RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100673 SEPARATION DATE: 20070507

BOARD DATE: 20120209

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TSgt/E-6 (1C471, Tactical Air Command and Control Craftsman), medically separated for a lumbar spine condition*.* The CI had a several year history of low back pain evaluated by several specialists; and, was diagnosed with degenerative disc disease (DDD) and a disc protrusion at L5-S1. He underwent a protracted trial of conservative measures, but did not respond adequately to fully perform within his Air Force Specialty (AFS) or meet physical fitness standards. He was issued an L4 profile and referred for a Medical Evaluation Board (MEB). The lumbar spine condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The PEB adjudicated the lumbar DDD condition as unfitting, rated 10% 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: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions, but does list 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 IPEB – Dated 20070321** | **VA (9 Mo. After Separation) – All Effective 20070508** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain with DDD | 5243 | 10% | Lumbar DDD | 5242 | 10% | 20080223 |
| ↓No Additional MEB/PEB Entries↓ | Cervical DDD | 5242 | 10% | 20080223 |
| Aortic Bicuspid Disorder  | 7000 | 10% | 20080223 |
| Anxiety Disorder  | 9400 | 10% | 20080223 |
| 0% x 5 / Not Service Connected x 2 | 20080223 |
| **Combined: 10%** | **Combined: 30%** |

ANALYSIS SUMMARY:

Low Back Pain Condition. The CI was treated for his back condition for five years prior to separation; and, imaging revealed a large circumferential disc protrusion at the L5-S1 level. He was evaluated by condition was not amenable to surgery; and, despite aggressive therapy with medications several neurosurgeons who concluded that his, physical therapy, and epidural spinal injections, his pain continued to impair AFS duty performance. He had no incapacitating episodes, and denied radicular symptoms. 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. These are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | MEB/PT ~3 Mo. Pre-Sep | VA C&P ~9 Mo. Post-Sep |
| Flexion (90⁰ Normal) | >90⁰ | 90⁰ |
| Combined (240⁰)  | 205⁰ | 220⁰ |
| Comments | No spasm; normal gait and contour. |
| §4.71a Rating | 10% | 10% |

The MEB examiner reported a full ROM with pain at the extremes of flexion and extension. There was no muscle spasm or abnormalities of gait or spinal contour. The Department of Veterans’ Affairs (DVA) Compensation & Pension (C&P) examiner also found no evidence of muscle spasm, abnormal gait or abnormal spinal contour. He recorded a normal neurologic exam to include 5/5 muscle strength in both lower extremities, normal reflexes, and a normal sensory exam. ROM was painful in all planes of motion. There was no apparent weakness, fatigability, or loss of coordination during or following three repetitions of ROM; but, flexion was decreased by 10⁰. The PEB and VA chose different coding options for the condition, but this did not bear on rating. Both the MEB and VA exams are consistent with a 10% rating under the VASRD §4.71a general rating formula for the spine. There was no evidence of ratable peripheral nerve impairment or documentation of incapacitating episodes which would provide for additional or higher rating. There is not reasonable doubt in the CI’s favor, therefore, to justify a Board recommendation for a change in the PEB’s adjudication of the lumbar spine condition.

Remaining Conditions. Other conditions identified in the DES file were depression, high blood pressure and seasonal allergic rhinitis. 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 cervical degenerative disc disease, aortic bicuspid disorder, anxiety disorder and several other non-acute conditions were noted in the VA rating decision 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. 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 lumbar spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the depression, high blood pressure and seasonal allergic rhinitis conditions 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.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lumbar Degenerative Disc Disease with L5/S1 Discopathy | 5243 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110818, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 XXXXXXXXXXXXX

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXX

 Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00673

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

 Sincerely,

XXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings