RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100865 SEPARATION DATE: 200050407

BOARD DATE: 20121003

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92Y1O, Unit Supply Specialist), medically separated for chronic low back pain (LBP), secondary to degenerative disc disease (DDD) and bone disease, and chronic neck pain due to strain and degenerative changes. The lumbar and cervical spine conditions 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/L3 profile and referred for a Medical Evaluation Board (MEB). Lumbar spine DDD and cervical spine DDD and spondylosis were forwarded to the Physical Evaluation Board (PEB) as unfitting conditions. Intermittent left arm pain; depressive disorder, not otherwise specified (NOS); gastroesophageal reflux (GERD) and elevated cholesterol conditions were also forwarded to the PEB, but determined to meet retention standards. The PEB adjudicated the chronic low back pain secondary to degenerative disc and bone disease and chronic neck pain due to strain and degenerative changes conditions as unfitting, rated 10% each, with probable application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD) for the neck and the US Army Physical Disability Agency (USAPDA) pain policy for the back. The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “I was medically discharged from the Army at a 20% Disability Rating. I was given a 10% rating for depression. I never suffered from depression in my life until my tour in Iraq. It has been confirmed that I suffered from PTSD. I request that I’m medically retired and not medically separated. [sic]”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the 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 ratings for unfitting conditions will be reviewed in all cases. The depressive disorder condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview and is accordingly addressed below. 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 Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050315** | | | **VA (~1 Mo. Post-Separation) – All Effective Date 20050408** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic LBP; DDD | 5242-5237 | 10% | DJD and DDD, Lumbosacral Spine | 5243 | 10%\* | 20050519 |
| Chronic Neck Pain… | 5242-5237 | 10% | DJD and DDD, Cervical Spine | 5243 | 10%\* | 20050519 |
| Cervical Neuritis, RUE | 8516 | 10%\* | 20050519 |
| Cervical Neuritis, LUE | 8516 | 10%\* | 20050519 |
| Intermittent Left Arm Pain | Not Unfitting | |
| Depressive D/O, NOS | Not Unfitting | | Major Depressive Disorder | 9434 | 10%\*\* | 20050519 |
| GERD | Not Unfitting | | GERD | 7346 | 10%\* | 20050519 |
| Elevated Cholesterol | Not Unfitting | | No Additional VA Entries | | | 20050519 |
| No Additional MEB/PEB Entries | | |
| **Combined: 20%** | | | **Combined: 50%** | | | |

\*No change to rating in VARD 20091001 (3+ Years Post-Separation)

\*\*No change to rating in VARD 20091001 and PTSD NSC (3+ Years Post-Separation); PTSD added effective 20101014

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 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 members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veteran Affairs (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 his 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. The Board noted the letter from the CI requesting additional treatment. While the Board recognized that this is most likely a copy of a letter sent by the CI to the VA, it wishes to emphasize that recommendations for treatment lie outside the Board’s authority.

Chronic Low Back Pain Secondary to Degenerative Disc and Bone Condition. 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.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM  Degrees | NARSUM  ~2 Mo. Pre-Sep | VA C&P  ~1 Mo. Post-Sep |
| Flexion (90) | 40 | 80 |
| Extension (30) | 25 | 30 |
| Combined (240) | 185 | 230 |
| Comment | Strength normal.  Neg. straight leg. | No pain, fatigue, weakness, or incoordination on repeat testing; flexion limited by stiffness |
| §4.71a Rating | 20% | 10% |

The CI had an insidious onset of LBP while deployed to Iraq (July 2003 to May 2004) variously related to heavy lifting and a fall from a truck in December 2003, and sought care for chronic back pain after return from Iraq. Imaging with X-rays was unremarkable (“questionable underlying L5-S1 intervertebral disc degeneration”) and a bone scan was normal. A chiropractic examination performed on 16 August 2004 measured the lumbar flexion at 52 degrees with a normal of 60 degrees for lumbar flexion (does not incorporate thoracic spine motion). An orthopedic examination performed on 25 August 2004 noted that he had mechanical LBP and the examiner recommended consideration by an MEB. The commander’s letter noted that the CI was not able to meet the basic soldiering duties due to his back and neck pain and was not able to perform his duties in supply. The commander also noted that the CI had been relieved of his duties in September 2004 for disrespect to the Troop Supply Sergeant and that UCMJ action was being considered. The CI was entered into the DES process two months later in November. At the MEB separation exam on 3 November 2004, just over 6 months prior to separation, the CI reported constant LBP. There was lumbar tenderness on examination. An orthopedic examination was performed two weeks later on 17 November 2004, 6 months prior to separation, specifically for the MEB process. The pain was noted to be non-radiating and he denied bowel or bladder incontinence. He had normal motor and deep tendon reflex (DTR) examinations. Gait was non-antalgic and heel/toe gait normal. The straight leg raise (SLR) was negative for signs of radiculopathy. Imaging was reviewed and noted to show “mild lumbar curvature.” No ROM measurements for the lumbar spine were documented. Mechanical LBP was diagnosed. There was pain on three maneuvers not expected to produce pain based on known pathology. The examiner commented that the LBP contributed to the inability of the CI to pass his physical fitness training (PFT) and meet duty requirements.

The Board noted that the CI had failed a PFT test on 18 August 2003 due to being overweight, prior to his fall that December, but that he passed one in October 2003 and also was able to pass one at least once after the fall, in February 2004. He failed APFT on 14 January 2004 due to weight (with passing scores for the run, pushups and sit-ups) and also failed on 21 January due to both weight and a low score on the two mile run. The narrative summary (NARSUM) was dictated 11 February 2005, less than 2 months prior to separation. The examiner documented that the CI could walk at his own pace without significant limitations, but that otherwise his activities were impaired and that duty restrictions had not been sufficient for improvement in his condition. There was tenderness over the lumbar paraspinal muscles without spasm or deformity. The ROM is in the chart above. There was pain on one maneuver not expected to produce pain based on pathology. He was noted to have DDD of the lumbar spine unresponsive to conservative treatment with secondary limitations in physical activity. At the VA Compensation and Pension (C&P) exam performed on 19 May 2005, 6 weeks after separation, the CI reported that he had daily pain rated at 7/10 and needed bed rest twice a week for 30 minutes to two hours. He denied sciatica. He could lift 15 pounds, sit for one to two hours and stand for 15 minutes. On examination, the lumbar spine was grossly intact. No assistive devices were used and he had no limp. There was no difficulty rising from a chair or changing positions on the examination table. Sensation, strength and reflexes were noted to be essentially normal. He was able to perform repetitive ROM without difficulty; the ROM values were mildly reduced and are in the chart above. DeLuca criteria were negative. There were no other records in evidence in the post separation period until the VA C&P examination dated 16 February 2011, almost 6 years after separation. Although this examination is well outside the 12 month post-separation window normally used by the Board in assessing disability it is similar to the first post separation C&P examination strengthening the value to the initial C&P examination and demonstrating stability of the back (and neck) condition. At this examination, the CI endorsed progressive worsening of his symptoms since separation; however, he reported that he had been working full-time as a carpenter. He reported he had missed four and one half weeks of work due to his back pain. There was no physician directed bed rest meeting the incapacitation description. Gait was normal and he was able to get onto the examination table without assistance or the use of a step stool and remove his shoes and socks without difficulty. On examination there was tenderness without muscle spasm. Flexion was 70 degrees and rotation 25 degrees bilaterally, but ROM was otherwise normal. DeLuca criteria were absent. The sensory exam was inconsistent and the changes non-anatomic. Motor and DTR examinations were normal. No atrophy was noted. The Board directs attention to its rating recommendation based on the above evidence. The VA and PEB both rated the back pain condition 10%. The different codes chosen by the PEB (5242-5237 degenerative arthritis and lumbosacral strain) and the VA (5243, intervertebral disc syndrome) had no bearing on the rating as all are rated under the general rating formula for the back. The Board does note that the PEB most likely utilized the USPDA pain policy when rating the back. There was moderate reduction in flexion and extension seen on the PEB examination, but not observed on the initial C&P examination. It is obvious that there is a clear disparity between these examinations, with implications regarding the Board's rating recommendation. The Board thus carefully deliberated the probative value assigned to these conflicting evaluations and reviewed the service file for corroborating evidence in the 12-month period prior to separation. The Board noted that the ROM limitation on the PEB examination is not consistent with the remainder of the service treatment record, the remainder of the physical examination done that same day, nor the imaging obtained. It specifically noted that the chiropractic examination 16 August 2004 documenting near normal lumbar flexion (52 degrees with a normal of 60 degrees) consistent with the near normal thoraco-lumbar flexion measured by the C&P examiner, which included both the lumbar and thoracic spine flexion components. The CI had pain with maneuvers not expected to produce pain on more than one examination prior to separation. Notably, on the chiropractic examination with near normal lumbar flexion, these signs were absent and this examination was consistent with the post-separation C&P examination as noted above. The Board determined that the C&P examination ROM values were more probative than those from the PEB process due to consistency with the evidence of the treatment records, other examinations, and the expected severity from the known pathology. 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 back condition.

Chronic Neck Pain Due to Strain and Degenerative Changes Condition. There were four ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation as summarized below.

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| --- | --- | --- | --- | --- |
| Cervical ROM  Degrees | Chiropractic  ~8 Mo. pre-sep | MEB Ortho Consult  ~5 Mo. Pre-Sep | NARSUM  ~2 Mo. Pre-Sep | VA C&P  ~1 Mo. Post-Sep |
| Flexion (45) | 45 | 20 | 40 | 35 |
| Extension (45) | 45 (60) | 40 | 45 | 45 |
| Combined (340) | 255 | Not applicable | 210 | 305 |
| Comment | Pain with motion. | Spurling neg.  ROM limited by pain. | Motor normal.  Spurling neg.  ROM limited by pain. | Tenderness.  No spasm.  Pain not exhibited. |
| 4.71a Rating | 10% | 20% | 10% | 10% |

The 17 November 2004 orthopedic note recorded that the CI fell off of a truck while deployed to Iraq in December 2003. Magnetic resonance imaging (MRI) obtained 26 July 2004 showed cervical lordotic straightening and moderate reversal consistent with significant spasm. It was otherwise unremarkable. A bone scan performed on 8 September 2004 was unremarkable. He was referred for chiropractic manipulation which did not resolve the pain. Repeat cervical films performed on 15 November 2004 and again 19 November 2004 was normal without evidence of spasm. A MRI performed on 23 February 2005, 6 weeks prior to separation, showed early degenerative changes of the vertebral foramina at C3-4 and of the C5-6 disc with a small right paracentral posterior disc protrusion. There was no nerve root or cord impingement. At the MEB separation exam performed on 3 November 2004, just over 6 months prior to separation, the CI reported intermittent numbness and tingling in the left ring and pinky fingers. Tenderness was noted over the cervical spine by the examiner. An orthopedic examination was performed 2 weeks later specifically for the MEB process, 6 months prior to separation. On examination, he was noted to have normal strength and reflexes of the upper extremities. Provocative examination maneuvers for nerve root impingement or irritation (Spurling test) were negative. The NARSUM was dictated 11 February 2005, less than 2 months prior to separation. The CI reported that the neck pain began after he fell on the truck in Iraq and that he also had recurrent numbness which radiated down his left arm. He again reinjured it while lifting after his return to home station. He failed to improve adequately with conservative management which included medications, chiropractic manipulation and physical therapy. On examination, he was noted to have tenderness of the cervical muscles without spasm or visible deformity. There was normal stregnth “Slight sensation over the triceps and ulnar forearm and hand was noted.” The reflexes were essentially absent bilaterally except for 2+ on the left brachioradialis. The ROM is above and was limited by pain. At the C&P) exam performed on 19 May 2005, 6 weeks after separation, the CI reported that he had daily pain rated at 8/10 with radiation down his arms, left greater than the right. He had not required bed rest. He had numbness in the fourth and fifth fingers and tingling from the elbows to the fingers. He was noted to be able to work overhead and look over his shoulder while driving. Sensory and motor exams were noted to be grossly normal. There was no tenderness to palpation, no muscle spasm was present and the spinal contour was normal. Although well outside the 12-month post-separation window normally used by the Board in assessing disability, the Board noted the C&P examination performed on 16 February 2011 which concluded there was no evidence of cervical radiculopathy. The complaints of arm and finger numbness were determined to be secondary to ulnar neuropathy. The Board directs attention to its rating recommendation based on the above evidence. The cervical ROM of motion values for both the PEB and for the VA rate at the 10% disability level. While the VA and PEB both rated the neck at 10%, the PEB coded the neck as 5242 5237, degenerative arthritis and cervical strain, and the VA as 5243, intervertebral disc syndrome. However, this provides no benefit to the CI in the absence of incapacitating episodes.

The Board reviewed the other coding options and determined that none was a better description of the underlying disability nor did any provide a rating advantage to the CI. The Board noted that the VA also rated for bilateral cervical radiculopathy due to the neck condition. Based on all the evidence, the Board concluded there was no associated cervical radiculopathy present at separation. Regardless of cause, there was no evidence that the left arm and hand numbness interfered with duty. 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 neck condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was depressive disorder, NOS. The Board’s first charge with respect to this condition 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. Depression was reviewed by the action officer and considered by the Board. This condition was not profiled; the commander’s statement simply states the CI “became very depressed in Iraq and has been on anti-depressants since.” The condition was not judged to fail retention standards. The CI was specifically evaluated by a psychiatrist for this condition at the request of the MEB. The MEB psychiatry evaluation noted that the CI had symptoms of depression in advanced infantry training in 2003, prior to the deployment to Iraq, which improved with treatment. While deployed to Iraq, he discontinued his medications with recurrent symptoms. He was restarted on medications while still in theater. The CI dismissed any stress from his combat experience as “nothing much.” After his return from Iraq and resuming treatment, he stated he “feels overall pretty well, and things are going well for him.” The psychiatrist noted that the CI was on medications and had responded favorably to them with good results in his mood and future plans. PTSD was excluded as a diagnosis, although it was noted that some symptoms of PTSD were present. While the VA did diagnose PTSD, it did so well after separation. There was no indication from the record that the mental health condition significantly interfered with satisfactory duty performance. 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; 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the back was most likely operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the neck condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended mental health condition, 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; Degenerative Disc and Bone Disease | 5242-5237 | 10% |
| Chronic Neck Pain Due to Strain and Degenerative Changes | 5242-5237 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110923, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXX, AR20120018610 (PD201100865)

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 XXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA