RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100680 SEPARATION DATE: 20041120

BOARD DATE: 20120426

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (11B, Infantry) medically separated for low back pain (LBP). The CI has had a long history of lower back pain (LBP). He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). The LBP condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB found the LBP condition unfitting, and rated it 10%. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states, “The rating of 10% is very low for these conditions and since my military service they have increased in severity.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Army PEB – dated 20040930** | | | **VA (2 mos. After Separation) – Effective 20041121** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5237 | 10% | Low Back Pain | 5242 | \*10% | 20050118 |
| ↓No Additional MEB/PEB Entries↓ | | | Not Service-Connected (NSC) x 8 | | | 20050118 |
| **Combined: 10%** | | | **Combined: \*10%** | | | |

\*VA Rating for the LBP condition was later increased to 20%, based on a subsequent VA Rating Decision (VARD) dated 20070320

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI that his condition has gotten worse, and may merit consideration for a higher rating. However, the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for future severity of conditions. This role and authority is granted by Congress to the Department of Veterans’ Affairs. The Board’s authority, as defined in DoDI 6040.44, resides in evaluating the fairness of DES fitness and rating decisions at the time of separation. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at separation.

Low Back Pain (LBP). In June 2002, the CI sought medical care for back pain, after a road march. He was treated with medication and physical therapy (PT). In spite of treatment, his problem with LBP persisted and became chronic. Eventually, an MEB was initiated. On 29 June 2004, the CI was seen by physical medicine at Madigan Army Medical Center (MAMC). He reported pain in his lower back that would sometimes radiate into the right thigh. He denied any numbness, tingling, or weakness of the legs. On exam, there was some tenderness present. Straight leg raise (SLR) was negative, and Lasegue’s sign was negative. He also had a negative Patrick’s sign, negative pelvic rock, and negative Gaenslens test. Neurological exam was normal. Range-of-motion (ROM) is summarized in the chart below. Magnetic resonance imaging (MRI) had shown degenerative disc disease (DDD) with disc dessication and protrusion at L5-S1, but no evidence of herniation, canal compromise, or neural foraminal stenosis. As noted above, the Army PEB found his LBP unfitting, and he was medically separated in November 2004. Two months later, the CI had a VA Compensation and Pension (C&P) exam. At that exam, the CI had good posture and normal gait. There was some tenderness in the lumbar region, but no guarding or spasm. He actively raised his right leg to 94 degrees and his left leg to 125 degrees. SLR was negative bilaterally. Two goniometric range-of-motion (ROM) evaluations were in evidence, and are summarized below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB PT – 20 wks. Pre-Sep  (20040629) | VA C&P – 8½ wks. Post-Sep  (20050118) |
| Flexion (90⁰ is normal) | 55/55/55⁰ | 30⁰ |
| Combined (240⁰ is normal) | 160⁰ | 170⁰ |
| Comments | Pain with motion. Extension is the worst. | Good posture, normal gait. No guarding or spasm. |

The Board carefully reviewed all evidentiary information available. The PEB and the VA used different diagnostic codes for the LBP condition, but they both assigned a 10% rating. The Board noted the disparity between the two ROM exams. Thoracolumbar forward flexion was only 30 degrees at his January 2005 C&P exam. However, there were certain inconsistencies in the C&P exam, which caused the Board to question its validity and probative value. A 30⁰ limitation of forward flexion would almost preclude some activities of daily living, such as dressing oneself or riding in a car. The record does not indicate that the CI was unable to dress himself or ride in a car. There is also no evidence that he was unable to sit in a chair, or sit on the examination table. In addition, there were other factors associated with that C&P exam, which caused further diminution of its probative value. In contrast, the 29 June 2004 MEB exam was done by the MAMC Asst. Chief of Physical Medicine & Rehabilitation, and it is clear that he was a skilled examiner. The goniometric ROM measurements were performed in the PT clinic, and included three repetitions in each plane of motion. The MEB examination was more consistent with outpatient notes, and more reflective of the anticipated severity suggested by the clinical pathology. After due deliberation, the Board decided to assign greater probative value to the MEB examination at MAMC, because of the factors elaborated above.

Although the CI complained of some subjective radicular symptoms, examination revealed no objective evidence of motor weakness or other neurological impairment. The Board concluded that there was insufficient evidence of a significant neuropathy that was separately unfitting. After careful consideration of all the evidence, the Board determined that the preponderance of evidence supported a disability rating of 20%, based on forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees. There was not sufficient evidence (nor reasonable doubt in the CI’s favor) to justify a Board recommendation for more than 20%. The Board unanimously recommends a rating of 20% for the LBP condition.

Other Contended Conditions. On the DD Form 294; the CI listed posttraumatic stress disorder (PTSD), tinnitus, sensorineural hearing loss (SNHL), trochanteric bursitis, and tarsal tunnel syndrome. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with military duty performance to a degree that could be argued as unfitting. The Board determined, therefore, that none of these conditions were unfitting, and subject to service disability rating.

Remaining Conditions. Knee pain, ankle fracture, shoulder pain, bunions, heartburn, recurrent ankle sprains, and several other conditions were noted in the DES file. None of these conditions were clinically significant during the MEB/PEB period, nor 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. 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 VA Schedule for Rating Disabilities (VASRD) in effect at the time of the adjudication. In the matter of the LBP condition, the Board unanimously recommends a disability rating of 20%, IAW VASRD §4.71a. In the matter of the PTSD, tinnitus, SNHL, tarsal tunnel syndrome, trochanteric bursitis, knee pain, ankle pain, shoulder pain, bunions, heartburn, or 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic LBP, due to Lumbar Strain and DDD | 5237-5242 | 20% |
| **COMBINED** | **20%** |

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

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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 XXXXXXXXXXX, AR20120008655 (PD201100680)

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 XXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA