RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1101040 SEPARATION DATE: 20080115

BOARD DATE: 20120410

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSgt/E-5 (2A571/Aerospace Maintenance Craftsman), medically separated for a thoracolumbar back condition. He did not respond adequately to conservative or surgical treatment and was unable to fulfill the physical demands within his Air Force Specialty (AFS), meet worldwide deployment standards or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Chronic low back pain (LBP), status-post lumbar discectomy of T10-11 was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the back condition as unfitting, rated 20% lAW Department of Defense and Veterans Administration Schedule for Rating Disabilities guidelines. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “See attached documents and requested VA medical records. The following conditions have continued to have a decline in mobility with sciatic pain, numbness in limbs, and other neurological problems. See documented Air Force medical records and requested VA medical records.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20071119** | | | **VA (~7 Mo. After Separation) – All Effective Date 20080116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain, S/P Discectomy of T10-11 with Removal of Bone Fragments | 5243 | 20% | Spondylosis, Thoracolumbar Spine with S/P Discectomy and Scar Claimed as DDD and Scoliosis | 5237 | 10%\* | 20080815 |
| ↓No Additional MEB/PEB Entries↓ | | | DJD Right Knee, Claimed as Torn Cartilage | 5003-5260 | 10% | 20080815 |
| Bilateral Intermittent Tinnitus | 6260 | 10% | 20080816 |
| Irritable Bowel Syndrome, Claimed as Gastroenteritis | 7319 | 10% | 20080815 |
| 0% x 5/Not Service-Connected x 7 | | | 20080815 |
| **Combined: 20%** | | | **Combined: 30%** | | | |

\*Increased to 20% effective 20100504

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the DES operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance.

Thoracolumbar Back Condition. The CI presented in 2004 for treatment of non-traumatic LBP after stepping out of a vehicle. The CI did not respond to physical therapy, narcotic and non-narcotic pain medications, muscle relaxants, or epidural injections. Due to conservative treatment failure, a positive MRI and myleogram for a bulging disc at the T10-11 with mild scoliosis, the neurosurgeon performed a minimally invasive lumbar discectomy and removal of bone fragments for definitive treatment. The CI had some response to surgery yet was separated 8 months later. Subsequent VA evidence reflects improvement of his back condition 8 months after separation then there was a decline in his back condition a year and 4 months later. The commander’s statement documented “the condition has not impacted his ability to perform his duties…and has not required modifications to his work schedule.” There were two ranges-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| --- | --- | --- |
| Thoracolumbar | Separation Date: 20080115 | |
| Goniometric ROM | PT –  ~ 4 Mos Pre Sep | VA C&P –  §~7 Mos Post Sep |
| Flexion 0-90⁰ normal | 50⁰ | 90⁰ |
| Combined 240⁰ normal | Incomplete | 240⁰ |
| Comments | Normal gait, posture and no spasm | Normal gait, posture and no spasm |
| §4.71a Rating | 20% | 10%\* |

\*IAW §4.59

The narrative summary (NARSUM), dated 3 months prior to separation, documented daily pain 3-4 of 10 (10 being the worst pain) which was an improvement from 10 of 10 prior to surgery, severe pain up to three times a month, reliance on use of pain medications, and the exam demonstrated “limited flexion, normal extension” referencing the physical therapist goniometric exam documented above. The VA Compensation & Pension (C&P) exam historically documented spine symptoms of constant pain, 8 of 10 (10 being the worst pain), increased with activity and relieved with rest and medications. The pain traveled up to the base of the neck and shoulders bilaterally and across the rib cage with associated dizziness, visual disturbances, bladder complaints and erectile dysfunction. The condition did not result in any incapacitation and he functioned with medication. The physical exam demonstrated negative testing for radicular pain, and painful motion, without loss of ROM with repetitive testing thus not meeting the DeLuca criteria. While the VA rating decision cited scoliosis, both the NARSUM and VA examiners described normal spinal contour, gait and neurological findings. The PEB and the VA chose different codes for the thoracolumbar back condition, although this did not bear on rating. The PEB’s 20% rating was consistent with VASRD §4.71a standards for the ROM evidence provided by the physical therapist exam and likely application IAW the Department of Defense guidelines with the notation CI “unable to complete duties 15% of the time,” and further notated no heavy lifting, back flexion, lifting over 20 pounds, run, or standing for prolonged periods. The VA’s 10% rating cited the VASRD §4.71a standards for the ROM evidenced and, in addition, cited painful motion to allow the condition to the minimal compensable rating IAW VASRD §4.59 (painful motion). There was no evidence of documentation of incapacitating episodes which would provide for additional or higher rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the thoracolumbar back condition.

Other Contended and Remaining Conditions. The CI’s application asserts that compensable ratings should be considered for sciatic pain, numbness in limbs, and other neurological problems. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence of ratable peripheral nerve impairment in this case. There was also no rating for these contended radicular and neurologic disorders in the original VA or future VA rating decisions. Finally these conditions were not in the DES. One other condition was identified in the DES file, heart palpitations. This condition was not significantly clinically or occupationally active during the MEB period, did not carry an attached profile, and was not implicated in the commander’s statement. This condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to separation rating. Additionally right knee degenerative arthritis, tinnitus, irritable bowel syndrome, and several other non-acute conditions were noted in the VA proximal to separation, but were not documented in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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 thoracolumbar back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the heart palpitations condition or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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, Status-Post Lumbar Discectomy of T10-11 with Removal of Bone Fragments | 5243 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111103, 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

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXXX

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-01040

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,

XXXXXXXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings