RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100793 SEPARATION DATE: 20071024

BOARD DATE: 20120515

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (42A34/Human Resources Specialist), medically separated for a low back condition. He did not respond adequately to conservative, non-operative management to perform within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). “Chronic low back pain (LBP) due to lumbar spondylosis and spinal stenosis” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated chronic LBP secondary to lumbar spondylosis and spinal canal stenosis unfitting, rated 10% with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e. (2) 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 condition(s) “identified but not determined to be unfitting by the PEB.” The service ratings for unfitting conditions will be reviewed in all cases. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20070711** | **VA (2 Mos. Pre-Separation) – All Effective 20071025** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5237 | 10% | Chronic Low Back Pain | 5237 | NSC | Not in File |
| ↓No Additional MEB/PEB Entries↓ | Bilateral Tinnitus  | 6260 | 10% | Not in File |
| 0% x 4/Not Service Connected x 9 | Not in File |
| **Combined: 10%** | **Combined: 10%** |

Low Back Condition. The CI’s back pain started in 2003 while working on an aircraft and was aggravated when he was deployed to Iraq in 2005 with the constant, prolonged wearing of his personal protection gear (IBA, LBE, weapon, rucks, and Kevlar). He was seen at theater sick call several times and treated conservatively with medications and profile and completed his Iraq tour. From September 2006 to June 2007 he was evaluated and treated extensively by orthopedics, physical therapy, primary care, physical medicine rehabilitation, and chiropractic care. He was diagnosed with LBP due to lumbar spondylosis and spinal stenosis, and also right thoracic scoliosis that he had upon entrance into the military. Orthopedics did not recommend surgery but rather conservative treatment modalities which did not provide adequate relief and the CI was issued a permanent profile in February 2007. The profile documented the following functional limitations; unable to move with a fighting load at least 2 miles, construct an individual fighting position, do 3-5 second rushes under direct and indirect fire and no running, sit-ups, jumping, lifting greater than 20 pounds, standing longer than 20 minutes without change in position, flutter kicks, or airborne operations. But, he was able to walk at his own pace. There were two range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation, as summarized in the chart below.

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|  | PT ~ 7 Mos. Pre-Sep(Inclinometric at L5)  | VA C&P ~2 Mo. Pre-Sep(Goniometric Thoracolumbar) |
| Flex (0-90) | 60⁰ | 90⁰ |
| COMBINED (240) | 240⁰ | 240⁰ |
| Comment | Slight tenderness bilateral lumbar area | Normal gait and posture, no painful ROM, no muscle spasm |
| §4.71a Rating | 20% | 0%\* |

 \* NSC by VA

At the MEB exam the CI reported “I have a bad back” and medicated with Motrin or Naprosyn for pain. The MEB physical exam demonstrated slight tenderness in the bilateral lumbar area, negative straight leg raise and Patrick sign, positive Waddell’s +1 and normal neuromuscular testing. There was no documentation of spasm, gait or spinal contour. The MRI of the lumbar spine on 3 October 2006 revealed mild diffuse central stenosis, degenerative disc disease at the L4- L5 level causing mild bilateral foraminal stenosis, and facet joint hypertrophy at L5-S1 causing moderate foraminal stenosis. The examiner referenced the physical therapy exam completed for the ROM exam which was completed by an inclinometer at L5. The therapist documented a 5/10 resting pain with a forward flexion of 61, 60 and 60 respectively. There was also pain with all ROM parameters. The Rating Decision (RD) dated 1 November 2007 was the source document used to cite the VA Compensation and Pension (C&P) exam, which was missing from evidence. The CI reported chronic lower back pain for over 5-6 years with symptoms of stiffness, weakness, crushing, aching, burning, increased with physical activity, stress or by itself and relieved by “just being still.” The CI reported no current treatment but four incapacitating episodes totaling 12 days during the past year. The C&P physical exam demonstrated normal gait and posture without radiating pain on movement, muscle spasm or tenderness, negative Deluca criteria and a normal neuromuscular exam and normal x-rays. The examiner stated there was no pathology to render a diagnosis.

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB and VA chose the same coding option for the condition. The PEB’s DA Form 199 reflected likely application of the USAPDA pain policy and its 10% rating was inconsistent with §4.71a standards for the general rating formula for diseases and injuries of the spine. The VA on the other hand did not service-connect the LBP based on no evidence of permanent residual or chronic disability. There is a disparity between the two examinations reflecting the different procedural ROM technique used by the examiners and possibly the impairment of the CI’s back on each of those exam days. This disparity had implications on the Board's rating recommendation. The Board carefully deliberated its probative value assignment to these conflicting evaluations, and reviewed the entire service treatment record (STR) for corroborating evidence in the 12-month period prior to separation in order to develop a comprehensive picture of the CI’s back condition at the time of separation. The Board was mindful of VASRD §4.2 (Interpretation of examination reports) and agreed that in this case the ranges of motion documented in the STR more consistently reflected forward flexion greater than 60 degrees and most often full forward flexion as stated in the VA exam. In addition, muscle spasm with normal gait was the predominant physical finding in the STR. Board members agreed the condition best coincided with the 10% rating criteria for diseases and injuries of the spine based on the totality of the evidence of all examinations. While the C&P exam documented the CI self-reported 12 days of incapacitating episodes, there were no treatment records to corroborate this report; without documentation of incapacitating episodes there is no avenue to a higher rating. There was also no evidence of ratable peripheral nerve impairment in this case. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the low back condition.

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 likely reliance on the USAPDA pain policy for rating low back condition was operant in this case and the condition was adjudicated independently of that policy 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. There were no other conditions within the Board’s scope of review for consideration.

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 | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110905, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXX, AR20120009657 (PD201100793)

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