RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100743 SEPARATION DATE: 20061030

BOARD DATE: 20120315

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PV2/E-2 (92A10 / Automated Logistician), medically separated from the Army for chronic non-radiating low back pain (LBP) with atraumatic onset. His non-radicular back pain began insidiously approximately one year after entering service. Radiographs showed two-level degenerative disc disease (DDD) in the thoracic spine. His treatment included medications (non-narcotic) and physical therapy. 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 U3/L3 profile and underwent a Medical Evaluation Board (MEB). Chronic back pain, nonsurgical was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the back condition as unfitting, rated 10% with likely application of the United States Army Physical Disability Agency (USAPDA) pain policy. The CI did not appeal, and was medically separated with a 10% disability rating.

CI CONTENTION: “The pains have intensified.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060908** | | | **VA (5 Mos. After Separation) – All Effective 20061031** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Non-Radiating Low Back Pain | 5299-5237 | 10% | Degenerative Disc Disease of the Thoracolumbar Spine | 5242\* | 20%\* | STR\* |
| Positive PPD | Not Unfitting | | No VA Entry | | | |
| Migraine Headache | Not Unfitting | | Chronic Migraines | 8100 | 0% | STR\* |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 1/Not Service Connected x 1 | | | 20070321 |
| **Combined: 10%** | | | **Combined: 20%** | | | |

\*No show for original VA exam scheduled for 20070116; DDD of T-spine 5242 code changed to 5243 and increased to 40% effective 20090430 (combined 40%) (*32 mos post-sep*)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, that the gravity of his condition and predictable consequences or worsening merit consideration for a higher separation rating. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board utilizes DVA evidence proximate to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Back Pain Condition. There was one thoracolumbar spine examination proximate to separation, including goniometric range-of-motion (ROM) evaluation with documentation of additional ratable criteria, in evidence which the Board weighed in arriving at its rating recommendation. This exam and the VA exam closest to separation are summarized in the chart below.

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| Goniometric ROM - Thoracolumbar | MEB (PT) ~ 4 Mos. Pre-Sep  (*ROM 20060620;*  *NARSUM 20060723*) | VA C&P ~ 31 Mo. After-Sep  (*20090526*) |
| Flex (0-90) | (38/40/42) 40⁰ | 45⁰ less 20⁰ (25⁰) |
| Ext (0-30) | (16/18/18) 15⁰ | 30⁰ |
| R Lat Flex (0-30) | (13/15/14) 15⁰ | 30⁰ |
| L Lat Flex 0-30) | (18/18/18) 15⁰ | 30⁰ |
| R Rotation (0-30) | (30/28/28) 30⁰ | 30⁰ |
| L Rotation (0-30) | (20/23/25) 25⁰ | 30⁰ |
| COMBINED (240) | 140⁰ | 195⁰ |
| Comment | All ROMs limited by pain; NARSUM (20060723) mild paraspinal tenderness and spasm, no bony TTP or deformity, neuro normal | Painful motion, TTP, 2+ paraspinal muscle spasm, gait normal, no incapacitating episodes last 12 mos, estimated “20⁰ loss of flexion with acute flares or repetitive motion” |
| §4.71a Rating | 20% (PEB 10%) | 40% (VA 40%) |

Physical therapy (PT) ROM MEB recorded the thoracolumbar ROMs four months pre-separation, with ROMs charted above, and all ROMs limited by pain. Forward flexion of 40⁰ meets the 20% rating criteria of “forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees.” The narrative summary (NARSUM), dated three months prior to separation, documented mild paraspinal spasm and tenderness, but no other significant findings. There was no bony tenderness or deformity, and neurological evaluation was normal. Radiographs of the cervical, thoracic, and lumbar spine were noted to be without pathology. However, the service treatment record (STR) detailed abnormal imaging: radiographs of the thoracic spine six months pre-separation showed minimal degenerative disc changes at T4-5 and T6-7; and radiographs one month prior to separation showed mild scoliosis (consistent with spasm).

The VA noted that the CI failed to report for his scheduled VA Compensation and Pension (C&P) exam, and therefore based their rating on the DES file and STR, arriving at a 20% evaluation using the PT/MEB ROMs and NARSUM exam. Although remote from separation, the Board noted a VA exam 31 months after separation showed slightly improved ROMs; however, the examiner stated “it is my estimation that there will be 20 degrees loss of flexion with acute flares or repetitive motion, but the exact degrees are not clinically possible.” There was 2+ paraspinal muscle spasm, gait was normal, and the CI reported no incapacitating episodes in the prior 12 months. The resulting forward flexion IAW DeLuca was 25⁰ (45⁰ minus 20⁰). The VA increased the CI’s thoracolumbar spine evaluation to 40% based on this exam, changing the code to 5243, intervertebral disc syndrome.

There were no reports of incapacitating episodes requiring bed rest prescribed by a physician and treatment by a physician, as required for alternate rating under intervertebral disc syndrome, so the condition is most appropriately rated using the general rating formula for diseases and injuries of the spine. Coding in this case would optimally be 5242 (degenerative arthritis of the spine), given the CI’s (non-radicular) symptoms and the radiographic evidence of degenerative disc disease. The MEB exam proximate to separation would rate 20% IAW the general rating formula. The record did not provide evidence that the CI’s condition ever met the 40% criteria of that formula, requiring forward flexion of 30 degrees or less, or favorable ankylosis of the entire thoracolumbar spine. 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 thoracolumbar spine condition.

LBP Condition (Radiculopathy). There was no evidence of unfitting peripheral nerve impairment in this case. The CI did not complain of radiation of his pain into his legs, or neurological symptoms in his legs. Neurological evaluation proximate to separation was normal, including motor, sensory, and reflexes. Lower extremity motor function was normal throughout the record, without 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.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were positive PPD [screening skin test for tuberculosis] and migraine headache (VA 0%). Neither of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. The record indicates the CI was taking medications for his positive PPD (INH), but had a normal chest radiograph and was never symptomatic. The CI’s headaches occurred two to four times per month, lasting a few hours, with pain controlled by rest. Incapacitation was not described, and the CI was prescribed anti-migraine medications two months pre-separation (with unknown results). There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were right ear cerumen impaction, occasional tingling in back with normal neurological exam, sleep disturbance due to LBP, a history of receiving counseling for stress, a history of food poisoning, and a history of acute tonsillitis. None of these conditions were occupationally significant 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 twelve 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 back condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the back pain condition, the Board unanimously recommends a rating of 20% coded 5242 IAW VASRD §4.71a. In the matter of the positive PPD and migraine headache conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of 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** |
| Chronic Non-Radiating Low Back Pain | 5242 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110908, 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 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

Deputy Assistant Secretary

(Army Review Boards)