RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1100615 SEPARATION DATE: 20090306

BOARD DATE: 20120329

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was Reserve HM2/E-5 (HN/8404), medically separated for discogenic low back pain (LBP). He suffered an impact injury to the buttocks and lumbar spine in July 2008 that subsequently required an aeroevacuation. He was later diagnosed with lumbar spinal stenosis and left radiculopathy. He was treated conservatively and declined an epidural steroid injection as a temporizing measure for pain relief. He did not respond adequately to treatment and was unable to perform within his rating or meet physical fitness standards. He was placed on restricted duty and underwent a Medical Evaluation Board (MEB). “Lumbago; other and unspecified disc disorder of lumbar region and thoracic or lumbosacral neuritis or radiculitis, unspecified” were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. 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 discogenic lower back pain (LBP) condition as unfitting, rated 10%; additionally possible left lower extremity radiculopathy and annular tear at L4/5 and L5/S1 conditions were rated category II, (contributing to the unfitting condition) with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “I had put in almost 15 years in the US Navy and Naval Reserve. I was injured while on active duty for training and have to have a Medical Board determination to find me fit or unfit for duty. I believe that I should have been given a Medical Retirement based on my time in service, due to the injury being while on active duty and the Department Of Defense having to do a evaluation board while on active duty”. He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20090126** | | | **VA (11 Mos. After Separation) – All Effective 20080804** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Discogenic Low Back Pain | 5237 | 10% | Spinal Stenosis with Degenerative Disc Disease | 5238 | 20% | 20100202 |
| Possible Left Lower Extremity Radiculopathy | Category 2 | |
| Annular Tear at L4/5 and L5/S1 | Category 2 | |
| ↓No Additional MEB/PEB Entries↓ | | | Chronic Left Hip Strain | 5299-5252 | 10% | 20100202 |
| 0% x 0/Not Service Connected x 3 | | | 20100202 |
| **Combined: 10%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: The Board utilizes Department of Veterans’ Affairs evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Discogenic Low Back Pain Condition. At his narrative summary (NARSUM), 4 months prior to separation, the CI complained of LBP and the NARSUM indicated all prior right leg numbness symptoms had resolved. The MEB exam accomplished two weeks prior indicated left great toe weakness on extension and radiating left leg pain. MRI indicated mild central canal stenosis without nerve impingement and bulging discs (not frank herniation) at L4-5 and L5-S1. On physical exam, there was no specific tenderness to palpation (TTP) of the lumbosacral spine and no significant muscular spasms. No specific pain was elicited by any maneuvers. No motor weakness was noted. Deep tendon reflex (DTR) testing was normal bilaterally. Gait was normal including walking on toes and heels. Range-of-motion (ROM) measurements were done, but were lacking rotation measurements or indication of repetition (see chart). At his February 2010 Compensation and Pension (C&P) exam, 11 months after separation, the CI complained of persistent back pain with radiating pain into the right lower extremity. There were no incapacitating periods for the past 12 months. Gait and spinal contour were normal. There was some tightness of the paravertebral muscles at L4-5. Straight leg raises were negative and muscle strength, reflexes and sensory testing were normal. ROMs were specified with DeLuca criteria and specified painful motion with ROMs as charted below. There were two ROM evaluations in evidence which the Board weighed in arriving at its rating recommendation and they are summarized below.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar | Separation Date: 20090306 | |
| Goniometric ROM | MEB PT – 3 mo. Pre-Sep  (20081024) | VA C&P – 11 mo. After-Sep  (2010202) |
| Flexion (90⁰ is normal) | 75⁰ | 50⁰ |
| Combined (240⁰ normal) | Incomplete (no rotation)  [Min 125⁰, Max 185⁰] | 190⁰ |
| Comments | Normal gait; no significant muscle spasm or pain on maneuvers | Pain on movement; no spasm or weakness; same ROM with repetition |
| §4.71a Rating | 10% | 20% |

The PEB and the VA used similar codes for the back pain, but they assigned different rating percentages. The MEB ROM values were incomplete as there was no measurement of rotation. However, if rotation measurements were zero, the combined ROM of 125⁰ would still be within the 10% rating level. The VA exam completed multiple repetitions and specified DeLuca criteria did not change the ROM values. The MEB exam was closest to separation, more consistent with outpatient notes, and more reflective of the anticipated severity suggested by the clinical pathology. Although the MEB physical noted left great toe weakness which might have been a radiculopathy, the NARSUM and VA exams demonstrated no motor or sensory loss indicative of a ratable radiculopathy. A neurology evaluation one month prior to separation documented minimally diminished left knee flexion and ankle dorsiflexion strength (4/5) and “hypoesthesia in left S1, S2” which would not have risen to the level of being unfitting. The radiating pain is considered under the general spine formula “with or without symptoms such as pain (whether or not affected by residuals of injury or disease.” There was therefore no evidence of a separately it radiates), stiffness, or aching in the area of the spine ratable (radiculopathy) peripheral nerve condition. After due deliberation, the Board unanimously agreed to assign greater probative value to the MEB examination, because of the factors elaborated above. After careful review of all evidentiary information available, the Board could not find sufficient reasonable doubt in the CI’s favor, for recommending a rating higher than 10%. The Board therefore, unanimously recommends a rating of 10% for the low back pain condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as category II by the PEB were possible left lower extremity radiculopathy and annular tear at L4/5 and L5/S1. There were limitations for duty for left leg radiculopathy and radiculopathy was discussed above. Annular tear was the basis for the unfitting and rated low back pain and was fully considered in the rating above. Radiculopathy was not implicated in the non-medical assessment (NMA) or noted as failing retention standards. Both category II conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance or were separately ratable. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB category II adjudication for any of the stated conditions.

Remaining Conditions. Several additional non-acute conditions or medical complaints were also documented, but were not significantly clinically or occupationally active during the MEB period; none carried attached duty limitations, or 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. Additionally, chronic left hip strain (VA 10%), and several other non-acute conditions were noted in the VA records 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. In the matter of the low back pain condition, the Board unanimously recommends no change in the PEB 10% unfitting adjudication. In the matter of the possible left lower extremity radiculopathy and annular tear conditions, the Board unanimously recommends no change in the PEB category II adjudication. In the matter of 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** |
| Discogenic Low Back Pain | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110610, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

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 letter dtd 12 Apr 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 individuals’ 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:

Assistant General Counsel

(Manpower & Reserve Affairs)