RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100839 SEPARATION DATE: 20060331

BOARD DATE: 20120718

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92A10 / Automated Logistical), medically separated for chronic low back pain (LBP) secondary to degenerative disc disease (DDD). The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3 and U4 profile and referred for a Medical Evaluation Board (MEB). Left flexor digitorum profundus rupture with tendon transplant repair condition, identified in the rating chart below, was also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the LBP as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The left ring finger tendon injury was determined to be not separately unfitting by the PEB. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “50% for P.T.S.D by Veterans Affairs. I never claimed it while in the Army because I didn’t know I had it.” The CI submits VA award letters for PTSD and his hand injury.

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 ratings for unfitting conditions will be reviewed in all cases. The left hand condition requested for consideration and the unfitting chronic LBP condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested posttraumatic stress disorder (PTSD) condition is not within the Board’s purview. The remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and listed on the DD Form 294 are not within the Board’s purview. Any contention not requested in this application, or otherwise outside the Board’s defined scope of review, remains eligible for future consideration by the Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20060301** | **VA (~4 Mos. Post-Separation) – All Effective Date 20060401** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain  | 5299-5242 | 10% | Low Back Strain | 5237 | 20%\*\* | 20060723 |
| Left Flexor Digitorum Profundus Rupture with Tendon Transplant Repair | Not Unfitting  | Residuals, Ruptured Flexor Tendon, L Ring Finger, s/p Repair | 5230 | 0% | 20060723 |
| ↓No Additional MEB/PEB Entries↓ | Scars L Ring Finger, Forearm | 7804 | 10% | 20060723 |
| Donor Site Scar Left Ankle | 7804 | 10% | 20060723 |
| Left Knee PFS | 5099-5024 | 10% | 20060723 |
| Right Knee PFS | 5099-5024 | 10% | 20060723 |
| 0% X 1  | 20060722 |
| **Combined: 10%** | **Combined: 50%** |

\*The CI had prior-service connected ratings for back pain (10%), right and left knee patellofemoral syndrome (10% each), and residuals of left ring finger injury (0%) dating to a break in active service (1 Dec 2003).

\*\*The rating for low back strain was increased from 10% to 20% effective 18 April 2006, the date the claim for an increased rating was received by the VA.

A service-connected rating for PTSD was granted effective 26 July 2010, 4 years after separation.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. 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 nor for conditions determined to be service-connected by the DVA but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Chronic Low Back Pain Condition. The CI had a history of chronic recurrent LBP beginning in 2002 while on active duty without specific injury. The CI presented for care of recurrent LBP in June 2005 without specific injury associated with muscle spasm and limited motion. A magnetic resonance imaging (MRI) on 11 July 2005 demonstrated a herniated disc at the L5-S1 level without nerve root compression. A physical therapy appointment on 11 July 2005 noted absence of radicular symptoms, normal neurologic examination, and negative provocative testing for nerve root irritation. At that examination, back range-of-motion (ROM) was recorded as “normal” but accompanied by report of pain. Back pain was reported to be worse at night and with sitting. At a 3 October 2005 spine surgery evaluation, pain was rated at a three on the ten scale. There was pain with motion but no muscle spasm. Motion was limited but not further specified. Neurologic examination was unremarkable. X-rays of the thoracic spine and lumbosacral spine performed that day were normal; however, the radiologist commented that there was very mild thoracic scoliosis (convex to left 4 degrees) and extremely minimal lumbar rotoscoliosis (convex to left without measurable angulation).

Upon follow up with the spine surgeon on 14 October 2005, the spine surgeon stated that there was no scoliosis present. The surgeon concluded there was no indication for surgical treatment. At that appointment the CI reported episodic back pain which he rated seven at that time. Back pain was rated two at a clinic appointment on 5 October 2005, and three at a clinic appointment 18 October 2005. The MEB narrative summary (NARSUM) examination, performed on 25 January 2006 recorded CI report that his back pain interfered with performance of strenuous military duties, playing basketball or weight lifting. On examination, the thoracolumbar ROM was flexion 90 degrees (with minimal pain), extension 15 degrees (with pain at end range), right lateral bending 15 degrees (with pain at 15 degrees), left lateral bending 18 degrees (with pain at 18 degrees), right and left rotation 30 degrees (with minimal pain) (combined 200 degrees). Muscle spasm was observed; however, gait was normal.

Neurologic examination was normal, and provocative testing for nerve root irritation was negative. The VA Compensation and Pension (C&P) examination was performed on 23 July 2006, 4 months after separation. The ROM examination was dramatically worse (flexion 25 degrees, combined 235) without intervening injury or change in condition. The examiner recorded CI’s report of chronic LBP for 5 years without change (“the pain remains essentially unchanged”). There is no mention of muscle spasm or abnormal gait. X-ray on that date was reported as normal. A C&P examination performed on 12 May 2007, 13 months after separation, documented complaint of worsening back pain. At that examination, there was no deformity of the spine and ROM was similar to the MEB NARSUM examination (flexion 85 degrees with pain at end range; extension 10 degrees without pain; lateral bending 25 degrees bilaterally without pain, and rotation 30 degrees bilaterally with mild pain and end range). Gait and neurologic examinations were normal. An X-ray performed on 12 May 2007 was again normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rating of 10% was consistent with the MEB ROM examination and was in accordance with the general rating formula for diseases and injuries of the spine. The Board considered whether the presence of muscle spasm was severe enough to support the 20% rating. Muscle spasm or guarding, when severe enough to result in an abnormal gait or abnormal spinal contour warrants a rating of 20%. The Board noted that muscle spasm was noted to be present on some examinations but was not associated with abnormal gait or abnormal spinal contour. The X-rays performed on 3 October 2005, were interpreted by the radiologist to show some abnormal contour; however, on that same date, examination by the spine surgeon specifically noted there was no muscle spasm. The NARSUM examination noted muscle spasm with normal gait.

Board members concluded the preponderance of evidence of the MEB NARSUM and service treatment records most nearly approximated the 10% rating IAW §4.71a. The Board also considered the VA examination after separation ROM upon which the VA based its 20% rating. The Board noted that there was no explanation for the dramatic reduction in ROM, and that the CI reported his back pain condition to be stable for several years. A repeat examination 9 months later demonstrated an improved ROM that was consistent with the MEB NARSUM examination despite the CI report of worsening back pain. Upon deliberation the Board agreed in this case that the MEB examinations and outpatient notes were more reflective of the anticipated severity based on the clinical pathology. There was no evidence of incapacitating episodes due to intervertebral disc disease that would meet the criteria for a minimum rating under the alternative formula for incapacitating episodes due to intervertebral disease. There was 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 chronic back pain condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was left ring finger tendon injury (left flexor digitorum profundus tendon). The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering 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 injured his left ring finger in 2001 resulting in rupture of the left ring finger digitorum profundus tendon. Initial surgery in 2001 was not completely successful and he underwent additional surgery in August 2005 and December 2005 (a staged tendon grafting procedure). The CI underwent MEB shortly after the second surgery and was still undergoing rehabilitation. The final clinical evaluation following recovery from the December 2005 surgery is a 20 January 2006 occupational therapy appointment. The therapist noted a good outcome, with no pain and no reported restrictions from the surgeons. Grip strength was grossly “good” and left ring finger active ROM was very good (the same as the normal right ring finger except for motion at the distal interphalangeal joint which flexed 58 degrees compared to 80 degrees on the right side). Based on this report, the PEB determined the left ring finger condition was not unfitting for military service. The 23 July 2006 VA C&P examination documented poor motion at the distal interphalangeal joint which was fixed at 45 degrees, with normal motion in the remainder of the left ring finger at the proximal interphalangeal joint and the metacarpophalangeal joint without pain or weakness. The VA adjudicated a 0% rating based on this examination. The VA granted a 10% rating for residual scar however surgical scars are not considered unfitting for continued military service unless their presence imposes a direct limitation on fitness. In this case there was not such evidence. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the contended condition left ring finger; and, therefore, no additional disability ratings can be recommended.

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 chronic LBP condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended left ring finger tendon rupture status post repair, the Board unanimously recommends no change from the PEB determination as not unfitting. 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 Secondary to Degenerative Disc Disease | 5299-5242 | 10% |
| Left Ring Finger Flexor Digitorum Profundus Injury | Not Unfitting | -- |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110930, 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 XXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120013386 (PD201100839)

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 XXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA