RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101134 SEPARATION DATE: 20080725

BOARD DATE: 20120905

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (13F1O/Fire Support Specialist), medically separated for degenerative disc disease (DDD). The CI developed low back pain (LBP) in 2007 and it gradually worsened over time. The condition could not be adequately rehabilitated with conservative management and it was felt that surgery would not render the CI fit for duty. The CI was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for PEB adjudication.

The Physical Evaluation Board (PEB) adjudicated the DDD condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

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. 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.

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20080409** | **VA (3 Mos. After Separation) – All Effective Date 20080726** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Degenerative Disc Disease | 5243 | 10% | Herniated Nucleus Pulposis of the Lumbosacral Spine | 5237 | 10% | 20080610 |
| ↓No Additional MEB/PEB Entries↓ | Radiculopathy with Sciatica Right Leg | 8520 | 10% | 20080610 |
| 0% x 2/Not Service-Connected x 1 | 20080610 |
| **Combined: 10%** | **Combined: 20%** |

ANALYSIS SUMMARY: 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.

Degenerative Disc Disease. The MEB narrative summary (NARSUM) was completed 5 months prior to separation and range-of-motion (ROM) measurements were recorded by physical therapy 4 months prior to separation. The NARSUM noted a history of LBP that began in May 2007 which progressively worsened over time. The pain was constant and radiated down his right leg into his foot. The CI also had some numbness and tingling in the right calf and foot along with stiffness of the right leg and lower back muscle spasms. Symptoms were aggravated by lifting, standing, sitting, squatting, running, sit-ups, ruck marching, and wearing any added weight. A magnetic resonance imaging (MRI) obtained on 7 May 2007, noted: 1. right central disc protrusion at the L4-L5 disc level with inferior extruded herniated disc material seen which abuts the right nerve root within the right lateral recess; 2. bilateral neuroforaminal narrowing at the L4-5 level; 3. disc desiccation from L3 through S1; 4. incomplete osseous fusion of the right lamina at the S1 level; and 5. mild left neuroforaminal narrowing at the L5-S1 level secondary to mild leftward disc bulging and left facet hypertrophy. The CI was treated with profile limitations, physical therapy, and pain management that included narcotics and steroids. Surgery was offered, but the examiner opined it would not make the CI fit for continued service and was appropriately declined. The available record contains very little clinical information from the CI’s time in service but does include a physician order for a single point cane for the diagnosis of lumbar radiculopathy dated and delivered on 21 May 2008.

The VA Compensation and Pension (C&P) examination was completed in June 2008, approximately 6 weeks prior to separation. It noted the CI’s pain was constant and rated at 5-6/10 and his treatment included non-steroidal anti-inflammatory medication and Neurontin. The CI had been placed on quarters once since his back pain began. This exam also documented radiculopathy with sciatica of the right leg with numbness and tingling extending in the right leg without evidence of motor dysfunction. There were two goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

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| Thoracolumbar ROM | MEB ~4 Months Pre-Separation(20080311)  | VA C&P ~1 Month Pre-Separation(20080610)  |
| Flexion (90⁰ Normal) | 75⁰ (75, 75, 75) | 80⁰ |
| Ext (0-30) | 25⁰ (25, 25, 25) | 30⁰ |
| R Lat Flex (0-30) | 25⁰ (27, 27, 27) | 30⁰ |
| L Lat Flex 0-30) | 30⁰ (28, 28, 28) | 30⁰ |
| R Rotation (0-30) | 30⁰ (55, 55, 55) | 30⁰ |
| L Rotation (0-30) | 30⁰ (55, 55, 55) | 30⁰ |
| Combined (240⁰) | 215⁰ | 230⁰ |
| Comment | No change in ROM after three repetitions. NARSUM: Able to arise from a chair easily but somewhat stiffly; no antalgic gait; some paraspinal muscles spasm, but minimal tenderness; sensation intact, motor 5/5, and reflexes 2+; negative straight leg and cross straight leg; no clonus. MEB 2808: paraspinal muscle spasm and tenderness; positive straight leg raise on right; negative Waddell’s. | Objective evidence of painful motion without acute spasm, weakness, or tenderness. No change with repeated motion. Normal posture and gait; decreased sensation in S1 nerve root distribution of right lower leg; motor and reflexes intact |
| §4.71a Rating | 10% | 10% |

On 9 April 2008, the PEB determined the DDD condition was unfitting and applied a 10% rating based on thoracolumbar flexion greater than 60 degrees, but not greater than 85 degrees. The VA applied the same disability rating and also coded 8520 radiculopathy with sciatica right leg rated at 10% for mild incomplete paralysis. This was based on the numbness and tingling that extended into the right leg without evidence of motor dysfunction.

The Board directs attention to its rating recommendation based on the above evidence. Both the NARSUM and the VA C&P exams support a 10% disability rating based on limitation of flexion due to pain. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. The sensory component in this case has no functional implications. No motor impairment was documented in the record. Since no evidence of functional impairment exists in this case, this condition is not considered to be unfitting and the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. 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 DDD condition.

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 DDD condition, and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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** |
| Degenerative Disc Disease | 5243 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111216, 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 XXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120016848 (PD201101134)

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 and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA