RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100672 SEPARATION DATE: 20051001

BOARD DATE: 20120606

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (37F / Psychological Operations Specialist), medically separated for chronic low back pain (LBP). He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 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. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the low back condition as unfitting, rated 10%. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “The following conditions were present, but not taken into account during my medical board. Spinal stenosis, sacroiliac weakness and injury, intervertebral disc syndrome, hearing loss, spinal flexation, and neck and shoulder injury. These conditions and issues are noted in my medical record.”

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 conditions spinal stenosis, sacroiliac weakness and injury, spinal fixation, intervertebral disc syndrome, as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting back pain condition. The other requested conditions hearing loss, neck injury, and shoulder injury are not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records.

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20050714** | **VA (2 Mo. After Separation) – All Effective Date 20051002** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5299-5237 | 10% | DDD w/ Herniated Nucleus Pulposus Lumbar Spine | 5243 | 10%\* | 20050802 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 0/Not Service-Connected x 0 | 20050802 |
| **Combined: 10%** | **Combined: 10%** |

\*VA rating was based on evidence of service treatment records rather than C&P examination.

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.

Chronic Low Back Pain Condition. There were two goniometric 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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| ROM - Thoracolumbar | PT ~ 5 Mo. Pre-Sep(20050425) | VA C&P ~ 2 Mo. Pre-Sep(20050802) |
| Flexion (90⁰) | 80⁰ | 90⁰ |
| Extension (30⁰) | 20⁰ | 30⁰ |
| R Lat Flex (30⁰) | 30⁰ | 30⁰ |
| L Lat Flex (30⁰) | 30⁰ | 30⁰ |
| R Rotation (30⁰) | 45⁰ | 30⁰ |
| L Rotation (30⁰) | 35⁰ | 30⁰ |
| Combined (240⁰) | 220⁰ | 240⁰ |
| Comment |  | No pain with motion.No muscle spasm.Normal gait, posture, and spinal contour. |
| §4.71a Rating | 10% | 0% |

The CI had chronic LBP beginning in 2003 associated with some radiating pain into the right thigh without weakness, loss of sensation or reflex changes. Magnetic resonance imaging (MRI) on 27 February 2004 demonstrated degenerative disc disease (DDD) with a bulging intervertebral disc at L4-5 without spinal canal or neuroforaminal stenosis, and a small right paracentral disc protrusion at L5-S1 associated with minimal right neuroforaminal stenosis without spinal canal stenosis or left sided neuroforaminal stenosis. Neurosurgical evaluation resulted in recommendation for non-surgical treatment, however no significant improvement in back pain resulted. A follow up neurosurgery evaluation on 20 January 2005 noted persistent right paraspinal back pain with minimal radicular symptoms (“does not really go down his leg very much”). The neurosurgeon ordered a computed axial tomographic (CT) myelogram. At a 4 February 2005 primary care clinic evaluation, the CI complained of continued chronic LBP with intermittent paresthesia to the lateral aspects of both thighs. On examination, there was tenderness of the paraspinous muscles, flexion to 80 degrees and extension to 35 degrees. Straight leg raising was negative, strength and reflexes were normal. The CT myelogram on 9 February 2005 demonstrated the same findings as the MRI the year before except that the right paracentral L5-S1 disc protrusion impressed the thecal sac and displaced the right S1 nerve root. Neurosurgery follow up evaluation on 15 February 2005 recorded that the CI’s symptoms were back pain and that there was not any significant leg pain and that there were no radicular symptoms that correlated with the findings on the CT myelogram (the CI’s complaint of lateral thigh numbness of both thighs does not correlate with the anatomic findings on MRI or CT myelogram). The neurosurgeon’s diagnosis was mechanical back pain and continued non-surgical treatment was advised. The MEB narrative summary (NARSUM) dated 18 April 2005, noted the above history, and recorded the CI used Tylenol as needed for pain. The CI was tender in the right sacroiliac joint area. Straight leg raising was negative, and strength, reflexes, and sensation were intact and normal. The PEB rated the back pain condition 10% coded 5299-5237, lumbosacral strain, consistent with the neurosurgeon’s diagnosis of mechanical LBP. Although the PEB may have applied the US Army Physical Disability Agency (USAPDA) pain policy, the 10% rating was consistent with the VASRD §4.71a standards under the general rating formula for diseases and injuries of the spine. The VA Compensation and Pension (C&P) examination was 2 August 2005, 2 months prior to separation. The history of back pain was recounted. The examiner recorded, “In general, he can sustain heavy physical activities without immediate distress.” The physical examination was normal including gait, posture, spinal contour, range of motion and neurologic examination. X-rays were normal. The examiner concluded “No pathology is identified on physical examination to render a diagnosis.” The VA assigned a 10% rating coded 5243 intervertebral disc disease based on based on the evidence of service treatment records rather than the C&P examination which demonstrated non-compensable examination findings. Although the PEB and VA chose different coding options for the condition, this did not bear on rating. 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. After due deliberation in consideration of the totality of the evidence, the Board concluded that there is not reasonable doubt in the CI’s favor, to justify a Board recommendation for other than the 10% rating assigned by the PEB for the back condition.

Contended PEB Conditions. The CI’s application asserts that separate compensable ratings should be considered for spinal stenosis, sacroiliac weakness and injury, spinal fixation, and intervertebral disc syndrome. Chiropractic examination in 2003 noted the CI was tender with joint fixation about the SI joint. Joint fixation is a chiropractic examination finding denoting decreased mobility. The MEB history and physical examination note tenderness about the right SI joint area. X-rays, MRI, and bone scan demonstrated no abnormality of the SI joint. MRI and CT myelogram documented intervertebral disc disease, however spinal stenosis was not shown.

All of these are associated with the CI’s chronic back pain condition and are subsumed under the rating for the back pain condition. Providing separate ratings based on the same impairment is prohibited by §4.14 (avoidance of pyramiding). While no sacroiliac joint pathology was shown, §4.66 directs that the lumbosacral and sacroiliac joints should be considered as one anatomical segment for rating purposes. Therefore the Board concluded that there was no basis for additional disability ratings for the CI’s back 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. In the matter of the chronic back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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** |
| Chronic Low Back Pain | 5299-5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110822, 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 XXXXXXXXXXXXXXXXXXXXX, AR20120017720 (PD201100672)

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 XXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA