RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200127 SEPARATION DATE: 20051102

BOARD DATE: 20120928

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (25Q20/Multichannel Transmission Systems Operator/Maintainer), medically separated for chronic low back pain (LBP) which persisted despite conservative treatment and surgery. The CI did not 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). Fatty liver and elevated triglycerides conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The PEB adjudicated the chronic LBP condition as unfitting, rated 0%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining conditions were determined to be not unfitting. The CI made no appeals and was medically separated with a 0% 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 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 CI made no contentions in this case; accordingly, only the back pain is within the scope of review. 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 20050920** | | | **VA (11 Days Post-Separation) – All Effective Date 20051103** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic LBP, s/p discectomy | 5237 | 0% | DDD LS spine with scar | 5242 | 40% | 20051113 |
| Peripheral neuropathy LLE … | 8520 | 20% | 20051113 |
| Fatty liver | Not Unfitting | | Fatty liver | 7399-7311 | NSC | 20051113 |
| Elevated triglycerides | Not Unfitting | | Not rated | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Hypertension | 7101 | 10% | 20051113 |
| 0% X 0 / Not Service-Connected x 6 | | |  |
| **Combined: 0%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY:

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.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM  Degrees | MEB ~3.5 Mo. Pre-Sep  (20050713 – date tested) | VA C&P ~1 ½ wks. Post-Sep  (20051113) |
| Flexion (90) | 45 | 30 |
| Ext (0-30) | 20 | 20 |
| R Lat Flex (0-30) | 20 | 15 |
| L Lat Flex 0-30) | 25 | 15 |
| R Rotation (0-30) | 35 | 20 |
| L Rotation (0-30) | 45 | 20 |
| Combined (240) | 190 | 120 |
| Comment | Sensory, motor, DTR, gait nml. No spasm. No deformity. | Antalgic gait; sensory and motor loss of ankle extensors at 4/5. No spasm or abn contour. |
| §4.71a Rating | 20% | 40% |

The CI had a history of chronic intermittent low back pain since (his first enlistment in) 1991 with flares related to sports activities in 2000 and 2001. He subsequently developed radicular symptoms in the left leg and a small herniated disc managed non-surgically. Symptoms worsened including left leg weakness leading to back surgery, laminectomy with L5-S1 discectomy, on 13 January 2005. Recurrent back pain 3 months following surgery prompted referral for an MEB. The CI was placed on 24-hour quarters for a flare of back pain on 11 August 2005. He reported subjective tingling of the left calf and toes. On exam, sensation and gait were normal. The lumbosacral spine was normal to inspection. Imaging showed possible mild diffuse, early degenerative changes. The MEB narrative summary (NARSUM) was dictated on 30 August 2005, 2 months prior to separation. The CI reported that he was in constant pain which he rated at 7/10 and which was localized to the central lower lumbar region, but with radiation down to the left buttock and left posterior thigh. His symptoms had improved since surgery 7 months earlier but were aggravated by lifting more than 30 pounds, prolonged standing more than 20 minutes and sitting more than 2 hours, as well as twisting to the left. The CI could walk at his own pace and distance. The MEB physical exam noted neither tenderness to palpation or spasm. There was no deformity or step-off. Strength, sensation and reflexes were normal (however decreased left ankle reflex had been documented consistent with his history of herniated disc and sciatica). Heel and toe walk were normal indicating good strength, and straight leg raise (SLR) was negative for lumbar nerve root irritation, both supine and sitting. Gait was normal. The examiner noted the presence of pain reported with four maneuvers not expected to produce pain. At the VA Compensation and Pension (C&P) exam on 13 November 2005, less than 2 weeks after separation, the CI reported continued pain rated 7/10 on average, with weakness of the left lower extremity and reduced sensation of the posterior left thigh. He denied bowel or bladder dysfunction or flares. The CI also noted a limp secondary to numbness of the left lower extremity and some atrophy of the left calf. There were no incapacitating episodes. On examination, his gait was noted to be antalgic secondary to left leg pain and numbness. He was noted to have mild atrophy with the circumference on the left 15.0 inches compared with the right measured at 15.5 inches. The left ankle extensors were reduced at 4/5 and normal for the other muscle groups. Deep tendon reflexes (DTRs) showed an absent left ankle jerk reflex, consistent with prior examinations and medical history, but were normal otherwise. Sensory testing showed diminished sensation to simple touch and sharp (discrimination) over the posterior aspect of the left leg. There was no muscle spasm or guarding.

The Board directs attention to its rating recommendation based on the above evidence. The PEB adjudicated the case using the now rescinded Army pain policy and rated the back at 0% coded 5237, lumbosacral strain. The VA coded the back 5242, degenerative arthritis of the back, and rated it 40% based on limitation of motion documented in the 13 November 2005 C&P examination. The Board noted the significant disparity between the PEB and VA examination findings and so carefully reviewed the outpatient notes from both before and after separation to determine the actual clinical picture of the CI’s disability at separation. A VA primary care note on 25 May 2006, almost 7 months after separation, noted a small surgical scar without tenderness or deformity. Spasm was absent. SLR remained negative. He was able to toe and heel walk, indicating good strength. The CI was noted to be slightly weaker on the left when climbing onto a chair. Sensation was intact and gait was normal. A mental health note 2 weeks later annotated that he “walks the perimeter on campus” of the college campus where he was employed as a security officer. A VA primary care note on 3 October 2006, 11 months after separation, noted tender right para-lumbar muscles, a positive SLR on the right, and normal sensation. Reflexes were absent in the ankles and knees, a change from prior examinations and inconsistent with the otherwise fairly normal neurological examinations before and after it. The CI was able to walk on his toes and heels as well as climb onto a chair. A follow up exam on 31 October 2006, almost a year after separation, noted an absence of tenderness or spasm, a negative SLR, and normal sensation and muscle strength exams. In the majority of the records in evidence, the sensory and motor examinations were normal as was gait, similar to the MEB examination. The Board also noted that at the time of the MEB, the CI was still within the first 12 months after surgery during which continued healing occurs. The CI also demonstrated pain with maneuvers not expected to be painful during the MEB examination. And, the small difference measured between the CI’s two calves is not unusual in healthy adults. In assigning probative value to these somewhat conflicting examinations for the MEB and the VA C&P, the Board noted the following: the MEB ROM measurements were consistent with corroborating evidence including the diagnostic and clinical pathology in evidence, and other collateral physical findings. There is nothing to reasonably account for the progressively impaired ROM in the fairly short interval between the MEB and VA examinations. Therefore, based on all of the evidence and associated conclusions just elaborated, the Board assigned preponderant probative value to the MEB evaluation. The MEB examination, including range of motion measurements, supports a 20% rating.

The Board also considered whether an additional disability rating was justified for peripheral nerve impairment due to radiculopathy. The CI had a herniated disc with radicular pain which was treated with surgery, and there were symptoms of radiating pain documented in the treatment records. Left calf atrophy was noted on examinations, and measurement at the C&P examination indicated mild atrophy, however normal strength was noted in the majority of examinations. Sensory symptoms did not affect the CI’s job performance. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. While the CI may have suffered additional pain from the nerve involvement, this is subsumed under the general spine rating criteria, which specifically states “with or without symptoms such as pain (whether or not it radiates).” Therefore the critical decision is whether or not there was a significant motor weakness which would impact military occupation specific activities. There is no evidence in this case that motor weakness existed to any degree that could be described as functionally impairing. The Board therefore concluded that additional disability rating was not justified on this basis. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the chronic low 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. As discussed above, PEB reliance on the USAPDA pain policy for rating chronic low back pain was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic low back pain condition, the Board unanimously recommends a disability rating of 20%, coded 5237 IAW VASRD §4.71a. 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic low back pain | 5237 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120124, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX

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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20120018090 (PD201200127)

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 XXXXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA