RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1101054 SEPARATION DATE: 20020329

BOARD DATE: 20120815

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt/E-5 (92Y/Supply Sergeant), medically separated for chronic mechanical low back pain (LBP) status post laminectomy*.* The CI had LBP and left leg radiating pain first evaluated in 1998. He failed conservative treatments and magnetic resonance imaging (MRI) diagnosed herniated disk at L5-S1 was surgically corrected (laminectomy). He had initial good symptom relief, however, he had return of symptoms of back pain and left leg radiation which was not resolved with conservative therapy including epidural steroid injection, physical therapy and narcotic pain medication. He declined consideration for repeat surgery (considered reasonable), 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). Degenerative disc disease (DDD) L5-S1 status post laminectomy and chronic mechanical LBP were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the low back condition (both MEB diagnoses) as unfitting, rated 10%; with specified application of Department of Defense Instruction (DoDI) 1332.39 and AR 635-40, with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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 chronic mechanical LBP status post laminectomy condition met the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and listed on the DD 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 Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20020128** | | | **VA (1 & 14 Mo. After Separation) – All Effective Date 20020330** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic mechanical Low Back Pain Status Post Laminectomy | 5299-5295 | 10% | Residuals of S/P Laminectomy and Residual of S1 Nerve Root Damage (also claimed as radiculopathy left leg) | 5299-5293 | 20% | 20020411 |
| Right Foot, Radiculopathy a/w … Laminectomy | 5293-5284 | 10%\* | 20030618 |
| Left Foot, Radiculopathy a/w … Laminectomy | 5293-5284 | 10%\* | 20030618 |
| ↓No Additional MEB/PEB Entries↓ | | | Right Shoulder Impingement Syndrome | 5299-5203 | 10% | 2002041 |
| Olecranon Bursitis, Left Elbow | 5299-5019 | 10% | 20020411 |
| 0% x 2/Not Service-Connected x 1 | | | 20020330 |
| **Combined: 10%** | | | **Combined: 50%\*** | | | |

\* Original VARD was absent 5293-5284 ratings (combined 30%); radiculopathy ratings added per VARD dated 20030729 based on exam of 20030618 as charted above.

ANALYSIS SUMMARY: The 2001/2002 Veterans’ Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed on 23 September 2002 for code 5293 (intervertebral disc syndrome) criteria, and then changed to the current §4.71a rating standards on 26 September 2003. The 2001 standards for rating based on range-of-motion (ROM) impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. The older 5293 criteria also specifically included symptoms compatible with sciatica which were present in this case. For the reader’s convenience, the 2001/2002 rating codes under discussion in this case are excerpted below.

5292 Spine, limitation of motion of, lumbar:

Severe........................................................ 40

Moderate...................................................... 20

Slight........................................................ 10

5293 Intervertebral disc syndrome:

Pronounced; with persistent symptoms compatible with sciatic

neuropathy with characteristic pain and demonstrable muscle

spasm, absent ankle jerk, or other neurological findings

appropriate to site of diseased disc, little intermittent

relief........................................................ 60

Severe; recurring attacks, with intermittent relief........... 40

Moderate; recurring attacks................................... 20

Mild.......................................................... 10

Postoperative, cured.......................................... 0

5295 Lumbosacral strain:

Severe; with listing of whole spine to opposite side, positive

Goldthwaite's sign, marked limitation of forward bending in

standing position, loss of lateral motion with osteoarthritic

changes, or narrowing or irregularity of joint

space, or some of the above with abnormal mobility on forced

motion....................................................... 40

With muscle spasm on extreme forward bending, loss of lateral 20

spine motion, unilateral, in standing position............... 20

With characteristic pain on motion............................ 10

With slight subjective symptoms only.......................... 0

Low Back Pain Condition. The narrative summary (NARSUM), performed 4 months prior to separation, was based on an exam 9 months prior to separation and is therefore charted following the physical therapy goniometric ROM evaluation. There were three goniometric ROM evaluations in evidence, with the NARSUM exam and documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Thoracolumbar ROM | PT ~9 Mo. Pre-Sep | MEB ~9 Mo. Pre-Sep | VA C&P ~2 Wk. Post-Sep | VA C&P ~14 Mo. Post-Sep |
| Flex (90⁰ Normal) | 30⁰ | Exam silent on ROM; referenced normal exam of 20010808 (7 Mo. pre-sep) NARSUM written 20011108 (4 Mo. Pre-sep) | 40⁰ | 60⁰ |
| Ext (0-30) | 0⁰ | 30⁰ | 25⁰ |
| R Lat Flex (0-30) | 10⁰ | 30⁰ | 30⁰ |
| L Lat Flex 0-30) | 10⁰ | 20⁰ | 30⁰ |
| R Rotation (0-30) | 15⁰ | - | 30⁰ |
| L Rotation (0-30) | 15⁰ | - | 30⁰ |
| Combined (240⁰) | 80⁰ | *Min 120⁰, Max 180⁰* | 200⁰ |
| Comment | “15⁰ antalgic forward flexion posture” (unable to stand straight), TTP; + R SLR, - L SLR,+ facet comp bilat, - Patrick Fabre bilat | “Break away weakness in LLE globally, numbness, decreased pin prick and left S1.”; DTR 2+/4 bilat except absent knee, R ankle & L ankle jerk; can only abulate with a cane | Painful motion; increased fatigability and pain with repetition; posture and gait normal; able to stand on balls/heels of feet; neg SLR; extensor hallucis strength 5/5 bilat; neuro normal | Lordotic curve is slightly decreased; L hallicus longus 4/5; bilat feet 5/5 strength; decreased sensation in L S1 distribution; prob R slight dim in pin discrimination in L5 portion of plantar foot; DTR absent L Ankle; SLR Neg; squat & rise 100%; heel/toe good |
| §4.71a Rating | 40% | 40% (PEB 10%) | 20% | 20%  (+VA 10% rad Sx each leg) |

At the time of the NARSUM, the CI reported severe LBP with pain radiating down the left leg to the foot. The CI was taking daily narcotic pain medication (Percocet) as well as nightly sleeping medication (Ambien), but was not taking prescribed Elavil or Gabapentin (mood and neurologic medications) “by his own choice.” Physical exam was focused to that charted above. Post-surgical MRI indicated a “small area of scarring at the level of L5-S1 which abuts the anterior surface of the thecal sac without significantly displacing it.” The present condition and functional status indicated “required cane for ambulation,” “dependence on pain medication” (daily narcotics) and “with AMA pain rating of moderate and constant frequency.” The examiner indicated there were “no objective findings consistent with the worsening pain.” Records indicated persistent complaint of left lower extremity radiating pain, with some notes indicating right lower leg radicular pain.

At the VA Compensation and Pension (C&P) exam, performed 2 weeks after separation, the CI reported he had recently discontinued use of narcotic pain medications and took no medication for the back condition. He stated pain in his back was “present on a daily and constant basis, waxing and waning throughout the day, dependent upon his level of activity” and interfered with activities. The exam is charted above and there was no change with repeated and resisted motion (negative DeLuca). A second VA exam, performed 14 1/2 months after separation documented pain in both lower extremities (down to the feet) that was attributed as more likely than not secondary to the back condition. The VA continued the 20% back rating and added 10% ratings for neuropathic pain for each foot.

The Board directs attention to its rating recommendation based on the above evidence. Although the second VA exam was beyond the DoDI 6040.44 defined 12-month interval for special consideration to post-separation evidence, and the second VA exam was afforded lowered probative value, it provided historical information and trend information relative to rating at the time of separation. The PEB disability description indicated “without significant neurologic abnormality or documented chronic paravertebral muscle spasms on repeated examination” and the Board agreed there was insufficient evidence for an unfitting peripheral nerve rating. However, the CI had persistent symptoms compatible with sciatic neuropathy with characteristic pain and absent ankle jerk with subjective neurological symptoms appropriate to site of his diseased disc and surgical scarring area for rating under code 5293, intervertebral disc syndrome. The Board discussed the probative values of the exams with the combination of the PT ROMs and NARSUM having the most detail, but being more remote from the date of separation. The initial VA exam closest to separation had ROMs consistent with the subsequent VA exams, however, there was some decreased probative value as exams prior to it and following it demonstrated an absence of left ankle reflex and the neurologic exam was limited to “normal” without further details. Board deliberations focused on rating under 5292 (limitation of motion) of 20% (moderate) or 40% (severe); or under 5293 at 20% (moderate; recurring) or 40% (severe, recurring attacks, with intermittent relief).

Given the ROMs after separation and the record in total, a rating above 20% under limited motion was not supported. There was significant improvement in the CI’s gait, requirement for pain medication, and ROMs following the NARSUM and the Board adjudged that the CI’s condition was closer to the disability picture for the 20% rating under 5293.

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 low back condition under coding of 5299-5293.

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 DoDI 1332.39 and AR 635-40 for rating the low back condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic mechanical LBP status post laminectomy condition, the Board unanimously recommends a disability rating of 20% 5299-5293 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 his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Mechanical Low Back Pain Status Post Laminectomy | 5299-5293 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111107, 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 XXXXXXXXXXXXXXXXXXXX, AR20120015473 (PD201101054)

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 XXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA