RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100954 SEPARATION DATE: 20080110

BOARD DATE: 20120905

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92G1O/Food Service Specialist), medically separated for degenerative disc disease (DDD) of the thoracolumbar spine after a 3 1/2 year history of mid and low back pain (LBP). There was no acute injurious event noted; however, the CI’s baseline back pain, initially documented within a month of entering active duty, worsened during a deployment where he lifted many heavy ammo cans. 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). DDD of the thoracolumbar spine was forwarded to the Physical Evaluation Board (PEB) as the only medically unacceptable condition IAW AR 40-501. Mild thoracolumbar dextroscoliosis was identified on the MEB proceedings document as a medically acceptable condition. The PEB adjudicated the DDD, thoracolumbar spine and dextroscoliosis condition as unfitting, rated 10% with application of a Veterans Administration Schedule for Rating Disabilities (VASRD) analogous code and possible application of the US Army Physical Disability Agency (USAPDA) pain policy*.* The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Disabilities were not addressed by the Army, the Department of Veterans Affairs addressed all disabilities which afflicted and continue to afflict me.”

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 unfitting DDD thoracolumbar spine condition, including the mild thoracolumbar dextroscoliosis condition, meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The other requested conditions rated by the Department of Veterans’ Affairs (DVA) proximate to separation (cervical strain and tinnitus) and and the later DVA rating for posttraumatic stress disorder (PTSD) are not within the Board’s purview. 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 20071101** | **VA (<1 mo. Post sep.) – All Effective Date 20080111** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| DDD, Thoracolumbar spine | 5299-5242 | 10% | Degenerative Arthritis of the Thoracolumbar Spine | 5242 | 10% | 20080201 |
| ↓No Additional MEB/PEB Entries↓ | Cervical Strain | 5237 | 10% | 20080201 |
| Tinnitus | 6260 | 10% | 20080201 |
| 0% x 0/Not Service-Connected x 1 | 20080201 |
| **Combined: 10%** | **Combined: 30%\*** |

\*PTSD @50% added effective 20091125, then increased to 100% effective 20100729

ANALYSIS SUMMARY:

Thoracolumbar Spine Condition. (includes DDD and thoracolumbar dextroscoliosis) There were three range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |  |  |
| --- | --- | --- | --- |
| ROM - Thoracolumbar | PT ROMs ~5 Mo. Pre-Sep\* | MEB ~4 Mo. Pre-Sep | VA C&P ~3 Wk. After-Sep |
| Flex (0-90) | 450 *\** | 45⁰ | 80⁰ |
| Ext (0-30) | 50 | 5⁰ | 25⁰ |
| R Lat Flex (0-30) | 30⁰  | 30⁰  | 30⁰ |
| L Lat Flex 0-30) | 30⁰  | 30⁰  | 30⁰ |
| R Rotation (0-30) | 100 | 10⁰ | 30⁰ |
| L Rotation (0-30) | 150 | 15⁰ | 30⁰ |
| COMBINED (240) | 1300 | 130⁰ | 225⁰ |
| Comment | + scoliosis & abn kyphosis; + tender to palpation; no spasm; able to heel-toe walk; normal gait | abn kyphosis of T spine & scoliosis. + pain w/ motion (see text) | + pain w/ motion; gait normal; no DeLuca decrease |
| §4.71a Rating | 10%-20% (see text) | 10%-20% (PEB 10%) | 10% |

 \*Dual inclinometer used: “one placed at C7-T1 and one placed at L5-S1”

The MEB and VA Compensation and Pension (C&P) evaluations document essentially the same history related to the CI’s LBP. The back pain began in August 2004, within the first month of entering basic training. A bone scan obtained at that time revealed lumbar scoliosis as the only abnormal finding with no specific diagnosis recorded. There were no exacerbations, limitations or complaints of back pain until the CI returned from a deployment in September 2006. During that deployment, the CI was required to lift heavy ammo cans and reported no acute injury. The CI noted daily mid to LBP described as sharp and burning with morning stiffness daily. The pain was variable in intensity often reaching 7/10 intensity and exacerbated by exertion, lifting and prolonged sitting/standing. There were no incapacitating episodes.

While the VA C&P examination documents that the CI did experience some radiation of pain into his right knee two times weekly, the narrative summary specifically states “he has not experienced radicular symptoms” The CI was treated with non-steroidal anti-inflammatory drugs, muscle relaxers, anti-depressants and non-narcotic pain medications without relief. Chiropractic care was attempted and a TENS unit was applied by physical therapy (PT), without significant relief. Plain film x-rays of the thoracic spine revealed “probably residual of prior Scheuennann's disease in the midthoracic vertebral bodies with very slight anterior wedging and minimal anterior spondylosis.” Lumbar x-ray revealed mild lumbar dextroscoliosis and mild endplate degenerative change and disc height loss at all lumbar levels. A magnetic resonance imaging (MRI) was obtained and revealed degenerative disc changes with focal midline disc herniation at L4-L5 and L5-S1 without encroachment on the neural foramina. The MEB exam on DD Form 2808 accomplished 4 months prior to separation documented “inability to flex at waist due to stated pain.”

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and VA rated the CI using the criteria of 5242 (degenerative arthritis of the spine) at 10%. The ROMs from the PT evaluation specified that dual inclinometer measurement was used; these values do not correspond to goniometric ROM measurements taken IAW VASRD guidance and omit portions of the goniometric ROM. The narrative summary (NARSUM) did not specify goniometric or inclinometer measurements; however, the NARSUM ROM values were exactly the same degrees as the PT ROMs. The VA exam was closer to the date of separation, and the Board assigned higher probative value to the VA exam. There was no evidence of incapacitating episodes (bed rest and treatment prescribed by a physician), no relationship of the abnormal spine contour to spasm or guarding, and no functionally limiting radiculopathy for separate peripheral nerve rating. 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.

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. Although there was possible application of the USAPDA pain policy, it was not clearly evident to the Board from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. Never the less, the condition was adjudicated independently of that policy by the Board. In the matter of the thoracolumbar 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| DDD, Thoracolumbar spine | 5299-5242 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111019, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

 XXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120016851 (PD201100954)

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 XXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA