RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100724 SEPARATION DATE: 20020504

BOARD DATE: 20120501

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (31F30/Tactical Network Switch Chief), medically separated for a low back condition*.* He did not respond adequately to conservative, non-operative treatment and was unable to fulfill the physical demands 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). Multilevel lumbar disc degeneration (DDD) from L3 to S2, moderate to moderately severe, and right foraminal L4-L5 herniated nucleus pulposus (HNP) that may be the cause of his right leg numbness were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The PEB adjudicated both conditions as unfitting, rated 10% with application of Department of Defense Instruction (DoDI) 1332.39 and AR 635-40. 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:

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| --- | --- |
| **Service PEB – Dated 20011214** | **VA (1 Mo. After Separation) – All Effective Date 20020505** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain Due To Multi Level DDD with Right HNP | 5299 5295 | 10% | Degenerative Disc Disease(DDD) with Herniated NucleusPulposus (HNP), Lumbar Spine | 5293 | 10% | 20020712 |
| ↓No Additional MEB/PEB Entries↓ | Pseudofolliculitis Barbae | 7899-7806 | 10% | 20020712 |
| Tinnitus | 6260 | 10% | 20020716 |
| 0% x 1/Not Service-Connected x 3 | 20020712 |
| **Combined: 10%** | **Combined: 30%** |

Low back Condition. The CI had episodic lowback pain (LBP) since approximately 1999 after a fall in the field which was refractory to multiple treatments to include physical therapy and oral medications. He was seen by neurosurgery who diagnosed low back pain from multilevel DDD without surgical options. The L3 profile included the following limitations; no AFPT, running, jumping, stooping squatting or road march, and able to lift up to 25 lbs. The commander’s statement corroborated these limitations which precluded him from performing in his MOS; adversely impacted readiness which caused him to transfer the CI to an administrative position and further documented him was an exceptional soldier. 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.

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| --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB ~ 7 Mos. Pre-Sep | VA C&P ~ 2 Mos. After-Sep |
| Flex (0-90) | 30⁰ | 90⁰ |
| COMBINED (240) | 140⁰ | 200⁰ |
| Comment |  |  |
| §4.71a Rating | 10% | 10% |

The narrative summary (NARSUM) completed for the MEB documented the following back symptoms; pain worse with lifting, sitting up, standing, and sometimes associated with radiation into the right lateral thigh with occasional numbness. Physical activity typically made the pain worse and was relieved with the non-steroidal medication, Arthrotec. The physical exam demonstrated a slow gait, trace weakness of the iliopsoas muscle, slight decrease in sensation to light touch in the right lateral thigh, otherwise a normal neuromuscular exam. Magnetic resonance imaging (MRI) was most significant for marked loss of T2 signal at the L3-L4, L4-L5, and L5-S1, and S1-S2 discs with right foraminal HNP at L4-L5 level. An electromyogram (EMG) completed after the NARSUM but prior to the PEB demonstrated an abnormal study consistent with mild chronic right lower extremity multi-level radiculopathy involving levels of L4, L5 and S1. The VA Compensation and Pension (C&P) exam documented the following back symptoms; non-radiating back pain worse with activity without weakness or numbness of the lower extremity. The pain was relieved with the non-steroidal medication Naprosyn and the narcotic medication, Darvocet. The physical exam demonstrated a normal gait, normal neuromuscular testing, and no painful motion. X-rays showed mild degenerative joint disease of the lumbar spine.

The 2002 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 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. For the reader’s convenience, the 2002 rating codes under discussion in this case are excerpted below. When older cases have goniometric measurements in evidence and when the VASRD 2001 code 5292 (for limitation of motion, lumbar spine) is applicable, the Board reconciles (to the extent possible) its opinion regarding degree of severity for 5292 with the objective thresholds specified in the current §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation. The three potentially applicable codes from the 2002 VASRD are excerpted below:

**5292** Spine, limitation of motion of, lumbar:

Severe ………………………………………………………..……….………….... 40

Moderate …………………………………….……………….…….…………...…. 20

Slight ………………………………………………………..…………………..….10

**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

**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 osteo-arthritic

 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 spine

 motion, unilateral, in standing' position ……………...…………..…...….….. 20

With characteristic pain on motion ………………………………..……...…….…. 10

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

The Board directs its attention to the coding and rating recommendation for the back condition. The PEB’s DA Form 199 reflected application of DoDI 1332.39 (E2.A1.1.20.2) and AR 635.40 (B-39) for rating, but its 10% determination was consistent with §4.71a standards based on the combined ROM. The Board considered the PEB’s rating under the 5295 code of the 2002 VASRD. The 20% rating for 5295 required “muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position.” The CI’s condition clearly did not meet that threshold even at the post separation VA examination. Likewise, the Board considered the VA rating under the 5293 code for intervertebral disc syndrome which fit with the CI’s underlying pathology. The 20% rating for “moderate, recurring attacks” could not be justified under 5293 based on findings of the MEB exam, the VA exam after separation, nor the CI’s pre-separation treatment records. Finally, the Board considered the 5292 code for limitation of spine motion. The limited flexion ROM impairment in evidence at the MEB examination was sufficient justification for 40% rating however there was no corroborating evidence in the 12-month period prior to separation or in the VA exam to support this flexion impairment. Additionally, under the current, more objective VASRD standards, neither the MEB nor VA exam could support a 20% rating under a combined thoracolumbar ROM code. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the low back condition.

Remaining Conditions. Other conditions identified in the DES file were non cardiac chest pain, intermittent reactive airway disease, refractive error and s/p nasal septoplasty. 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 pseudofolliculitis barbae, tinnitus and several other non-acute conditions were noted in the VA 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. As discussed above, PEB reliance on DoDI 1332.39 for rating low back condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the low back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the non cardiac chest pain, intermittent reactive airway disease, refractive error and s/p nasal septoplasty 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. 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, 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 5295 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110820, 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 XXXXXXXXXXXXX, AR20120011828 (PD201100724)

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 XXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA