RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100811 SEPARATION DATE: 20050425

BOARD DATE: 20120329

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (74D20/Chemical Operations Specialist), medically separated for chronic back pain. His low back pain with radiation and numbness down the left leg began in September 2002 after lifting sandbags. MRI showed three-level degenerative disc (DDD) and joint disease with bulging discs, most significant at L4-5 where there was severe left lateral recess stenosis and moderate central canal stenosis. His treatment included medications, physical therapy, epidural steroid injection, and back surgery (L4-5 discectomy in June 2004). Despite post-operative rehabilitative care, including chiropractic manipulation, 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 L3 profile and underwent a Medical Evaluation Board (MEB). “Chronic low back pain with left leg radiculopathy s/p L4-5 diskectomy” 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) file are discussed below. The PEB adjudicated the chronic back pain condition as unfitting, rated 10% with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI did not appeal for a Formal PEB (FPEB), and was medically separated with a 10% disability rating.

CI CONTENTION: “I believe I received a lower disability rating than I should have. I still suffer from daily pain in my back and numbness in my left leg radiating down the back of my leg.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20050202** | | | **VA (2 Mos. Pre-Separation) – All Effective 20050426** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Back Pain | 5243 | 10% | S/P L4-5 Discectomy w/ … LBP and L Leg Radiculopathy | 5243 | 20% | 20050215 |
| Left Leg Radiculopathy | Not PEB-Addressed | |
| ↓No Additional MEB/PEB Entries↓ | | | S/P L4-5 Discectomy w/ Residual Scar | 7805 | 0% | 20050215 |
| 0% x 1/Not Service Connected x 1 | | | 20050215 |
| **Combined: 10%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. It is a fact; however, that the 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.

Chronic Back Pain Condition. There were two post-operative thoracolumbar spine examinations, including goniometric range-of-motion (ROM) evaluations and documentation of additional ratable criteria, in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

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| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB (PT) ~ 3 Mos. Pre-Sep  (20050107) | PEB Description  (20050202) | VA C&P ~ 2 Mos. Pre-Sep  (20050215) |
| Flex (0-90) | (30, 30, 30) 30⁰ | 60⁰ | 60⁰ |
| Ext (0-30) | (10, 10, 10) 10⁰ | 30⁰ | 20⁰ |
| R Lat Flex (0-30) | (40, 40, 40) 30⁰ |  | 20⁰ |
| L Lat Flex (0-30) | (40, 40, 40) 30⁰ |  | 20⁰ |
| R Rotation (0-30) | (30, 30, 30) 30⁰ |  | 30⁰ |
| L Rotation (0-30) | (30, 30, 30) 30⁰ |  | 20⁰ |
| COMBINED (240) | 160⁰ | 200⁰ | 170⁰ |
| Comment:  Surgery [20040623] 10 months pre-separation [DOS 20050425] | NARSUM & DD 2808 (20041220): painful motion, TTP, “neoprene back brace helps,” scar, neuro normal, Waddell’s 0/5 | Passive ROM specified (versus active ROM IAW VASRD). Tenderness reported. | Pain at endpoints of all ROMs, TTP w/ flexion, SLR pos on L (neg on R), additionally limited by pain after repetitive use, posture & gait normal, no assistive devices, no spasm, neuro normal (reflexes symmetrically 1+ in UE & LE) |
| §4.71a Rating | 40% (PEB 10%) | 20% (PEB 10%) | 20% |

The narrative summary (NARSUM), dated 5 months prior to separation, cited the physical exam documented on the DD Form 2808 4 months prior to separation and the ROMs performed by physical therapy 3 months prior to separation. The PT ROMs (a ROM-only exam) showed significant deficits (flexion meeting the 40% criteria under the general rating formula for diseases and injuries of the spine). The NARSUM and DD Form 2808 reported painful motion, tenderness to palpation, a surgical scar, normal neurological evaluation, and an absence of Waddell’s signs. The examiner noted (DD Form 2807-1) a neoprene back braces provided some relief. Pre-operative MRI (22 October 2002) showed three-level osteoarthritis and disc bulging, most significant at L4-5, with severe left lateral recess stenosis and moderate central canal stenosis.

The VA Compensation and Pension (C&P) exam, 2 months prior to separation, reported less severe ROM deficits (meeting the 20% criteria for flexion), with pain at all ROM endpoints. The CI reported one incapacitating episode, of 30 days duration, after his surgery (CI was assigned 30 days of convalescent leave after surgery). The examiner noted tenderness to palpation, a positive straight leg raise on the left (negative on the right), and additional ROM limitation after repetitive use due to pain. Negative findings included normal posture and gait, absence of spasm, and the CI did not use any assistive device for ambulation. Motor and sensory exams were normal, and reflexes were symmetrically diminished (1+) throughout the upper and lower extremities. The examiner noted, “there are no signs of intervertebral disc syndrome with chronic and permanent nerve root involvement.” Radiographs revealed mild degenerative disc and joint changes at L4-5. The VA assigned a 20% evaluation based on this exam.

Although the CI was apparently assigned 30 days of convalescent leave after surgery, this did not equate to “bed rest prescribed by a physician and treatment by a physician,” as required for rating under intervertebral disc syndrome, and in fact would be medically contraindicated. The CI’s condition is most appropriately rated using the general rating formula for diseases and injuries of the spine. Coding in this case could be 5242 (degenerative arthritis of the spine), given the radiologic findings; however, 5243 (intervertebral disc syndrome) is most appropriate given the CI’s radicular symptoms, history of disc surgery, and the MRI findings degenerative disc disease. The source of the ROMs cited by the PEB was unclear; however, the PEB’s cited 60 degrees of passive forward flexion, as well as the exam most proximate to separation, would rate 20% IAW the general rating formula. The MEB ROM met the 40% criteria of that formula (with forward flexion of 30 degrees or less); however, the VA exam had a higher probative value due to its proximity to separation, and the 20% rating was more consistent with the disability picture portrayed in the record. 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 lumbar spine condition.

Other PEB Conditions. The other condition forwarded by the MEB was left leg radiculopathy. Although the PEB did not specifically adjudicate the left leg radiculopathy condition, it was presented in the MEB evidence before the PEB. The Board must thus approach this issue as a *de facto* service determination that left leg radiculopathy was not an unfitting condition. The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard.

The CI endorsed radiation of his pain into his left leg and numbness in his left leg. Any pain-radiculopathy is considered above under the CI’s primary unfitting lumbosacral condition IAW the general rating formula for diseases and injuries of the spine, “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.” Neurological evaluation proximate to separation was normal, including motor and sensory exams. 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.

Remaining Conditions. The other conditions identified in the DES file were flu-like symptoms, bilateral knee pain (VA NSC), history of tonsillectomy (1990), and weight gain of 20-25 pounds over 6 months due to inactivity. Several additional non-acute conditions or medical complaints were also documented. 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 back pain was likely operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic back pain condition, the Board unanimously recommends a rating of 20% coded 5243 IAW VASRD §4.71a. In the matter of the left leg radiculopathy condition, the Board unanimously recommends no change from the PEB *de facto* adjudication 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 Back Pain | 5243 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110927, 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)