RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101027 SEPARATION DATE: 20041129

BOARD DATE: 20120921

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (75B, Personnel) medically separated for a lumbar spine condition. She experienced an onset of low back pain in 1993; which was subsequently diagnosed as degenerative disc disease (DDD) complicated by spinal stenosis; and, for which she underwent surgery in early 2004. Post-operatively the condition could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was consequently issued a permanent L4 profile and referred for a Medical Evaluation Board (MEB). The single condition of “lumbar stenosis” was forwarded to the Physical Evaluation Board (PEB). The PEB adjudicated the condition as unfitting, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with that disability rating of 10%.

CI CONTENTION: The application borrows wording from the PEB’s DA Form 199, and states “Low back pain due to multilevel degenerative disk disease and congenitally short pedicles (EPTS), status L4/L5, L5/S1 foraminotomy (February 2002) without resolution of symptoms. Flexion 85, no radiculopathy or consistent muscular spasms.” She does not elaborate further or specify a request for Board consideration of any additional conditions.

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 rating for the unfitting lumbar spine condition is addressed below; and, no additional conditions are within the DoDI 6040.44 defined purview of the Board. 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 20040707** | | | **VA (2 Mo. Post-Separation) – Effective 20041130** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Back Pain, Multilevel DDD | 5243 | 10% | DDD L4-5, L5-S1 | 5242 | 20% | 20050120 |
| No Additional MEB/PEB Entries. | | | 0% x 3 Additional Conditions | | | 20050120 |
| **Combined: 10%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY:

Lumbar Spine Condition. The CI experienced an atraumatic onset of low back pain with radicular pain in 1993, that was treated conservatively and incurred temporary profiles over the ensuing years. With worsening symptoms, she underwent specialty evaluation in 2003. Magnetic resonance imaging (MRI) at that time revealed “mild hyperlordosis and scoliosis” (anatomic, not functional), congenital spinal stenosis with shortened pedicles of the lower lumbar segments, disc protrusions at T10/11, L3/4, L4/5, and L5/S1 (with foraminal stenosis and nerve root encroachment at this level), and multilevel “mild to moderate” DDD from L3 to S1. Left lower extremity radicular pain was a dominant complaint at this time; and, a series of nerve root injections was undertaken, which provided inadequate relief. In February 2004 she underwent a bi-level laminectomy (L4/5, L5/S1) with foraminotomy. The narrative summary (NARSUM) states that, “This afforded her some relief, however she continues to have significant pain.” No nerve conduction studies are in evidence for the radiculopathy, but multiple normal neurologic physical exams are documented in the service treatment record (STR). The NARSUM noted constant pain rated 6/10, “increased with activity.” The physical exam noted a normal gait and with 5/5 motor strength, symmetric 2+ reflexes, and sensation intact to pinprick. At the VA Compensation and Pension (C&P) exam (2 months post-separation) the pain was rated 7/10 and the examiner stated, “Any physical activity brings it up or sometimes it just comes by itself.” The VA examiner noted 3 cumulative days of bedrest over the last year (not minimally compensable under the VASRD §4.71a rating formula for incapacitating episodes). The VA physical exam noted normal gait, positive spasm, negative tenderness, and the same normal neurologic findings as noted in the MEB exam. The VA range-of-motion (ROM) measurements were flexion of 50 degrees and a combined ROM of 145 degrees; noting painful motion and fatigability.

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s DA Form 199 quoted flexion of 85 degrees in accurate support of its 10% rating, although the source ROM evaluation is not in evidence in the service treatment record (STR). Other than a single outpatient entry, 18 months prior to separation (9 months prior to surgery), which documented flexion of 30 degrees (ratable at 40%) and extension of 15 degrees; there is no formal ROM evidence from the service. Given that the VA goniometric evaluation is the only source of evidence available to the Board that is compliant with VASRD §4.46 (accurate measurement), that the VA evaluation was more temporally proximate to separation than the MEB evaluation (7 months prior to separation), and that the VA evaluation was clinically consistent with the pathology and severity reflected throughout the STR. The Board was in agreement that predominant probative value should be assigned to the VA evidence proximate to separation. The VA ROMs were accurately rated 20% IAW the §4.71a general rating formula for the spine. The Board considered whether additional service ratings could be recommended under a peripheral nerve code for the persistent radiculopathy in evidence. 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. There was no sensory deficit or motor weakness in evidence. There is thus no 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 recommends a disability rating of 20% for the lumbar spine condition. The action officer recommended, and the Board concurred with, the code 5242 (degenerative arthritis of the spine) for its clinical compatibility.

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, the Board unanimously recommends a disability rating of 20%, coded 5242, IAW VASRD §4.71a. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Multi-level Degenerative Disc Disease, Lumbosacral Spine | 5242 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111110, 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXX, AR20120017728 (PD201101027)

1. 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 to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA