RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX bRANCH OF SERVICE: Army

CASE NUMBER: PD1200084 SEPARATION DATE: 20041020

BOARD DATE: 20120626

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SPC/E-4(63M, Bradley Mechanic), medically separated for chronic low back pain (LBP) following a motor vehicle accident in November 2003. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS). He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic low back pain as not meeting retention standards IAW AR 40-501. No other conditions were forwarded for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic LBP s/p motor vehicle accident as unfitting, rating it 0% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB), apparently withdrew his appeal and was given an informal reconsideration PEB which medically separated him with a 10% disability rating.

CI CONTENTION: The CI states: “not all of the conditions were included and that is why my records should be changed.” He lists migraine headaches, cervical spine condition, and facial scars for which the VA has granted service-connected ratings effective the day after separation and appear in the summary chart below. The CI also lists posttraumatic stress disorder for which the VA granted a service-connected rating effective 16 March 2010.

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. The remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and later, and listed on the DA Form 294 are not within the Board’s purview. 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:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB Recon – Dated 20040928** | | | **VA (5 Mos. Post-Separation) – All Effective Date 20041021** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5237 | 10% | Degenerative Disc Disease, Lumbar Spine | 5003\* | 10% | 20050325 |
| ↓No Additional MEB/PEB Entries↓ | | | Migraine Headaches | 8100 | 30% | 20050325 |
| Degenerative Disc Disease and Strain, Cervical Spine | 5242 | 10% | 20050325 |
| Traumatic Scar, R Hand | 7804 | 10% | 20050325 |
| Epidural Inclusion Cysts of the Scalp\*\* | 7819-7800 | 10% | 20050901 |
| 0% X 1 / Not Service-Connected x 1 | | | 20050325 |
| **Combined: 10%** | | | **Combined: 50%** | | | |

\*VARD of 10/21/09 changed code to 5242. \*\*Cysts added by VARD of 2/22/06, no change to combined.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the DVA but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), 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. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. 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 6044.40, 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 Pain Condition. 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 | PT/MEB ~4 Mo. Pre-Sep  (20040615) | VA C&P ~5 / 11 Mo. Post-Sep  (20050325 / 20050901)\* |
| Flexion (90⁰ Normal) | 80⁰ | 75⁰ |
| Extension (30⁰) | 23⁰ | 12⁰ |
| R Lat Flex (30⁰) | 30⁰ | 30⁰ |
| L Lat Flex (30⁰) | 30⁰ | 30⁰ |
| R Rotation (30⁰) | 40⁰ | 30⁰ |
| L Rotation (30⁰) | 40⁰ | 30⁰ |
| Combined (240⁰) | 225⁰ | 205⁰ |
| Comment | No further limitation after repetition.  No significant muscle spasm | Exam from 20050325 C&P:  No tenderness,  No muscle spasm.  Gait normal.  Posture normal.  ROM from 20050901 C&P. |
| §4.71a Rating | 10% | 10% |

\*VA Spine C&P examination 20050325 omitted the thoracolumbar ROM; addendum 20050901

added thoracolumbar spine ROM.

The CI was involved in a motor vehicle crash on 10 November 2003 when the car he was riding in was struck from the rear by a trailer truck. He was seen in a civilian emergency room and released. He sought chiropractic care 2 days later. Magnetic resonance imaging (MRI), performed on 2 December 2004, disclosed bulging discs at L4-5 and L5-S1 without significant spinal canal stenosis or neural foraminal narrowing. The MEB narrative summary (NARSUM), performed on 29 June 2004 recorded that initial complaints of weakness in the legs with episodic periods of numbness in the lower extremities had improved over time. The service treatment record (STR), including the initial chiropractic appointment, records absence of radiating pain or signs or symptoms of lumbar radiculopathy. Examinations documented intact reflexes, normal strength and negative straight leg raising. Tenderness with muscle spasm and mild decreased back ROM was noted in the STR in the months after the motor vehicle crash. The NARSUM listed the physical therapy thoracolumbar ROM examination (recorded in the table above), performed on 15 June 2003. There was no reduction with repetitive motion. The NARSUM examiner noted there was no significant muscle spasm. The IPEB adjudicated a 0% rating citing “full” range of motion without tenderness or spasm. The CI appealed and submitted a civilian functional capacity evaluation dated 21 September 2004 that included a lumbar ROM examination. The lumbar ROM was performed using the dual inclinometer method that measures isolated lumbar spine motion, not thoracolumbar ROM used by the VASRD for rating purposes. Lumbar flexion was recorded as 40, 45, and 40 degrees; extension 10 degrees without change over three repetitions, and lateral bending 10 degrees without change over three repetitions. The examiner performed an additional ROM examination with three repetitions recorded as lumbar flexion 50, 50, and 50 degrees. Extension was unchanged from the earlier examination. The normal lumbar ROM by the dual inclinometer method is 60 degrees. When combined with a normal thoracic ROM, this would represent approximately 10 to 20 degrees loss of thoracolumbar flexion correlating with a 10% rating using the VASRD general rating formula for diseases and injuries of the spine. The PEB reconsideration, performed on 28 September 2004, considered the submitted dual inclinometer lumbar spine ROM examination and concluded the measured lumbar spine flexion of 50 degrees was equivalent to thoracolumbar goniometric flexion of 70 degrees (a 20 degree reduction) and adjudicated a 10% rating in accordance with VASRD rating guidelines. The VA spine Compensation and Pension (C&P) examination performed on 25 March 2005 did not record thoracolumbar ROM but documented absence of tenderness and muscle spasm, with normal gait and posture. A VA spine C&P addendum, performed on 1 September 2005 recorded a thoracolumbar ROM examination consistent with the MEB examination and the 10% rating adjudicated by the VA. ROM evidence in both evaluations proximate to separation supports no more than a 10% disability rating. There is no pathway to any higher rating under this code as muscle spasm or guarding severe enough to cause abnormal gait or spinal contour are not present. There was no associated radiculopathy for separated peripheral nerve rating. 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 LBP 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 Low Back Pain Status Post MVA | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120122, 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 XXXXXXXXXXXXXXXX, AR20120011972 (PD201200084)

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 XXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA