) |  |  |  |
| MRI disc bulge/annular tear L4-5 mild DDD L3-4; EMG essentially normal | \*Secondary to pain; Tender to palpation(TTP); midline at L4,5 region; + straight leg raise(SLR) on the right, negative on left; sensory intact to light touch; motor 4/5 for hip flexion, extension, and abduction and ankle dorsiflexion but this was due to pain; reflexes +2 bilaterally | No other exam performed, ROM only | no motor weakness, atrophy or radicular/neurological deficits in lower extremities; localized tenderness in spine; +SLR at 30 bilaterally with pain in back-no radiation |
| §4.71a Rating 5295 | 10% |  | 10% |
| 5292 (ROM) | 20% if Moderate, 40% if Severe | 40% if Severe | 20% if Moderate, 40% if Severe |

The CI had a long history of chronic LBP that was well documented in the service treatment record (STR) dating to November 1996. The CI had a motor vehicle accident in November 1996 and was diagnosed with lumbar strain. The CI was treated sporadically for LPB until May 2001 when he was seen by physical therapy for a three month history of LBP, and TTP spine. The CI failed extensive physical therapy and he was referred for chiropractic intervention. In September 2001 the chiropractor noted TTP L5, S1; left leg shortening ¼ inch and paralumbar muscle spasms. The CI’s LBP did not improve and he was given an epidural steroid injection due to an annular tear at L4-5 in November 2001. An electromyelogram done in October 2002 demonstrated that findings did not meet criteria for a S1 radiculopathy; however these findings do suggest a denervation process in an S1 radicular pattern. The MEB examination 5 months prior to separation indicated constant, nonradiating achy LBP located at the midline lower lumbar region with associated tingling sensation in the right leg greater than the left leg with a burning sensation in the right heel. The examiner further noted that the CI had significant pain made worse with running, push-ups and sit-ups; pain and discomfort that caused interference with his sleep; an inability to wear a rucksack, LBE, Kevlar or MOPP gear; an inability to fire a weapon secondary to pain; and, an inability to do a physical fitness test such as push-ups, sit-ups or running due to pain. A physical therapy examination 5 months prior to separation documented the ROM measurements in the chart above. The VA Compensation & Pension (C&P) examination 2 months prior to separation noted that the CI had received two epidural steroid injections for his chronic LBP with the last one being given in October 2002. The examiner noted localized tenderness in the spine and lumbosacral area with limited forward flexion; however, there was no motor weakness, atrophy or radicular, neurological deficit in the lower extremities. The CI had functional limitations of frequent bending, stooping and lifting heavy weights due to chronic LBP.

The 2002 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, were in effect at the time of separation and then changed to the current §4.71a rating standards on 26 September 2003. The 2002 standards for rating based on range of motion (ROM) impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. When older cases have goniometric measurements in evidence, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation. For the reader’s convenience, the 2002 rating codes under discussion in this case are excerpted below.

**5295 Lumbosacral strain:**

Severe; with listing of whole spine to opposite side, positive

Goldthwaite's sign, marked limitation of forward bending in

standing position, loss of lateral motion with osteoarthritic

changes, or narrowing or irregularity of joint

space or some of the above with abnormal mobility on forced

motion........................................................................... 40%

With muscle spasm on extreme forward bending, loss of lateral

spine motion, unilateral, in standing position............... 20%

With characteristic pain on motion............................... 10%

With slight subjective symptoms only........................... 0%

**5292 Spine, limitation of motion of, lumbar:**

Severe........................................................... 40%

Moderate...................................................... 20%

Slight............................................................. 10%

**5293 Intervertebral disc syndrome:**

Pronounced; with persistent symptoms compatible

with sciatic neuropathy with characteristic

pain and demonstrable muscle spasm, absent

ankle jerk, or other neurological findings appropriate

to site of diseased disc, little intermittent

relief ....................................................................... 60%

Severe; recurring attacks, with intermittent relief 40%

Moderate; recurring attacks ................................. 20%

Mild ....................................................................... 10%

Postoperative, cured .............................................. 0%

The Board noted that both the PEB and VA examinations were sufficiently documented in terms of ratable data for the criteria in place at the time of their rating determinations and that the CI’s overall condition and described history were congruent between these two examinations. The MEB NARSUM Examination was as complete as the VA C&P examination but the VA examination was more proximate to separation and was therefore adjudged to have a higher probative value.

The PEB coded the chronic LBP analogous to 5295 (lumbosacral strain) rated at 10%. The VA coded the degenerative disease lumbar spine 5292 (spine, limitation of motion of, lumbar) analogous to 5010 (arthritis, due to trauma, substantiated by x-ray findings) initially at 20%. In November 2007 the VA decision review officer rendered an opinion and increased the entitlement for the degenerative disease lumbar spine to 40%. The effective date was the day after separation from service indicating the initial VA rating of 20% was an error. The rating decision was based on the original VA C&P examination from April 2003. By the time this decision was rendered, the VASRD rules for rating the spine had been updated to the current standards. The VA looked at the rating criteria from the time of separation in 2003 and noted his condition more nearly approximated that of severe (rather than moderate) limitation of motion of the low back for the entire period of the appeal, from the initial rating in 2003 through 2007. The decision noted both the original VA C&P examination and a later examination from 2007 supported this determination of a severe limitation of motion and neurologic examinations performed in both 2003 and 2007 did not support a diagnosis of radiculopathy. The 2007 VA C&P examination documented a more severe limitation of spinal motion with forward flexion limited to 30 degrees, extension limited to 10 degrees, and right and left lateral flexion and rotation all limited to 15 degrees. The VA also looked at rating the CI’s back condition under the updated rating criteria and noted the condition did not meet the criteria for a rating higher than 40%. The decision review officer also discussed rating the back condition under incapacitating episodes which was included in the VASRD effective September 2003 and determined there was no evidence of any incapacitating episodes requiring bed rest prescribed by a physician.

The Board considered the PEB’s rating under the 5295 code for lumbosacral strain. Both the NARSUM and VA C&P exams documented pain on flexion and tenderness of the spine which could be interpreted as “with characteristic pain on motion” and probable moderate degree of pain. If the lumbosacral strain was considered severe, and the forward flexion limited to 45 degrees was considered a marked limitation, a 40% rating could be applied under 5295. The CI’s permanent profile stated he was not to run at all but could walk, bike, swim, and walk or run in a pool at his own pace and distance. He was limited to 30 pounds of lifting and was restricted from doing sit-ups and push-ups. The VA C&P exam from 2003 noted he was walking three miles three times a week. This exam also noted the CI was limited in frequent bending and stooping, was not able to run, jog, or play sports, but was able to do his job in supply without restriction. While these functional limitations are significant, they do not support a characterization of severe lumbosacral strain and the 40% rating is not supported. While the PEB used the 5295 code, it labeled the condition as “chronic LBP in the S1 dermatome” and this implies intervertebral disc syndrome which is rated under 5293. The MEB NARSUM diagnosed right S1 radiculitis with chronic low back pain. Therefore the Board also considered rating under 5293. The NARSUM exam noted the CI’s pain was of moderate intensity and constant and also documented tingling in the right leg and a burning sensation in his right heel along with a positive straight leg raise on the right. However, the frequency of these radicular symptoms is not documented. The 2003 C&P exam does not include any radicular symptoms but did document a positive straight leg raise bilaterally at 30 degrees with pain in the back that did not radiate. To date the VA has not diagnosed any peripheral neuropathy or radiculopathy. Also the MRI and EMG findings do not support a significant nerve involvement. Without a clear diagnosis of radiculopathy or frequency of symptoms, there is insufficient evidence to rate under 5293. The Board therefore looked at ROM limitations. The VASRD in place at the time of separation determined ratings for 5292 spine, limitation of motion of, lumbar by classifying ROM limitations as slight, moderate, or severe. Both the NARSUM and 2003 VA C&P exams document forward flexion limited to 45 degrees. As this is a loss of half of the total motion, the Board determined the limitation exceeded the characterization of slight and discussed at length whether the CI’s limitation should be considered moderate or severe. Today’s VASRD rating criteria for diseases and injuries of the spine focuses on forward flexion and total combined range of motion. Under these criteria, a 20% rating is applied for ROM of the thoracolumbar spine forward flexion greater than 30 degrees but not greater than 60 degrees or a combined range of motion of the thoracolumbar spine not greater than 120 degrees. If today’s criteria were applied to either of the two exams in question, a 20% rating would result. Forward flexion limited to 30 degrees or less or favorable ankylosis of the entire thoracolumbar spine is required for the higher rating and neither of these is present. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the Chronic LBP condition.

The Board could find no evidence for an unfitting radiculopathy justifying additional service rating for peripheral nerve impairment. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. There was no evidence of any motor or functional impairment, therefore the Board cannot support a recommendation for additional rating based on peripheral nerve impairment.

Remaining Conditions. Other conditions identified in the DES file were headaches, occasional sinusitis, numbness and tingling to lower extremities, swollen and/or painful knee, and hemorrhoids. 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. Additionally bilateral carpal tunnel syndrome, deformed nail right big toe, and several other non-acute conditions were noted in the VA 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. In the matter of the chronic LBP condition, the Board unanimously recommends a rating of 20%, coded 5292 IAW VASRD §4.71a. In the matter of the headaches, occasionally sinusitis, numbness and tingling to lower extremities, swollen and/or painful knee, and hemorrhoids 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.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5292 | 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

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

1. 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 to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

 Deputy Assistant Secretary

 (Army Review Boards)