RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100860 SEPARATION DATE: 20090722

BOARD DATE: 20120807

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated National Guard member on a temporary tour of active duty, SSG/E-6 (63B38, Track Vehicle Repair), medically separated for a lumbar spine condition. He experienced an onset of back pain in 2005 after a deployment to Iraq. He was subsequently diagnosed with lumbar disc disease and underwent fusion surgery in 2007. The condition could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The lumbar spine condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. A right knee condition was also addressed by the MEB, and forwarded as meeting retention standards. The PEB adjudicated the lumbar spine condition as unfitting, rated 20%, referencing the Veterans Administration Schedule for Rating Disabilities (VASRD). The right knee condition was determined to be not unfitting. An initial appeal for a Formal PEB (FPEB) was withdrawn, and the CI was found to be unfit for further duty by reason of physical disability and released from active duty with a 20% disability rating. He elected to transfer to the Retired Reserve List awaiting pay at age 60, in lieu of disability severance pay.

CI CONTENTION: With the assistance of a representative, the CI submits: “The rating the Army awarded him for his low back pain s/p spinal fusion was 20% in March 2009, but the VA rated his status post lumbar fusion at 40% effective July 2009.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 right knee condition adjudicated as not unfitting by the PEB was not requested for review, therefore, only the unfitting lumbar spine condition is addressed by the Board in this case. 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.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20090416** | **VA (4 Mo. Pre-Separation) – All Effective 20090723** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain, S/P Fusion | 5241 | 20% | S/P Lumbar Fusion | 5241 | 40% | 20090317 |
| Left L5-S1 Radiculopathy | 8599-8520 | 20% | 20090317 |
| PFS/Surgical Residuals, Right Knee | Not Unfitting | PFS, Right Knee | 5299-5260 | 10% | 20090317 |
| No Additional MEB/PEB Entries | Insomnia | 6399-6354 | 10% | 20090317 |
| Right Thigh Numbness | 8599-8521 | 10% | 20090317 |
| 0% x 2 / Not Service-Connected x 4 | 20090317 |
| **Combined: 20%** | **Combined: 70%** |

ANALYSIS SUMMARY:

Lumbar Spine Condition. Upon redeployment from Iraq in November 2005, the CI was placed on medical hold for evaluation of back pain which began without known injury near the end of the tour. Imaging revealed L5/S1 disc herniation with left neural encroachment (confirmed electrodiagnostically). He underwent L4-S1 fusion in May 2007, but suffered two recurrent falls which contributed to recalcitrant back and radicular pain that improved little with continued conservative measures. Post-operative x-rays showed normal hardware alignment, and neurologic testing was normal except for minor sensory deficits. Orthopedics recommended no additional surgical intervention. The narrative summary (NARSUM) cited “very limiting” physical restrictions, and the CI was confined to administrative duties. The physical exam noted pain bilaterally with straight leg raising and a proximal sciatic sensory deficit on the right. At the VA Compensation and Pension (C&P) exam, prior to separation, the CI reported baseline pain rated 3-4/10 with flares to 8/10 (via prolonged standing or sitting, bending, twisting). He noted occasional numbness of his left foot, to which he attributed difficulty with balance and a recent fall. The VA physical exam noted antalgic gait and paraspinal tenderness without spasm. Neurologic testing documented a left sciatic sensory deficit, but 5/5 motor strength with normal reflexes. The goniometric range-of-motion (ROM) evaluations in evidence, which the Board weighed in arriving at its rating recommendation, are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | MEB PT ~13 Mo. Pre-Sep | VA C&P ~4 Mo. Pre-Sep |
| Flexion (90⁰ Normal) | 60⁰ | 50⁰ |
| Combined (240⁰) | 150⁰ | 180⁰ |
| Comments | Abnormal gait. | Onset of painful motion at 10⁰ flexion. |
| §4.71a Rating | 20% | 20%\* |

 \*VA rating decision quoted painful motion thresholds in support of a 40% rating (see below).

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s 20% rating was consistent VASRD §4.71a criteria for the ROMs and findings under consideration. The VA rating decision cited the baseline ROMs charted above, but additionally elaborated examiner comments for “degrees at which painful motion begins and ends” (including onset of pain with flexion at 10⁰). It can only be assumed that the rater’s 40% determination was premised on these pain thresholds. The VA examiner, however, did not document repetitions or DeLuca findings; which is the only VA sanctioned route for adjustment of ratable ROM measurements. IAW VASRD §4.71a and by well established precedent, the Board does not apply such findings outside the context of justification for the minimum compensable rating under §4.59 (painful motion). There was no documentation of incapacitating episodes which would support a rating higher than 20% under the alternate rating formula.

The Board considered whether additional rating could be recommended under a peripheral nerve code, as conferred by the VA, for the residual sciatic radiculopathy at separation. Firm Board precedence requires a functional impairment tied to fitness to support a recommendation for addition of a peripheral nerve rating to disability in spine cases. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. The sensory component in this case has no functional implications, unless the balance issues raised during the VA C&P evaluation are considered to be of unfitting significance, and no motor weakness was in evidence. The members deliberated if the functional impairment attributable to the occasional interference of the sensory deficit with ambulation (reported falls, as above) was adequate support for an argument that the sciatic neuropathy was itself unfitting. It was noted; however, that there was no corroborating evidence in the service record for such occurrences; no other clinical documentation of balance issues; and, no exam findings consistent with the fairly dense sensory deficit normally associated with significant impairment of proprioception and balance. It was ultimately concluded that there is insufficient evidence of a separately ratable functional impairment (with fitness implications) from the residual radiculopathy, and the Board cannot support a recommendation for an additional disability rating on this basis. 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 of the lumbar spine 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. 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. 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lumbar Disc Disease with Residuals of Spinal Fusion | 5241 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110915, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXXXXX

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), WRAMC, Building 7, Washington, D.C. 20307-5001

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120015255 (PD201100860)

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 XXXXXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA