RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101062 SEPARATION DATE: 20080420

BOARD DATE: 20120509

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92G20/Cook), medically separated for right L4-5 sensory deficit and radiculopathy which interfered with his ability to stand and wear personal protective gear because it increased his radicular pain. His electrodiagnostic evidence of chronic right L5 radiculopathy was rated as mild, incomplete paralysis. He was also separated for lumbar degenerative disc disease (DDD) which interfered with his ability to perform basic Soldier functions. The CI injured his back when he was knocked to the ground during a mortar attack in Iraq in 2004. 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 initially underwent a Military MOS Reclassification Board (MMRB). The MMRB referred his case to the Medical Evaluation Board (MEB). One other condition, anxiety disorder not otherwise specified (NOS), was forwarded on the MEB submission as a medically acceptable condition. The PEB adjudicated the right L4-5 sensory deficit and radiculopathy condition as unfitting, rated 10%, and the lumbar DDD as unfitting rated 0%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). Additionally anxiety disorder NOS was adjudicated as not unfitting and therefore not rated. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “PTSD.” He elaborates no specific contentions regarding rating or coding but mentions one additionally contended condition. A contention for its inclusion in the separation rating is therefore implied.

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SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” In addition to a review of the ratings for the unfitting conditions, all of the conditions requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, anxiety disorder NOS/posttraumatic stress disorder (PTSD) is addressed below. 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 (ABCMR).

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20080426** | | | **VA (7 Mo. Pre Separation) – All Effective Date 20080421** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right L4-5 Sensory Deficit and Radiculopathy | 8520 | 10% | Radiculopathy , Right Lower Extremity | 8522 | 10% | 20070920 |
| Lumbar Degenerative Disc Disease | 5299-5242 | 0% | Thoracolumbar Right Paracentral Disc Herniation with Intervertebral Disc Disease | 5299-5243 | 10% | 20070920 |
| Anxiety Disorder NOS | Not Unfitting | | Post-Traumatic Stress Disorder | 9411 | 30% | 20070913 |
| ↓No Additional MEB/PEB Entries↓ | | | Pseudofolliculitis Barbae | 7813-7806 | 60% | 20070920 |
| 0% x 1/Not Service-Connected x none | | | 20070920 |
| **Combined: 10%** | | | **Combined: 80%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. 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 6040.44, 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.

Right L4-5 Sensory Deficit and Radiculopathy and Lumbar Degenerative Disc Disease Conditions. The CI injured his back when he was knocked to the ground during a mortar attack in Iraq in 2004. His back pain did not resolve and he sought care the next morning. He was treated conservatively with a temporary profile and non-steroidal anti-inflammatory medication. While home on leave in September 2004 he had an MRI done which showed a moderate sized right paracentral disk extrusion (herniation) causing a moderate degree of narrowing of the right lateral recess of the spinal canal and effacing the right S1 nerve root. Subsequent MRIs completed February 2005, August 2007, and April 2009 all documented similar findings with degenerative disc disease at L5-S1. The CI returned to Iraq and was referred to orthopedics in theater. No immediate surgery was recommended but the surgeon recommended continuing the profile and re-evaluating for surgical intervention upon redeployment. The CI redeployed in February 2005 and he continued to have back pain accompanied by intermittent pain radiating down his right leg with numbness of his right foot. He continued conservative treatment including physical therapy and was issued a permanent L2 profile for lumbar disc herniation in 2005. He was also receiving care in pain management. He transferred to Fort Sill in September 2005 where his symptoms persisted despite treatment with neurontin and physical therapy. He was issued a permanent L3 profile for chronic low back pain (LBP) on 27 November 2006 and was referred to the MMRB. In April 2007 the MMRB recommended an MEB. The CI was referred to neurosurgery and underwent EMG testing. The EMG of 28 September 2007 was abnormal and revealed electrodiagnostic evidence of chronic right L5 radiculopathy. The neurosurgeon noted this EMG showed chronic denervation and he did not feel that surgical intervention would relieve the patient’s symptoms. He recommended continued conservative treatment with physical therapy, pain management, and possible epidural steroid injections. Three injections were completed but did not lead to resolution of the CI symptoms. A repeat EMG completed in May 2009 also documented radiculopathy. The CI’s permanent L3 profile is for chronic LBP and displaced disc L4 L5. The PEB determined both the radiculopathy and the DDD were unfitting.

Right L4-5 Sensory Deficit and Radiculopathy. The MEB narrative summary (NARSUM) examination completed 4 months prior to separation noted normal and symmetric deep tendon reflexes but decreased sensation in the L4 and L5 dermatomes of the right lower extremity. Muscle strength testing is not documented but the patient was able to walk on his heels and on his toes. No report of straight leg raise testing is documented. The VA Compensation and Pension (C&P) examination completed 7 months prior to separation noted history of weakness in the right leg and ankle with numbness in the lower right leg and foot in addition to back pain. The examination noted motor weakness of L4 with extension of right knee with strength as 3/5 and L5 with strength of right foot extension and right great toe extension both 3/5 as well as decreased sensation in the L5 dermatome in the right foot. The exam also showed neurologic deficits related to S1 with decreased sensation in the S1 dermatome of the right foot and motor weakness of right knee flexion at 3/5 and right plantar flexion also at 3/5. Deep tendon reflexes were equal and symmetric in the bilateral lower extremities. This examination also noted a positive straight leg raise test on the right.

The PEB determined this condition was unfitting stating it interfered with the CI’s ability to stand and wear his personal protective gear because both of these activities increased his radicular pain. It applied a rating of 10% for mild incomplete paralysis of the sciatic nerve. The VA also rated the radiculopathy at 10% but used 8522 and rated for moderate incomplete paralysis of the superficial peroneal nerve. This nerve involvement was responsible for the decreased sensation in the right foot but does not fully account for the motor strength deficits documents on the C&P examination. The motor deficits include findings referable to L4, L5, and S1. Although various code schemes could be used, none provides a rating greater than 10% and none offers any advantage to the CI. 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 right L4-5 sensory deficit and radiculopathy condition.

Lumbar Degenerative Disc Disease Condition. There were four goniometric range-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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| Goniometric ROM - Thoracolumbar | VA C&P ~ 7 Months  Pre-Separation  (20070906) | PT ~ 4 Months  Pre-Separation  (20071211) | MEB ~ 4 Months  Pre-Separation  (20071216) | VA C&P ~ 13 Months  After Separation  (20090520) |
| Flex (0-90) | 90⁰, pain at 90⁰ | 90° (110⁰) | 80⁰ (80°, 80°, 80°) | 65°-70° |
| Ext (0-30) | 30⁰ (28⁰), pain at 28⁰ | 30⁰ | 25⁰ (25°, 25°, 25°) | 30⁰ |
| R Lat Flex (0-30) | 25⁰ (26⁰), pain at 26⁰ | 30⁰ | 30⁰ (30°, 30°, 30°) | 30⁰ |
| L Lat Flex 0-30) | 30⁰ | 30⁰ | 30⁰ (30°, 30°, 30°) | 30⁰ |
| R Rotation (0-30) | 30⁰ | 30° (60⁰) | 30⁰ (50°, 50°, 50°) | 25° |
| L Rotation (0-30) | 30⁰, pain at 30⁰ | 30° (60⁰) | 30⁰ (45°, 45°, 45°) | 25° |
| COMBINED (240) | 235⁰ | 240⁰ | 225⁰ | 205° |
| Comment | Normal posture and curvature; normal gait; no muscle spasm; positive SLR on right; negative SLR on left; no ankylosis, with movement, pain radiates down into right leg; right lower extremity muscle weakness and decreased sensation | Unclear if this is active or passive. | ROMs from PT 20071102.  No abnormal contour; no muscle atrophy or spasm; no tenderness; Waddell signs negative; normal gait; decreased sensation L5 dermatome right lower extremity; pain during all movements; active ROM limited by pain.  MRI 20070810 DDD L5-S1 | Information from VARD 20090821 (VA C&P exam 20090520 missing). Abnormal posture; spasm; tenderness to palpation; functional loss is due to pain MRI 20090408: DDD L5-S1 |
| §4.71a Rating | 10% | 10% (§4.59) | 10% | 10% |

The MEB NARSUM examination completed 4 months prior to separation noted pain during all movements of the thoracolumbar spine and active ROM limited by pain. The ROM measurements were completed for the MEB by physical therapy in November 2007. The NARSUM notes separate ROM measurements completed by physical therapy in December that showed full ROM. However, this note does not state if these measurements are active or passive and there is no mention of when or if pain occurred. This is the only finding of full ROM near the time of separation and all other clinical information near the time of separation notes either painful motion or pain-limited motion. The initial VA C&P examination was completed 7 months prior to separation and documents pain-limited motion of the thoracolumbar spine. It also noted the joint function of the spine was additionally limited by pain after repetitive use. A later VA C&P examination was completed 13 months after separation and it also documents pain limited motion. It also documents a slight worsening of the condition after separation. However, no examination warrants a rating greater than 10%.

The PEB determined lumbar DDD was unfitting and noted it interfered with the CI’s ability to perform basic Soldier functions. It noted the 110 degrees of thoracolumbar flexion in the December 2007 physical therapy visit and applied a 0% rating. However, while the December 2007 exam does not specifically document pain with motion it also does not document the absence of painful motion. Multiple other exams do document painful motion and/or pain-limited motion both before and after this visit and with the application of reasonable doubt, the Board concluded the CI did have painful motion at the time of separation. The VA rated this condition at 10% for pain-limited motion as the total combined ROM was not greater than 235 degrees on the C&P examination. As explained in §4.59, *Painful Motion*, the intent of the VASRD is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the lumbar DDD condition IAW with both §4.59 and §4.71a.

Other PEB/Contended Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was anxiety disorder NOS. The CI also contends that PTSD should be rated. An MEB Psychiatric Addendum completed 17 December 2007 noted a diagnosis of anxiety disorder NOS in the setting of mild PTSD, currently in remission. The CI had completed treatment and appeared to be free of any occupational impairment. His GAF was noted to be 85 on this addendum and 80 to 85 on a VA C&P examination completed 13 September 2007. Neither anxiety disorder nor PTSD condition was profiled, implicated in the commander’s statement, or noted as failing retention standards. In fact the commander’s letter emphasized how well the CI was able to work and complete all assigned tasks with minimal supervision. As noted in a subsequent VA C&P examination completed in May 2009, more than a year after separation from service, the CI’s condition had deteriorated. He was having frequent symptoms and was in current treatment for PTSD with a GAF of 58. However, the Board must base it fitness determinations on the level of functional impairment present at the time of separation. The Board’s threshold for countering DES 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. After due deliberation, and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending any mental health condition as additionally unfitting 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. In the matter of the right L4-5 sensory deficit and radiculopathy 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 lumbar DDD condition, the Board unanimously recommends a permanent service disability rating of 10%, coded 5243 IAW VASRD §4.71a and §4.59. In the matter of PTSD or anxiety disorder NOS, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation.

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

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right L4-5 Sensory Deficit and Radiculopathy | 8520 | 10% |
| Lumbar Degenerative Disc Disease | 5243 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111109, 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 XXXXXXXXXXXX, AR20120009213 (PD201101062)

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 XXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA