RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1100959 SEPARATION DATE: 20080519

BOARD DATE: 20120622

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TSgt/E-6 (3P071/Security Forces Craftsman/Military Working Dog Handler), medically separated for chronic low back pain (LBP) with herniation of L5-S1 intervertebral disc resulting in slight impingement of right S1 nerve root. The CI did not improve adequately with treatment to meet the physical requirements of his Air Force Specialty (AFS) or satisfy physical fitness standards. He was issued a temporary L4 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the lower back condition as unfitting, rated 20%; with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “Unfit condition of the lower back was not rated solely by the VASRD and without application to DoD 1332. Unfit condition of lower back did not include condition of service aggravated DDD annotated in medical records and MRl report. Reevaluation of thrombosis of right forefinger. Reevaluation of right shoulder injury. Reevaluation of right knee injury. Reevaluation of hip injury. Thorough investigation and reevaluation of all medical records.” He additionally lists all of his VA conditions and ratings as per the rating chart below.

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 lumbar degenerative disc condition requested for consideration and the unfitting chronic back pain condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. Although not listed in the diagnoses section on the AF Form 356, the PEB mentioned digital artery thromboembolism and nonexertional chest pain in the remarks section concluding these recent medical diagnoses were not unfitting for continued duty. The Board therefore concluded these two conditions also met criteria for Board purview and are addressed below. The other requested conditions, right forefinger, right shoulder injury, hip injury, and right knee injury, and the remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and listed on the DA Form 294 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 Air Force Board for the Correction of Military Records (AFBCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20080402** | | | **VA (4 Mo. After Separation) – All Effective Date 20080520** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5243 | 20% | Lumbosacral Disc Compression | 5243 | 40% | 20080911 |
| ↓No Additional MEB/PEB Entries↓ | | | Right Shoulder Tendonitis | 5299·5203 | 10% | 20080911 |
| Right Knee Tendonitis | 5257-5260 | 10% | 20080911 |
|  | | | 0% x 0/Not Service-Connected x 1 | | | 20080911 |
| **Combined: 20%** | | | **Combined: 50%** | | | |

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. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Low Back Pain, With Herniation of L5-S1 Intervertebral Disc Resulting in Slight Impingment of Right S1 Nerve Root Condition. Review of service treatment records (STRs) documents persistent LBP, since 2006. Magnetic resonance imaging (MRI) in August 2006 demonstrated degenerative disc disease (DDD) at L4-5 and L5-S1 with a small disc protrusion at L4-5 and disc bulging at L5-S1 without neural impingement. In August 2006, he underwent one epidural steroid injection before transferring to a new base assignment. After arrival at his new assignment a duty limiting profile was extended and he underwent additional epidural steroid injections in January 2007 and February 2007 without lasting relief of pain interfering with strenuous activities. Neurosurgical evaluation beginning in April 2007, extending into November 2007, including repeat MRI, selective nerve root block, and discogram concluded surgical treatment was not a recommended option. MRI in June 2007 demonstrated DDD at L4-5 and L5-S1 with an L4-5 disc protrusion and annular tear, and a small to moderate para-medial disc herniation at L5-S1 with slight impingement on the right S1 nerve root. Selective S1 nerve block did not improve his pain complaints and discogram (in October 2007) yielded pain that was not concordant with anatomic findings amenable to surgical intervention. The MEB narrative summary (NARSUM), performed on 29 November 2007 summarized the clinical history, and related the back pain prevented prolonged sitting or standing. The CI reported he could bend over but had severe pain raising back up. The CI reported he was walking 2.5 to 3 miles, three times per week with plans to increase the frequency to five times per week. The physical examination noted limited motion due to pain but did not record range-of-motion (ROM). Strength was normal (5/5), with intact reflexes and normal sensation. A straight leg raise was stated as positive on the left which did not correlate with imaging results above. Neurosurgery examinations previously documented negative straight leg raising for signs of radiculopathy as well as normal strength, reflexes sensation and normal gait. The commander’s letter, dated 21 November 2007, reported the CI accomplished all duties as Chief of Security, a managerial position that did not require the performance of strenuous duties required of most security forces members. Other than medical appointments, the CI had not missed any days of work due to his back condition. The CI underwent another epidural steroid injection on 30 November 2007 with report of no improvement in pain. A physical therapy ROM examination performed on 4 January 2008, requested by the PEB recorded flexion of 50 degrees, extension 10 degrees, right lateral bending 15 degrees, left lateral bending 10 degrees, right rotation of 25 degrees, and left rotation of 30 degrees. A clinic appointment on 29 January 2008 documented painful back motion and a normal gait. A 12 February 2008 MEB NARSUM addendum related worsening subjective symptoms: “The member is able to walk slowly up to 1.5 miles but pain starts when he stops; unable to run, pedal bicycle, stand more than 10 to 15 minutes, lift more than five pounds.” The PEB rated the CI’s back condition at 20% noting intact reflexes and strength. At an examination on 18 April 2008, there was back tenderness with muscle spasm. Strength, reflexes, gait and stance were normal.

The VA Compensation and Pension (C&P) examination was performed on 11 September 2008, 4 months after separation. The CI reported his back pain began sometime between “2004 and 2005” during canine training when he was struck by a dog, twisted and wrenched his back, and fell to the ground. He returned home unable to walk, and was brought to sick call the next day. In addition, the CI reported right shoulder and right knee injury in the same training incident but these injuries received little attention due to the severity of the back injury at that time. Review of the STR does not find primary documentation that corroborates this clinical history. The first occurrence of medical care for back pain was on 8 March 2004. Medical records document a report of onset of back pain while lifting a kitchen chair at home in March 2004 that resolved completely by 30 March 2004. A 10 May 2004 periodic medical examination was silent for complaints of back pain. The medical record is silent for complaints of LBP until 30 May 2006 when he experienced recurrent low back pain lifting up his 30 pound daughter. Multiple treatment record entries, from this time document the 2004 incident was related to lifting a chair, and that the May 2006 incident was while lifting his child. A 22 August 2006 civilian pain clinic evaluation records: “he states that the current episode of pain began 4 months ago. The event which precipitated this pain was lifting his 2 year old child who weighs about 30 lbs. Aggravating factors contributing to the back pain may be back pain 3-4 years after lifting a chair.” Medical records document care for right shoulder pain in January 2002 and January 2006 without history of injury or trauma. The Board also noted the CI reported his back was injured in a military working dog training incident in April 2004 to medical providers beginning in April 2007, as well as in his letter of exception to the PEB, and for the line of duty form. However, primary medical documentation from prior to 2007 does not corroborate the event, and there is no report of injury in evidence in the file. The C&P examination recorded subjective symptoms worsened since separation including pain with walking three to four blocks that compels him to stop, inability to bend or lift, tolerate standing, sitting or driving. Activities of daily living were indicated as “normal.” ROM was limited to flexion 26 degrees, extension 8 degrees, left lateral flexion 12 degrees, right lateral flexion 12 degrees, left rotation 22 degrees, and right rotation 20 degrees. Posture was normal, gait was hesitant and wide based. Laseague sign was “indistinctly positive at 12 degrees on the right and 20 degrees on the left. The examiner was uncertain regarding the validity of range of motion results commenting, “Though persistent and consistent I cannot substantiate ROM’s.”

The Board directs attention to its rating recommendation based on the above evidence. The PEB rating of 20% 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 the VA examination ROM. In its assignment of probative value to the disparate exams, the Board must acknowledge that VA C&P examinations may predispose a lowered pain threshold since the examinee is generally quite aware that the severity of symptoms and pain tolerance on ROM is directly correlated with the resulting rating and financial gain. The measurement of ROM reflecting pain with motion is dependent on the examinee’s reported pain with scant ability by the examiner to objectively confirm it. 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 and less vulnerable to the undue influence just elaborated. 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 CI contends DDD as annotated in medical records and MRl reports was not considered by the PEB. DDD was associated with the back pain condition and was considered by the PEB with the rating for the chronic LBP. VASRD §4.14 prohibits granting two ratings based on the same symptoms or impairment. Although not listed in the diagnoses on the AF Form 356, the PEB mentioned digital artery thromboembolism and nonexertional chest pain in the remarks section, concluding these recent medical diagnoses were not unfitting for continued duty. 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. No underlying cause was determined for the digital artery thromboembolism and a course of treatment was provided. The CI was evaluated for non-exertional chest pain in January 2008. There was no evidence of cardiac or other condition that would interfere with military duties. At the time of an examination on 18 April 2008 and the C&P examination on 11 September 2008, complaints referable to the digital artery thrombosis or nonexertional chest were not documented. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions 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 any of the contended conditions, 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. In the matter of the chronic LBP with herniation of L5-S1 intervertebral disc resulting in slight impingement of right S1 nerve root condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended digital artery thromboembolism and nonexertional chest pain conditions, 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 | 5243 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111023, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

XXXXXXXX

Dear XXXXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §1554a), PDBR Case Number PD-2011-00959

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings