RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1200024 SEPARATION DATE: 20070121

BOARD DATE: 20120510

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 / Food Service Operations), medically separated for low back pain (LBP). 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 underwent a Medical Evaluation Board (MEB). Chronic LBP secondary to degenerative disc disease (DDD) was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the LBP as unfitting, rated 10%; additionally neck pain and bilateral knee pain were rated as category III (conditions that are not separately unfitting and not compensable or ratable); 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: The CI’s contention on the DD Form 294 is as follows: “degenerative disk disease cervical and lumbar spine 10%, residual of left shoulder fracture 10%, left arm condition 0%, right arm condition 0%, right shoulder condition 0% , bilateral knee condition with degenerative joint disease 0%.” A contention for their inclusion in the separation rating is therefore implied.

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 service ratings for unfitting conditions will be reviewed in all cases. The conditions DDD, cervical spine, and bilateral knee pain requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the service ratings for the unfitting conditions. The remaining conditions rated by the VA at separation and or listed on the DA Form 294 are not within the Board’s purview. Any conditions or contentions 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 20061012** | | | **VA (2 Mo. Pre Separation) – All Effective Date 20070122** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5299-5237 | 10% | DDD Cervical & Lumbar Spine | 5003 | 10% | 20061114 |
| Neck Pain Secondary to Mild DDD | Not disqualifying | |
| Bilateral Knee Pain | Not disqualifying | | Bilateral Knee Condition with DJD | 5024 | NSC | 20061114 |
| ↓No Additional MEB/PEB Entries↓ | | | Residuals Lt Shoulder Fracture | 5203 | 10% | 20061114 |
| 0% x 0/Not Service-Connected x 4 | | | 20061114 |
| **Combined: 10%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation and for conditions not diagnosed while in the service but later determined to be service-connected by the Department of Veterans’ Affairs (DVA). While the Disability Evaluation System (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. The DVA, however, is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Low Back Condition. The CI was first seen in 2003 for back pain that had occurred gradually without injury. Initial plain X-rays of the neck, mid back and low back were normal. He experienced temporary relief with physical therapy, chiropractic care and profile restrictions but continued to have LBP. In October 2003 he was issued a P2 profile which limited lifting to 40 pounds and allowed the walk as an alternate aerobic AFPT and within a month he return to the clinic requesting a P3 profile and a MEB. The examiner diagnosed chronic LBP and referred him for a magnetic resonance imaging (MRI) and to orthopedics. The MRI revealed mildly congenitally narrowed appearance of the thoracic and lumbar spinal canal with mild DDD at the L5-S1 but no disc extrusion. The orthopedics evaluation was not in evidence but was referenced in a February 2004 service treatment record (STR) entry by physical medicine rehabilitation which documented LBP with DDD and a normal electromyogram of the low back. There were no STR entries for further care of his back from February 2003 up to his deployment in November 2004. He deployed to Iraq from November 2004 to 2005 and sought care twice for increased LBP due to daily wear of his personal protective gear (LBE and IBA and Kevlar). Seven months after his return he requested a permanent profile due to chronic back and knee pain. The profile restrictions included; functional limitation with the inability to do 3-5 second rushes under direct and indirect fire and limited the AFPT to pushups and the walk. His commander’s statement documented the upper and low back condition noting he was unable to perform in his grade and MOS in addition noted his performance of duty in all areas had been exceptional. There were two 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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| ROM - Thoracolumbar | PT/MEB ~ 5 Mo. Pre-Sep | VA C&P ~ 2 Mo. Pre-Sep |
| Flex (0-90) | 80⁰ | 90⁰ |
| COMBINED (240) | 225⁰ | 240⁰ |
| Comment | Tender paraspinous muscles, painful ROM | Normal ROMs |
| §4.71a Rating | 10% | 0% |

The narrative summary (NARSUM) completed for the MEB documented the above historical review, non-steroidal use, but did not document a symptom or functional limitation history. The physical exam demonstrated tenderness to palpation of the lumbar paraspinous muscle, bilateral sacroiliac notch tenderness, normal lumbar lordosis, neuromuscular exam, and heel, toe and duck walk. A new MRI had been obtained for the board exam and documented that the findings appeared similar to the prior November 2003 exam. The VA Compensation & Pension (C&P) exam documented the following symptoms; stiffness, weakness and intermittent pain, aching, sticking and sharp in the upper and lower back, occurring four times a day, lasting for one to two hours on each occasion with a severity of 7/10 (10 being worse), increased with physical activity, relieved by itself or with rest, could function with or without medication which included a two non-steroidal (Mobic and Motrin) and a narcotic like medication (Tramadol). He did not recall any incapacitation which required bed rest. The physical exam demonstrated a body mass index (BMI) of 29 (considered overweight), normal gait, posture, no spasm or tenderness and neuromuscularly normal.

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB ruled 10% based on limited thoracolumbar flexion coded analogous to 5237 (lumbosacral or cervical strain) IAW the VASRD §4.71a general rating formula for diseases and injuries of the spine. The VA combined the neck and low back DDD condition and ruled 10% coded 5003 based on x-ray evidence consistent IAW the VASRD §4.71a for this code as neither condition had a compensable loss of ROM. The Board looked for higher ratings using 5242 code (degenerative arthritis of the spine) or the 5243 code (intervertebral disc syndrome) but neither the PEB nor the VA had evidence which suggested functional loss due to pain or flare-ups which would provide for additional or higher ratings. There was no evidence of ratable peripheral nerve impairment in this case. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the low back condition.

Contended PEB Conditions. The other conditions adjudicated as not unfitting by the PEB were neck pain and bilateral knee pain. The Boards’ main charge in respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudication. 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. While the knee condition was profiled it was not on the administratively permanent profile, not implicated in the commander’s statement or noted as failing retention standards. The neck condition was implicated in the commander’s statement and had had a P2 profile but was not administratively on the permanent profile as a U3, and the profile allowed for push-ups which is not consistent with an unfitting neck condition. This condition was also not noted as failing retention standards nor was it clinically active during the MEB process. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended PEB conditions and, therefore, no additional disability ratings can be recommended.

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 the USAPDA pain policy for rating low back condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the low back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended neck pain and bilateral knee pain conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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** |
| Chronic Low Back Pain | 5299-5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20111226, 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

DEPARTMENT OF THE ARMY

ARMY REVIEW BOARDS AGENCY

1901 SOUTH BELL STREET 2ND FLOOR

ARLINGTON, VA 22202-4508

24 MAY 2012

Encl

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 AR20120009217 (PD201200024)

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:

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA