RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200027 SEPARATION DATE: 20050623

BOARD DATE: 20121004

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized National Guard SPC/E-4 (63B10/Light Weight Vehicle Mechanic), medically separated for a mid (thoracic) and low (lumbar) thoracolumbar back condition. He did not respond adequately to conservative treatment for his mid back or operative treatment for his low back condition and was unable to fulfill the physical demands within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Psoriasis, L4 isthmic spondylolisthesis, and T8/9 disc herniation with left T8 radiculopathy conditions were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The PEB adjudicated the mid and low back conditions as unfitting, rated 10% and 0%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining MEB condition was determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “L4-L5 spinal fusion not included in rating several herniated disks not just one T8 and T9 were damaged other medical conditions were not added to my medical board proceedings the following conditions were not reviewed or included thoracic radiculopathy, radiculopathy both L-1 L-2, lumbago, congenital spinal deformity, spondylosis L5 - S-1, and aggrivation due to deployment of my psoriasis my psoriasis is a service connected disability from my service in desertstorm/desertshield which I received a V.A. rating.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 condition, psoriasis, as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below, in addition to a review of the ratings for the unfitting conditions. 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 Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20050519** | **VA (5 Mos. Post -Separation) – All Effective Date 20050729** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Lt Thoracic T8 Radiculopathy | 8799-8719 | 10% | Thoracic Spine w/ Bulging Disc, Lumbar Fusion, Osteoarthritis (Low Back Pain) | 5242 | 20%\* | 20051121 |
| Chronic Low Back Pain | 5239 | 0% |
| Psoriasis | Not Unfitting | Seborrmeic Dermatitis and Psoriasis | 7816-7806 | 30%\*\* | 20051110 |
| ↓No Additional MEB/PEB Entries↓ | 0% X 1 / Not Service-Connected x 6 |  |
| **Combined: 10%** | **Combined: 40%** |

\*VARD granted 10% for lumbar strain effective 20020529 then bundled this condition with the thoracic back condition for a 20%.

\*\*VARD granted 10% effective 20020529 then VARD increased rating to 30% retroeffective 19921218

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 member's medical conditions, compensation can only be offered for those medical conditions that cut short a 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.

Mid and Low Back Condition. The CI sought care for progressive low back pain with radiation to his left leg after being mobilized to FT Bliss in preparation for overseas duty in Iraq. He was evaluated by neurosurgery and found to have an instability of L4-L5 (isthmic L4/5 spondylolisthesis) on flexion and extension X-rays and further found to have severe degenerative disc disease at L4-L5 on a magnetic resonance imaging (MRI). In March 2004, the CI elected to have surgery to stabilize his spine and relieve his pain. During his convalescence, he was involved in a motor vehicle accident, which caused a T8/9 thoracic disc herniation with subsequent left T8 radiculopathy. He was found to be a candidate for surgery, but chose instead to pursue a medical separation from the Army, judged to be a clinically reasonable decision. The profile limitations included no lifting or carrying more than 40 pounds, prolong standing more than 30 minutes, wear of LCV, rucksack, body armor or Kevlar helmet, no 2 mile run or sit-ups for the AFPT and no functional activities except able to wear protective mask and all chemical equipment. The commander’s statement, written by the medical hold commander, documented the CI was not working in his primary MOS and that his medical condition required him to attend numerous medical appointments. There was three range-of-motion (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 | PT exam ~3 Mo. Pre-Sep | MEB exam ~2 Mo. Pre-Sep | VA C&P ~5 Mo. Post-Sep |
| Flexion (90⁰ Normal) | 70⁰ | Full motion 90⁰ | 40⁰ |
| Ext (0-30) | 30⁰ | Full motion 30⁰ | 30⁰ |
| R Lat Flex (0-30) | 30⁰ | Full motion 30⁰ | 25⁰ |
| L Lat Flex 0-30) | 30⁰ | Full motion 30⁰ | 25⁰ |
| R Rotation (0-30) | 30⁰ | Full motion 30⁰ | 40⁰ |
| L Rotation (0-30) | 30⁰ | Full motion 30⁰ | 35⁰ |
| Combined (240⁰) | 220⁰ | 240⁰ | 195⁰ |
| Comment | Painful motion, T-spine full with painful motin | T8 Dermatomal Pain,silent exam on painful motion | Painful motion |
| §4.71a Rating | 10% | 0% | 20% |
| §4.124aRating mid back | 10% | 10% |  |

At the MEB exam, the CI reported left thoracic pain and numbness since his MVA in September 2004. The MEB physical exam demonstrated full spinal motion; zero Waddell findings, normal neurological findings of the lower extremities and dermatomal pain and sensory loss in the left T8 distribution. Flexion and extension X-rays of the lumbar spine performed in March 2005 showed no instability at L4-L5 and MRI of the lumbar spine in February 2005 showed post-operative changes after fusion at L4-L5. The medical examiner diagnosed persistent left lower thoracic dermatomal pain and numbness consistent with T8 radiculopathy and opined that the CI appropriately chose to observe the T8-T9 disc herniation (HNP) with expectations that it would resolve gradually over a period of 2 to 5 years. The examiner also diagnosed persistent pain in the lumbar spine, left hip and left knee after a lumbar fusion and further treatment was not indicated. At the VA Compensation and Pension (C&P) exam performed after separation, the CI additionally reported daily pain of the low back, 4 of 10 in intensity, worse with bending, twisting, unable to sit for more than 45 minutes, radiating pain down the back of the left lower extremity to the ankle with numbness. He took Percocet, a narcotic based pain medication, for pain relief. He did not report flare ups and was not working. The C&P exam demonstrated a normal gait, a long well healed midline lumbar surgical scar, tenderness to palpation of the left paralumbar muscles, midline pain with percussion of the lumbar spine, no muscle spasm or Deluca observations and normal neuromuscular findings. The middle back/thoracic spine was normal and did not demonstrate distinct separate pain. X-rays of the thoracic lumbosacral spine revealed minimal scoliosis, otherwise were normal. There was no electromyogram (EMG) in evidence of left lumbar radiculopathy or sensory motor peripheral neuropathy of left leg. The examiner diagnosed lumbosacral spine, status post surgery with fusion and internal fixation and opined the functional impairment was moderately severe.

The Board directs attention to its rating recommendation based on the above evidence. There is a clear disparity between the MEB and VA examinations, with very significant implications regarding the Board's rating recommendation. The Board thus carefully deliberated its probative value assignment to these conflicting evaluations, and carefully reviewed the file for corroborating evidence in the 12-month period prior to separation. The MEB did not document specific values for the ROM evidence; but, there was a ROM measurement by physical therapy (PT) within 12 months of separation on which to base a rating grounded in VASRD §4.71a which was compliant with VASRD §4.46 (accurate measurement). The Board notes that there is not a reasonable accounting for progressively impaired ROM in the fairly short interval between the MEB and VA examinations; and VA rating evaluations based on ROM rely on subjective pain thresholds with motion during an exam performed in the context of expressly providing a basis for disability rating; thus subject to loss of objectivity. The Board notes that the MEB was silent to documentation of painful motion. The PT exam is similar in ratable data to the VA exam, is VASRD 4.46 compliant and most proximate to separation. Therefore, based on all evidence and associated conclusions just elaborated, the Board is assigning preponderant probative value to the PT evaluation. The PEB and VA chose different coding options for the condition. The PEB chose to rate the mid back with the §4.124a—Schedule of ratings–neurological conditions and convulsive disorders and the low back with IAW §4.71a—Schedule of ratings–musculoskeletal system. The VA chose to bundle the thoracic and lumbar spines together and rate for residual pain which is consistent IAW §4.71a which cites “With or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease.” The PEB assigned a 10% rating with code 8719 (neuralgia, long thoracic nerve) for the mid back based on T8 dermatomal pain, sensory loss and objective evidence of a T8-T9 HNP. The PEB assigned a 0% rating with code 5239 (Spondylolisthesis or segmental instability) for the low back condition status post lumbar fusion.

The Board considered the approach taken by the PEB to assign a rating to the mid back separately from the low back. IAW VARSD note 1, under the general rating formula for diseases and injuries of the spine an evaluator can evaluate any associated objective neurologic abnormalities, including, but not limited to, bowel or bladder impairment, separately, under an appropriate diagnostic code. After a lengthy discussion the Board agreed the evidence of objective residual dermatomal pain and numbness is clinically different than the pain pathology for the lumbar spine and therefore agreed the PEB’s approach is consistent with the VASRD. However, the Board agreed the preponderance of evidence reflects functional pain impairment of the low back and the painful motion documented in the PT exam warrants a minimum of 10% with application of §4.59 (painful motion). The Board noted the VA decision which coded with 5242 **(**Degenerative arthritis of the spine) and assigned 20% for painful limited flexion. The Board considered the 5242 code and also the 5243 (Intervertebral disc syndrome) which allows the evaluator to assign a rating (preoperatively or postoperatively) either under the general rating formula for diseases and injuries of the spine or under the formula for rating intervertebral disc syndrome based on incapacitating episodes, whichever method results in the higher evaluation when all disabilities are combined under §4.25. The Board agreed however the evidence did not support a higher rating with either code. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the low back condition and concluded that there was insufficient cause to recommend a change in the PEB adjudication for the mid back condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was psoriasis. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering 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. The CI had chronic psoriasis for years which had waxed and waned with and without treatment while in service and had been profiled as a P2 profile after his return from the Gulf War. While the MEB forwarded this condition as failing retention standards and was listed with the medical conditions on the profile, it was not specifically profiled as a P3 condition and was not specifically implicated in the commander’s statement. The profile also did not specifically delineate which limitations were likely due to his back versus his skin condition and the evidence weighed heavily on back limiting functions. The condition was service-connected by the VA in 1992 however, did not preclude the CI from mobilized activated service from 2003-2005 nor any other drilling time for his over 20 years in service. The service treatment record (STR) reflects treatment with light therapy for his chronic psoriasis and then the oral medication Soriatane (a second generation retinoid) was added in June 2004 with an improvement to 85%. In October 2004 the STR reflects the CI would have likely moved forward with his unit in Iraq and the treating dermatologist was silent to holding him back, however, because his unit was demobilizing, continuing care for his psoriasis was recommended. The MEB examiner documented the condition was stable, would require chronic visits to a dermatologist, and further documented the condition was exacerbated by hot, dry weather and dusty living conditions. All were reviewed by the action officer and considered by the Board. There was no indication from the record that this condition 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 psoriasis contended condition 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. 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 low back condition, the Board unanimously recommends a disability rating of 10%, coded 5239 IAW VASRD §4.71a. In the matter of the mid back condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended Psoriasis 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 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** |
| Chronic Lt Thoracic T8 Radiculopathy | 8799-8719 | 10% |
| Chronic Low Back Pain | 5239 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111130, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

XXXXXXXXXXXXXXXXXXXXXXXXX, AR20120018946 (PD201200027)

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