RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100717 SEPARATION DATE: 20020914

BOARD DATE: 20120203

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Active Guard Reserve (AGR) member SGT/E-5 (63B, Light Wheeled Vehicle Mechanic), medically separated for chronic mechanical low back pain (LBP). The CI complained LBP onset while lifting tires in September 2000. Since that time, he had been unable to perform his duties within his Military Occupational Specialty (MOS), which required him to lift up to 100 pounds. He was issued a permanent L3 profile and underwent a MOS/Medical retention Board (MMRB) with referral to a Medical Evaluation Board (MEB). “Grade I spondylolisthesis with mild left-sided sciatica without neurologic deficit but with significant functional loss” 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) packet will be discussed below. The IPEB adjudicated chronic mechanical low back pain condition as unfitting, rated 10%; with specified application of DoDI 1332.39. 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.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20020528** | **VA (~ 2 Mo. After Separation) – All Effective Date 20020915** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Mechanical Low Back Pain, Due To L5-S1 Spondylolisthesis … | 5299-5295 | 10% | Chronic Low Back Pain | 5292 | 10% | 20021125 |
| Sciatica, Left Lower Extremity | 8520 | 20% | 20021125 |
| ↓No Additional MEB/PEB Entries↓ | Not Service Connected x 3 | 20030206 |
| **Combined: 10%** | **Combined: 30%\*** |

\* VA rating based on exam most proximate to date of permanent separation and includes Board of Veterans Appeals determination and later VA correction of effective date.

ANALYSIS SUMMARY: The 2002 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were modified on 23 September 2002 to add incapacitating episodes (5293 Intervertebral disc syndrome), and then changed to the current §4.71a rating standards on 26 September 2003. The 2002 standards for rating based on range-of-motion (ROM) impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. Additionally, the VA rating determinations were made after the September 2002 VASRD change, and the Board of Veterans Appeals determination (implemented by VARD 11 March 2005) was after the new spine criteria became effective in September 2003. For the reader’s convenience, the 2002 rating codes under discussion in this case are excerpted below.

5292 Spine, limitation of motion of, lumbar:

Severe........................................................ 40

Moderate...................................................... 20

Slight........................................................ 10 *(VA)*

5293 Intervertebral disc syndrome:

Pronounced; with persistent symptoms compatible with sciatic

neuropathy with characteristic pain and demonstrable muscle

spasm, absent ankle jerk, or other neurological findings

appropriate to site of diseased disc, little intermittent

relief....................................................... 60

Severe; recurring attacks, with intermittent relief........... 40

Moderate; recurring attacks................................... 20

Mild.......................................................... 10

Postoperative, cured.......................................... 0

5294 Sacro-iliac injury and weakness:

5295 Lumbosacral strain:

Severe; with listing of whole spine to opposite side, positive

Goldthwaite's sign, marked limitation of forward bending in

standing position, loss of lateral motion with osteoarthritic

changes, or narrowing or irregularity of joint

space, or some of the above with abnormal mobility on forced

motion....................................................... 40

With muscle spasm on extreme forward bending, loss of lateral 20

spine motion, unilateral, in standing position...............

With characteristic pain on motion............................ 10 *(PEB)*

With slight subjective symptoms only.......................... 0

Of special note, the VA code 5293 as excerpted above was changed in September 2002 to rate based onincapacitating episodes. The Department of Veterans’ Affairs (DVA) rating for symptoms of sciatica as 8520 at 20% was following the change in the VASRD criteria.

Low Back Condition, Including Sciatica. The MEB forwarded condition was “Grade I spondylolisthesis with mild left-sided sciatica without neurologic deficit but with significant functional loss,” while the PEB adjudicated condition was “Chronic mechanical low back pain, due to L5-S1 spondylolisthesis, without neurologic abnormality or documented chronic paravertebral muscle spasms on repeated examinations, with characteristic pain on motion.” There were two back exams with ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Goniometric ROM - Thoracolumbar | MEB ~ 4 Mo. Pre-Sep(20020514) | VA C&P ~ 2 Mo. After-Sep(20021125) |
| Flex (0-90) | 90⁰ | 95⁰ (90⁰) |
| Ext (0-30) | 30⁰ | 15⁰ |
| R Lat Flex (0-30) | 23⁰ | 20⁰ |
| L Lat Flex 0-30) | 23⁰ | 20⁰ |
| R Rotation (0-30) | 35⁰ (30⁰) | Not measured |
| L Rotation (0-30) | 35⁰ (30⁰) | Not measured |
| COMBINED (240) | 226⁰ | <240⁰ (incomplete) |
| Comment | Reflexes 2/2; sensation intact; SLR negative; “All motions were with pain at extremes”; tender; forward flex fingers to toes; rotation total 70⁰/ tilt total 45⁰; See text for non-ROM rating | No spasm; SLR negative; reflexes 2+; ‘there was a subjective decrease to sensation over the lateral left foot using 10-gram monofilament testing.” no fatigability or incoordination noted on repetitive motion; See text for non-ROM rating  |
| §4.71a Rating | 10%-20% | 10% |
| §4.124a Rating | 10% | 20%\* |

The CI had LBP following a lifting injury in September 2000. Non-surgical treatment did not provide relief and the CI was not a surgical candidate. The CI reported radiating pain down the left lower extremity, pain into the thigh, and episodes of pain and numbness down as far as the calf. X-rays at this time were noted to reveal a grade I spondylolisthesis at the L5-S 1 level, anterolisthesis. Magnetic resonance imaging (MRI) revealed no herniated discs but confirmed grade I spondylolisthesis of L5 on S1 (vertebra not aligned) with no disruption, a bilateral pars defect and mild to moderate bilateral neural foraminal narrowing. The MEB diagnosis was grade I spondylolisthesis with mild left-sided sciatica without neurologic deficit but with significant functional loss. History included “He has no observed weakness of this extremity, although at times he almost stumbles because he “can't feel my leg.” There is no incontinence reported. He describes his pain as constant slight pain with occasional flares to marked pain.” ROMs were slightly pain limited (charted above).

VA Compensation and Pension (C&P) examination, two months post separation indicated reported similar history with the CI noting that pain occasionally radiated to the left lateral thigh with occasional give-way of the left leg, usually associated with pain in that region. The CI had a pattern of good days and bad days, and denied having lost any time from work as a security guard as a result of his back. Exam showed slightly limited ROM (charted above) with intact heel and toe walking. There was a subjective decrease in sensation over the lateral left foot using 10-gram monofilament testing. The CI had a Veteran's hearing before the Board of Veterans appeals 20 months post-separation, and testified concerning activity limitations and that his LBP could incapacitate him to the point where he must lay down and take medication on a daily basis. He was under the care of a VA outpatient clinic, undergoing physical therapy and was on medication for pain management. “He experienced daily back pain of approximately two to three on a scale of 10, and once or twice a week, he would experience pain of eight or nine that would cause him to be totally incapacitated.” The VA adjudicated a 20% rating for sensory involvement of the sciatic nerve coded 8520 (moderate incomplete paralysis of thesciatic nerve) based on the hearing and evidence.

Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The pain component of a radiculopathy was not specifically subsumed under the spine rating criteria prior to September 2003, however, sciatic radiculopathy was potentially considered under code 5293, Intervertebral disc syndrome IAW §4.71a. The functional impairment in this case appeared to be an intermittent mix of sensory (parasthesia) and pain radiation leading to either “at times he almost stumbles” or feeling of his leg giving way. “Occasional give-way of the left leg, usually associated with pain in that region.” The “once or twice a week, he would experience pain of eight or nine that would cause him to be totally incapacitated” described at the VA hearing was not substantiated in the service treatment records, and most likely post-separation worsening.

The Board deliberated between analogous coding to 5293, intervertebral disc syndrome for all back and sciatic disability, or the addition of a new unfitting peripheral nerve condition (8520, sciatica) and dual coding with a separate back code (ROM-focused) under 5295 (or 5292). Considering the 5299-5293 coding for symptoms compatible with sciatic neuropathy with characteristic pain or other neurological findings, the CI’s condition best reflected moderate symptoms with recurring attacks (20%). It did not rise to the level of severe; recurring attacks, with intermittent relief (40%). The peripheral nerve level of disability at the time of separation was adjudged to be mild (10%) versus the later VA assessment as moderate (20%); however, the lack of motor deficit or objective evidence of neurologic abnormality aside from minimal light touch foot sensation abnormality noted on the VA exam, agrues against an unfit finding. Other back coding based on painful or limited motion would be no higher than the 10% (mild) level or that assigned by the PEB. Even if sciatic were considered a new unfitting diagnoses, the 10% (nerve) and 10% (back) rating would not be predominate to the rating as 5299-5293 at 20%. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the LBP with mild sciatica condition.

Remaining Conditions. Another condition identified in the DES file was burn on left hand. 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. 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. In the matter of the low back condition, the Board unanimously recommends a service disability rating of 20%, coded 5299-5293 IAW VASRD §4.71a. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for 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** |
| Chronic Mechanical Low Back Pain with Mild Sciatica | 5299-5293 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110902, 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

(TAPD-ZB), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXX (PD201100717)

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:

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA