RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100576 SEPARATION DATE: 20040515

BOARD DATE: 20120424

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (13F, Fire Support Specialist), medically separated for low back condition. He did not respond adequately to conservative non-operative treatment and was unable to fulfill the physical demands within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was issued a permanent U3 profile and underwent a Medical Evaluation Board (MEB). Chronic low back pain (LBP) with degenerative disc disease (DDD) 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) packet will be discussed below. The PEB adjudicated the chronic subjective LBP condition as unfitting, rated 10% with application of Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Veteran condition of low back pain due to lumbar degenerative disc disease was more severe than range of motion result indicated. Veteran range of motion of 220 was with great pain and to a degree, forced. A 10% rating support limited duty of a profile status, not medical separation. This does not fix.” 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 20040326** | **VA (3 Mo. After Separation) – All Effective Date 20040516** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Subjective Low Back Pain | 5299-5237 | 10% | Chronic Lumbar Strain with Normal Appearing LS Spine | 5237 | 10% | 20040815 |
| ↓No Additional MEB/PEB Entries↓ | Mild Tinea Pedis, Bilateral | 7813-7806 | 10% | 20040815 |
| 0% x 1\*/Not Service-Connected x 3 | 20040815 |
| **Combined: 10%** | **Combined: 20%\*\*** |

\*20071126 increase pes planus from 0% to 30% effective 20070618 for \*\*combined 40%

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that the medical evidence of a combined 220 degree thoracolumbar range-of-motion (ROM) did not reflect his severe pain disease. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted service improprieties in the disposition of a case. 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. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board also acknowledges the CI's contention suggesting that ratings should have been conferred for conditions not diagnosed while in the service but later determined to be service-connected by the Department of Veterans’ Affairs (DVA). 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 DVA, however, 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.

Low Back Condition. The CI injured back in 1995 due to a training accident while in a military vehicle, then reinjured his back in 2002 which led to a more thorough evaluation and ultimately was diagnosed with two level DDD. In December 2003 he was seen by orthopedics who upheld the diagnosis, and in addition, documented there was no radiculopathy and opined he was a nonsurgical candidate and recommended an MEB. His permanent profile limitations included; no running of distance greater than two miles, road marching, jumping, and authorized an alternative aerobic physical training event, and swim at own pace. The commander’s statement documented worsening of his low back condition and as of January 2004 he was not working in his MOS, and corroborated the profile limitations. There were two goniometric ROMs evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Goniometric ROM - Thoracolumbar | MEB ~ 2 Mo. Pre-Sep | VA C&P ~ 3 Mo. After-Sep |
| Flex (0-90) | 90⁰measured 95⁰ | 75⁰ |
| COMBINED (240) | 230⁰measured 270⁰ | Not measured⁰ |
| Comment |  | No spasm, nl gait |
| §4.71a Rating | 10% measured 0% | 10% |

The narrative summary (NARSUM) completed for the MEB documented symptoms of low back pain that were slight and constant. The physical exam demonstrated a normal neuromuscular exam, able to walk on the heels and toes without difficulty, negative Waddell’s signs (likely no psychological undertones) and did not comment on spinal contour or spasm. The examiner referenced the MRI completed in Korea which showed diffuse disc enlargement beyond the vertebral margins suggesting bulging annulus yet there was no evidence of disc herniation. The orthopedic exam completed 5 months prior to separation documented full active ROM of the lumbar spine and a normal neuromuscular exam. The VA Compensation and Pension (C&P) exam documented symptoms of back pain that was an 8 on a scale of 10 with 10 being the worst, increased pain on sitting for prolonged periods of time or climbing stairs, radiating pain to the right shoulder blade especially after walking more than one mile, pain that interfered with his sleep at night and an inability to heavy lift. The physical exam demonstrated painful ROMs, negative Deluca criteria, normal gait and no muscle spasm.

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB and VA chose the same coding options for the condition and both ruled IAW the VASRD §4.71a general rating formula for diseases and injuries of the spine. The PEB ruled 10% based on a combined thoracolumbar ROM 220 degrees and the VA ruled 10% based on limited flexion. Neither the PEB nor the VA had evidence which suggested functional loss due to pain or flare-ups. The Board recognized that the combined goniometric ROM cited in the PEB ruling was in error mathematically and the correct combined ROM was 230 degrees which would still allow the 10% per the VASRD §4.71a. The Board also recognized the true measured combined ROM was 270 degrees which would allow 0% per VASRD §4.71a, however the Board's recommendation may not produce a lower rating than that of the PEB. There was no evidence of documentation of incapacitating episodes which would provide for additional or higher rating. There was no evidence of ratable peripheral nerve impairment in this case. There is not reasonable doubt in the CI’s favor, therefore, to justify a Board recommendation for other than the 10% rating assigned by the PEB for the low back condition.

Remaining Conditions. One other condition identified in the DES file was bilateral pes planus. This condition was not significantly clinically or occupationally active during the MEB period; and did not carry an attached profile; and was not implicated in the commander’s statement. This condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to separation rating. Additionally tinea pedis and several other non-acute conditions were noted in the VA rating decision proximal to separation 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. 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 condition condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the bilateral pes planus condition 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. 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** |
| Chronic Subjective Low Back Pain  | 5299-5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110805, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 XXXXXXXXXX

 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 XXXXXXXXXXXXX, AR20120008436 (PD201100576)

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 XXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA