RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200069 SEPARATION DATE: 20051006

BOARD DATE: 20120905

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (21B/Combat Engineer), medically separated for chronic back pain due to lumbar degenerative disc disease (DDD), without neurologic abnormality. The CI developed back pain that radiated down his legs and his symptoms progressively worsened over time despite conservative treatment. Surgery was not indicated. The CI did not improve adequately with treatment and was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the lumbar DDD condition as unfitting, rated 10%. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I was diagnosed with deteriorative disc disease. I am not getting better I am only getting worse at the time of separation I could barely walk. I still have pain down both of my legs and constant back pain. My last months in the service I was in constant pain my spouse had to dress me several month pass with my doctors not doing anything for the pain the physical therapist finally got them to send me in for a MRI six month after my injury and they concluded that I have deteriorative disc disease.”

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 (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20050920** | | | **VA (13 Mo. After Separation) – All Effective Date 20051007** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Back Pain, due to Lumbar Degenerative Disc Disease, without Neurologic Abnormality | 5299-5242 | 10% | Degenerative Disc Disease, Lumbar Spine | 5243 | 10% | 20061102 |
| ↓No Additional MEB/PEB Entries↓ | | | Left Shoulder Tendonitis | 5024-5203 | 10% | 20061102 |
| 0% x 4/Not Service-Connected x 1 | | | 20061102 |
| **Combined: 10%** | | | **Combined: 20%\*** | | | |

\*Increased to 40% with increase of Retropatellar Pain Syndrome, Right and Left Knees from 0% each to 10% each with bilateral factor of 1.9 effective 20090430.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of his condition and predictable consequences merit consideration for a higher separation rating. 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.

Chronic Low Back Condition. The CI had progressively worsening back pain that radiated down his legs and did not respond to conservative treatment. He was offered a trail of epidural steroid injections by physical medicine but declined. On the MEB narrative summary (NARSUM) he denied any musculoskeletal weakness, numbness, or tingling. At the time of his VA Compensation and Pension (C&P) examination, approximately 13 months after separation, he had daily pain rated at 5/10. He had moderate relief with Tylenol and also used a TENS unit as needed. He had been working as a parts clerk for the previous 3 months and had not missed anytime form work.

There were two goniometric 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 | MEB ~1 Month  Pre-Separation | VA C&P ~13 Months  Post-Separation |
| Flexion (90⁰ Normal) | 90° (95, 95, 95) | 80⁰ |
| Ext (0-30) | 15⁰ (15, 15, 15) | 30⁰ |
| R Lat Flex (0-30) | 30° (35, 35, 35) | 30⁰ |
| L Lat Flex 0-30) | 30° (35, 35, 35) | 30⁰ |
| R Rotation (0-30) | 30° (45, 45, 45) | 30⁰ |
| L Rotation (0-30) | 30° (50, 50, 50) | 30⁰ |
| Combined (240⁰) | 225⁰ | 230⁰ |
| Comment | Slight pain with flexion, extension, and right and left rotation. Mild tenderness over the midline with mild spasm of paraspinal muscles; normal straight leg raise; normal motor, sensation intact to light touch, and normal and symmetric reflexes in bilateral lower extremities; no clonus. Negative Waddell’s signs. MRI May 2005: DDD and facet osteoarthritis at L5-S1 with small central disc protrusion with minimal impingement on the left S1 nerve root. | Painful motion. Normal posture and gait; normal curvature; motor, sensory, and reflexes intact in lower extremities. |
| §4.71a Rating | 10% | 10% |

Although they used different VASRD codes, both the PEB and the VA rated his back condition at 10% for painful or pain-limited ROM. The Board directs attention to its rating recommendation based on the above evidence. Both the NARSUM examination with ROM measurements provided by physical therapy and the VA C&P examination support a 10% rating using the VASRD general rating formula for diseases and injuries of the spine. Although the ROM documented on the MEB NARSUM includes flexion of 90 degrees, there was decreased extension as well as painful motion with flexion, extension, and right and left rotation. This supports a 10% IAW §4.59. The VA C&P examination documents flexion limited to 80 degrees by pain and this supports a 10% rating based on forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees. 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 CI had no neurologic abnormalities and denied weakness, numbness, and tingling. Since no evidence of functional impairment exists in this case, 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 chronic back pain 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 chronic back pain 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** |
| Chronic Back Pain, due to Lumbar Degenerative Disc Disease, without Neurologic Abnormality | 5242 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120120, 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 XXXXXXXXXXXXXXXXXX, AR20120016853 (PD201200069)

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 XXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA