RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100746 SEPARATION DATE: 20090829

BOARD DATE: 20120509

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (52C30/Utility Equipment Repairer), medically separated for degenerative arthritis of the spine. The CI had a history of non-traumatic low back pain (LBP) since 1999. It worsened in 2004 and he underwent extensive courses of conservative management including epidural steroid injections. In 2006 he underwent an Military Occupational Specialty (MOS)/Medical Retention Board (MMRB) in 2006 and was reclassified from 11B to 52C MOS. LBP continued, surgery was not indicated and further treatment including electrical stimulation, traction, physical therapy and chiropractic manipulation provided little or no benefit. He was unable to perform within his MOS or meet physical fitness standards, was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). “Chronic LBP, degenerative disk disease (DDD)” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Three other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the degenerative arthritis of the spine condition as unfitting, rated 20% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The thoracolumbar spine condition will be considered.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20090610** | | | **VA (~1 Mo. After Separation) – All Effective Date 20090830** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Degenerative Arthritis of the Spine | 5242 | 20% | Degenerative Joint Disease, Lumbar Spine with Thoracic Spine Strain | 5242 | 40% | 20090903 |
| Adjustment Disorder | Not Compensable | | Adjustment Disorder with Anxiety | 9499-9413 | 30% | 20090827 |
| Left Supraspinatus Tendinitis | Not Unfitting | | Left Shoulder Impingement Syndrome | 52091 | 20% | 20090903 |
| Right Infrapatellar Tendinitis | Not Unfitting | | Right Knee Tendonitis | 5261 | 10% | 20090903 |
| ↓No Additional MEB/PEB Entries↓ | | | Tension Headaches | 8199-8100 | 30% | 20090903 |
| Cervical Strain | 5237 | 10% | 20090903 |
| 0% x 3/Not Service-Connected x 2 | | | 20090903 |
| **Combined: 20%** | | | **Combined: 80%** | | | |

ANALYSIS SUMMARY: In opening, the Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those conditions “identified but not determined to be unfitting by the PEB.” The Board noted the CI supplied his current Department of Veterans’ Affairs (DVA) ratings for all of his service-connected conditions in supporting documents, but must emphasize that since there was no request for Board consideration of those “not unfitting” conditions, the Board must restrict its scope to the rated PEB condition. The forwarded MEB condition was “chronic LBP, DDD at L3-L4” and the Board considered the PEB unfit determination was for the thoracolumbar spine only and did not include the cervical spine. There was no sciatic nerve condition noted on the MEB or PEB and consideration of peripheral nerve rating was outside the scope of the Board’s adjudication. The cervical spine was also considered outside of the scope of the Board’s adjudication. (Note: adjustment disorder is considered a condition which does not constitute a physical disability IAW DoDI 1332.38, encl 5, and is not a ratable condition [not compensable versus not unfitting].) Any condition which is not requested in this application or otherwise within the Board’s defined scope of review remains eligible for future consideration by the Army Board for the Correction of Military Records (ABCMR).

Low Back Degenerative Arthritis of the Spine Condition. Thoracolumbar x-rays indicated degenerative changes to the thoracic and lumbar regions and mild spurring at L4; MRI demonstrated L3-4 diffuse disk bulging which possibly was contacting the exiting nerve root. 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 ~4 Mo. Pre-Sep | VA C&P ~1 Mo. After-Sep |
| Flex (0-90) | 46⁰ (45) | 0-40⁰ 30⁰\* |
| Ext (0-30) | 22⁰ (20) | 0-15⁰ |
| R Lat Flex (0-30) | 35⁰ (30) | 0-30⁰ |
| L Lat Flex 0-30) | 33⁰ (30) | 0-30⁰ |
| R Rotation (0-30) | 59⁰ (30) | 0-30⁰ |
| L Rotation (0-30) | 55⁰ (30) | 0-30⁰ |
| COMBINED (240) | 185⁰ | 175⁰ |
| Comment | ROM “based on average;” normal gait; normal heel and toe walking; mild tenderness; no spasms; normal spine contour; negative SLR bilaterally; normal motor and sensory exams | \* Forward flexion after repetitive motion is limited to 30⁰. Pain on motion, tenderness; antalgic gait; normal contour; positive left Lasegue’s sign (sciatic radicular pain); normal motor and sensory exams |
| §4.71a Rating | 20% | 40% |

The narrative summary (NARSUM) exam indicated a history of intermittent left leg sciatic pain, with normal electrodiagnostic testing (EMG), and no radicular complaints at the time of the NARSUM. Pain was predominately with prolonged standing or sitting (over 15 minutes), and “movement can actually give him some pain relief. The (CI) states he can also run, and can run as far as 0.5-mile before he starts to develop severe LBP.” Exam showed negative tests for radicular symptoms (Patrick's and Gaenslen's). “He had a positive Milgram test (indicative of cord sheath pathology), with significant pain but no radiation of symptoms.” ROMs as charted above were stated to be averages. The examiner also stated “according to DeLuca criteria, stationary activity such as sitting and standing can produce severe flare-ups of pain. There is no association of pain with ROM change. In fact according to the soldier movement provides pain relief. There is no association with fatigue, weakness, lack of endurance, instability or incoordination.” The assessment was “chronic LBP secondary to DDD with sciatica on the left.” The CI had been on narcotic pain medication and Neurontin, but later notes mention no use of those medications.

The VA C&P history reiterated a non-traumatic back pain onset. Pain was constant and dull, “aggravated by prolonged standing. Some radiation of pain into LLE with prolonged walking, and flexion of back but no LE numbness, tingling or weakness. No loss of bladder or bowel function.” There was a reported history of spasms, and flare-ups in the thoracic spine every other day. Exam indicated an antalgic gait, with normal spine contour, no spasm and positive tenderness, but assessment that tenderness or guarding was not severe enough to be responsible for abnormal gait. Lasegue’s sign was positive on the left for radicular pain symptoms. Motor and sensory exams were normal. ROMs are charted above with the “additional limitation with repetitive motion” positive for “ROM after repetitive motion Flexion: 0 to 30 degrees.”

The PEB and the VA used the same codes for the back pain, but they assigned different rating percentages, based on ROM criteria from different exams. The MEB ROM values were the average measurements and the examiner specifically addressed DeLuca criteria as without increased limitations. The VA exam indicated tenderness, and although ROMs were similar to the MEB exam, the examiner indicated limitation of motion to forward flexion of 30⁰ following repetition.

In its assignment of probative value to such disparate exams, the Board must acknowledge that the VA spine examination was post-separation and may predispose a lowered pain threshold since the examinee is generally quite aware that their pain tolerance on ROM is directly correlated with the resulting rating and vulnerable to the psychological influence from secondary gain. The ROM values based on subjective pain responses and recorded by the VA examiner were consistent with the MEB ROMs except for decreased flexion on repetitive motion. The VA exam and MEB exam were both equally detailed and comprehensive, and the VA exam was closer to (but after) the CI’s date of separation. The Board considered the totality of evidence throughout the treatment notes to include but not limited to the imaging pathology and the nature of the CI’s pain (standing and sitting versus moving). The Board also discussed the CI’s degree of functional limitations; his back ROMs, scant evidence of spasm or abnormal gait, continued superior duty performance, varying levels of pain, and number and types of treatments. The Board also noted the absence of evidence of incapacitating episodes.

After due deliberation, the Board majority assigned greater probative value to the MEB examination as supported by the evidence of record. Additionally, the Board took into consideration that the general spine formula is with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease. After careful review of all evidentiary information available, the Board majority could not find sufficient reasonable doubt in the CI’s favor, for recommending a rating higher than 20%.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the low back condition and IAW VASRD §4.71a, the Board by a simple majority recommends no change in the PEB’s 20% adjudication. The single voter for dissent (who recommended 40%) did not elect to submit a minority opinion. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as unfitting for additional service disability rating.

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** |
| Degenerative Arthritis of the Spine (Lumbar) | 5242 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110904, 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 XXXXXXXXXX, AR20120009218 (PD201100746)

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 XXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA