RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100713 SEPARATION DATE: 20061105

BOARD DATE: 20120227

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (31B / Military Police), medically separated for Scheuermann’s kyphosis (a thoracic spine condition). The CI had a history of episodic mid-back pain, since at least 2004, which increased significantly in January 2005 with no history of trauma. Radiographs revealed kyphotic deformity with anterior wedging of three thoracic vertebrae (T7-9), consistent with Scheuermann’s disease. His treatment included medications, physical therapy, and chiropractic manipulation. 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 P3 profile and underwent a Medical Evaluation Board (MEB). Scheuermann’s kyphosis 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) file are discussed below. The PEB adjudicated the Scheuermann’s kyphosis condition as unfitting, rated 0% with likely application of the USAPDA pain policy. The CI did not appeal, and was medically separated with a 0% disability rating.

CI CONTENTION: “Seek to have the determination of the MEB reviewed for fairness, consistency and accuracy in accordance with the ongoing reevaluation of MEB ratings. Former servicemember feels the rating was inadequate given the debilitating, career-ending and life-impacting extent of the injury and a verifiable cause of said injury related directly to military service was indeed found. VA provided a rating much higher that the service. I have been rated by the Department of Veterans Affairs for the injury related to my military service which rendered me unlit for duty (aggravated kyphosis, impingement of spinal vertebrae and cartilage). Additionally, the VA has found and rated an additional injury related directly to military service not evaluated as part of my MEB (left shoulder impingement. permanent bursitis).” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20060718** | **VA (7 & 14 Mos. After Separation) – All Effective 20061106** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Scheuermann’s Kyphosis | 5237 | 0% | Scheuermann’s Disease with DDD Thoracic Spine | 5299-5242 | 10% | 20080111 |
| ↓No Additional MEB/PEB Entries↓ | Left Shoulder Impingement | 5201 | 20% | 20070629 |
| 0% x 2/Not Service Connected x 0 | 20080111 |
| **Combined: 0%** | **Combined: 30%** |

\* Vasovagal syndrome added at 0% effective 20091125 (VARD of 20100216)

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the DES operates. The 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. However the Department of Veterans’ Affairs (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 is empowered to evaluate the fairness of service fitness determinations, and to make recommendations for service rating of conditions which it concludes would have independently prevented the performance of required duties (at the time of separation). The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard.

Thoracic Spine (Scheuermann’s Kyphosis) Condition. There were two thoracolumbar spine examinations, with documentation of goniometric range-of-motion (ROM) and additional ratable criteria, in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

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| Goniometric ROM - Thoracolumbar | MEB ~ 6 Mos. Pre-Sep(20060512 & 20060504) | VA C&P ~ 14 Mos. After-Sep(20080111) |
| Flex (0-90) | 80⁰ | 90⁰ (pain begins/ends at 72⁰) |
| Ext (0-30) | 15⁰ | 30⁰ (pain begins/ends at 25⁰) |
| R Lat Flex (0-30) | (23⁰) 25⁰ | 30⁰ |
| L Lat Flex 0-30) | (16⁰) 15⁰ | 30⁰ |
| R Rotation (0-30) | (45⁰) 30⁰ | 30⁰ |
| L Rotation (0-30) | (39⁰) 30⁰ | 30⁰ |
| COMBINED (240) | 195⁰ | 240⁰ |
| Comment | Gait normal, no TTP, Waddell’s neg, Trendelenburg neg, SLR neg, neuro normal, no atrophy | Kyphosis, “ROM is normal,” pain w/ ROM, pain w/ repetitive movement, gait normal, neg Lasegue, no spasm/guarding, no TTP, neuro normal |
| §4.71a Rating | 10% (PEB 0%) | 10%\* |

 \* Conceding painful motion IAW §4.59

The narrative summary (NARSUM), six months prior to separation (with ROMs measured by physical therapy eight days prior) reported mildly reduced ROMs meeting the 10% criteria under the general rating formula for diseases and injuries of the spine, §4.71a. There was no tenderness to palpation, the lumbar spine had no obvious deformities, and the exam was otherwise normal, including gait, Waddell’s, straight leg raise, Trendelenburg (for hip weakness), and neurological evaluation. Radiographs revealed kyphotic deformity with anterior wedging (and Schmorl’s nodes) of thoracic vertebrae T-7, T-8 and T-9; there was no scoliotic deformity, and all other osseous structures were normal.

The VA Compensation and Pension (C&P) exam, 14 months after separation, reported normal ROMs, with painful motion and pain following repetitive motion. The examiner stated “pressure pain in lumbar spine with flexion begins/ends at 72 degrees,” and for extension, it “begins/ends at 25 degrees.” There was no tenderness, spasm, or guarding, and the remainder of the exam was normal, including gait, Lasegue, and neurological evaluation. Radiographs revealed narrowing of the disc spaces especially in the mid segment secondary to degenerative disc change and “causing a slight round back deformity possibly with very mild wedging of the anterior portions of some of the mid thoracic vertebral bodies.”

The PEB noted the CI’s kyphosis was a congenital condition, but acknowledged evidence of permanent service aggravation and forward flexion of 80 degrees. The CI’s entrance physical exam noted a normal spine exam, and no history of recurrent back pain. There was no specified service deduction based on any component of “existed prior to service” (EPTS). The PEB also discussed the cause of Scheuermann’s disease, which is unknown, and cited a web page as reference (www.spineuniversity.com). An independent review of the literature demonstrates Scheuermann's disease, also known as juvenile osteochondrosis of the spine, most likely represents a group of diseases with similar symptoms, but etiology and pathogenesis are uncertain. It may result from osteochondritis (detached growth plates) of the upper and lower cartilaginous vertebral end plates or trauma; some cases are familial.

The PEB rating of 0% may have been IAW the USAPDA pain policy or with an unspecified deduction for EPTS. The Board adjudged there was insufficient evidence for an EPTS deduction and applied VASRD-only rules in rating the back condition. The MEB exam rated the condition at 10% due to limited motion and the VA exam rated the condition at 10% IAW §4.59 (painful motion) and the VA stated “the provisions of 38 CFR 4.40 [functional loss] and 4.45 [the joints] concerning functional loss due to pain, as cited in DeLuca v. Brown, 8 Vet. App. 202 (1995), have been considered” in support of their 10% rating.

The degenerative findings on radiographs (Schmorl’s nodes, narrowed disc spaces) support analogous coding under 5299-5242, degenerative arthritis of the spine. Less optimal codes include 5003, degenerative arthritis, and 5237, lumbosacral or cervical strain. Although occasional spasms were noted on the MEB history form, the service medical record did not contain other instances of muscle spasms or guarding, and abnormal spine contour was not adjudged as due to spasm or guarding. The MEB exam proximate to separation, as well as the 14-month VA exam, would rate 10% under the general rating formula. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the thoracic spine (Scheuermann’s kyphosis) condition.

LBP Condition (Radiculopathy). There was no evidence of unfitting peripheral nerve impairment in this case. The CI endorsed occasional numbness (unspecified region) associated with back spasms. Neurological evaluation throughout the record was normal, including motor, sensory, and reflexes of the lower extremities, and there was no atrophy or foot drop. This leaves no grounds for Board recommendation of an additionally unfitting neuropathy. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of any lower extremity radiculopathy as an unfitting condition for separation rating.

Remaining Conditions. Other conditions identified in the DES file were knee pain, shoulder impingement and bursitis (VA 20% for left shoulder impingement), sinusitis and bronchitis associated with common cold, one episode of fainting, and occasional dizziness associated with excessive physical activity. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant during the MEB period, none carried attached profiles, and none were implicated in the commander’s statement. The MEB physical exam had a normal exam for #33, upper extremities. The VA exam seven months after separation was noted as indicating pain limited motion of the left shoulder at 60° of abduction following repetition. DES and Board fitness determinations are performance-based. Although the profile for the thoracic spine condition could have provided shelter for the limitations caused by the shoulder condition, the Board could not find evidence in the commander’s statement or elsewhere in the service file that documented any significant interference with performance of duties attributable to the shoulder condition. All of the above 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. No other conditions were service connected with a compensable rating by the VA within 12 months of separation or contended by the CI. 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the thoracic spine condition may have been operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the thoracic spine (Scheuermann’s Kyphosis) condition, the Board unanimously recommends a rating of 10% coded 5299-5242 IAW VASRD §4.71a. In the matter of the left shoulder impingement 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.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Scheuermann’s Kyphosis with DDD of Thoracic Spine | 5299-5242 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110823, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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 10% 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

 Deputy Assistant Secretary

 (Army Review Boards)