RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100859 SEPARATION DATE: 20080725

BOARD DATE: 20120412

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E4 (68W, Health Care Specialist) medically separated for lumbar disc disease. He injured his back in 2007, and was subsequently diagnosed with a bulging disc causing nerve root compression at L4-5. Surgical intervention was deferred and conservative treatment pursued. The spine condition, however, could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was thus issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The lumbar spine condition characterized as “lumbar degenerative disc disease, L4-5, with chronic lumbago, spondylosis L4-L5, L5-S1 with multilevel facet hypertrophy and L5 left nerve root impingement” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB; but, other conditions, contended or evidenced in the Disability Evaluation System (DES) file, are addressed below. The PEB adjudicated the lumbar spine condition as unfitting, rated 20%, citing criteria 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: “EMG results prior to discharge not considered in PEB show persistent, chronic neuropathic process. Continued weakness in both legs causing severe limitations in daily activities. High cholesterol and hypertension not included in combined rating. No combined rating done. Neuropathy being treated since before discharge not included in rating. Loss of range of motion not included. I believe that the EMG results requested by the PEB on 4 March 2008 were not considered as the PEB made 20% determination specifying DDD without motor neurologic deficits. Neuropathy was original complaint and more seriously limiting condition.”

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20080328** | **VA (7 Mo. Post-Separation) – All Effective Date 20080726** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbar DDD w/o Neuro Deficits | 5299-5242 | 20% | Lumbar DDD | 5242 | 20% | 20090202 |
| No Additional MEB/PEB Entries | 0% X 3 | 20090202 |
| **Combined: 20%** | **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. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the DES operates. 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. That role and authority is granted by Congress to the Department of Veteran's Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s contention for a rating for other conditions (lumbar neuropathy) documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short the member’s career, and then only to the degree of severity present at the time of final disposition. The DVA, however, is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should his degree of impairment vary over time.

Lumbar Spine Condition. The narrative summary (NARSUM) notes a lumbar strain injury in 2004, but a primary onset of symptoms in 2007 during a road march with load bearing. Symptoms included bilateral radicular radiation with sensory symptoms. Imaging revealed multilevel degenerative disease with an L4-5 bulging disc compressing the left nerve root. A surgical option was discussed, but reasonably declined; and, the CI underwent a series of epidural steroid injections. His pain improved and the radicular symptoms resolved, but the symptoms rebounded and failed further conservative measures. Per the NARSUM opinion, “Surgery is not recommended at this time, although it may become necessary in the future.” 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; as summarized in the chart below.

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| Thoracolumbar ROM | MEB Ortho ~4 Mo. Pre-Sep | VA C&P ~7 Mo. Post-Sep |
| Flexion (90⁰ Normal) | 60⁰ | 60⁰ |
| Combined (240⁰) | 145⁰ | 200⁰ |
| Comments | + Spasm; pain at 30⁰ flex. | + Tenderness; painful motion. |
| §4.71a Rating | 20% | 20% |

The MEB examiner noted functional restrictions of lifting more than 25 pounds, marching, load bearing and “strenuous repetitive activity”. By physical exam there was paravertebral spasm, but normal spinal contour. Gait was normal at the time, but notation was made that the CI “sometimes gets pain and altered gait with worsening of pain”. The ROMs charted above were measured by the orthopedist who annotated “with pain limiting at 30 degrees on flexion, but able to stretch to 60 degrees with pain.” At the post-separation VA Compensation and Pension (C&P) exam, the CI reported constant pain rated 6 of 10 “elicited by physical activity and quick movement”. It was noted that he “can function with medication” and that “his condition has not resulted in any incapacitation”; but, that “Bending, tying shoes, lifting or twisting cause pain enough to require immediate rest and medication.” The VA physical exam noted paralumbar tenderness, but no spasm and normal gait. The ROMs are charted above, and there was no degradation of ROM with repetitions (negative DeLuca criteria).

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and VA applied the code 5242 (degenerative arthritis of the spine), which is appropriate to the pathology. The ROM findings rated by the MEB and VA were similar, each yielding a 20% rating under the VASRD §4.71a general spine formula. Although the MEB examiner did not document measurements with repetition, there are no relevant probative value distinctions between the service and VA evaluations. Both were accurately rated and there was no evidence of incapacitating episodes to achieve a higher rating under the alternate formula. 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 lumbar spine condition.

Contended Neuropathy. The electromyelogram (EMG) results referenced in the contention were in fact addended to the NARSUM on March 21, 2008; and, were presumably available to the PEB which convened on March 28. The EMG report documented “evidence of bilateral (left > right) neuropathic process … consistent with lower lumbar polyradiculitis … does not show a focal neuropathy”. The NARSUM orthopedist opined that these were expected EMG findings in light of the imaging results. The NARSUM did not document the presence or absence of concurrent neurologic symptoms; but, exam findings were 5/5 motor strength throughout and symmetric reflexes. There was a mild sensory deficit in the left L5/S1 dermatome. The post-separation VA examiner reported that “numbness affects legs intermittently several times a week.” On the VA exam there was “no evidence of radiating pain on movement,” and normal neurologic testing was detailed. The VA examiner opined, “There are no signs of lumbar intervertebral disc syndrome with chronic and permanent nerve root involvement.” There was consequently no additional rating for neuropathy awarded by the VA. Firm Board precedent requires a functional impairment tied to fitness to support a recommendation for addition of a peripheral nerve rating to service disability in spine cases. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. The presumptive sensory component in this case has no functional implications, and no motor weakness was in evidence. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional disability rating for a peripheral neuropathy.

Remaining Conditions. Although the CI mentions hypertension and hypercholesterolemia in his contention, neither of these conditions was documented in the NARSUM. There were no medications listed for either condition. Normal blood pressure was recorded on the MEB physical and a ‘No’ response checked for history of high blood pressure. The post-separation VA C&P examiner, in fact, made an entry that the CI did not have a history of hypertension. Hypercholesterolemia is not a ratable condition IAW DoD and VA regulations. Other conditions identified in the core DES file were a prior appendectomy, a prior right knee injury, and a prior surgical fracture of the right hand. None of these conditions were significantly clinically or occupationally active 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. 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. 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 lumbar spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended lumbar neuropathy, hypertension, and hypercholesterolemia conditions, the Board unanimously agrees that it cannot recommend any finding of unfit for additional disability rating. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as unfitting for additional 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** |
| Lumbar Degenerative Disc Disease | 5299-5242 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110902, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

 XXXXXXXX

 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, AR20120007684 (PD201100859)

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 XXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA