RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxx branch of SERVICE: Army

CASE NUMBER: PD1101088 SEPARATION DATE: 20080417

BOARD DATE: 20120815

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SSG/E-6 (31B, Military Police), medically separated for lumbar degenerative disc disease (DDD) post L5-S1 fusion. The CI injured her back in twisting injury 6 years prior to separation. Increased back pain was not relieved with extensive conservative therapy and she underwent an L5-S1 interbody fusion which did not lead to full resolution of her pain. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded lumbar DDD, s/p lumbar interbody fusion as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The CI non-concurred with the MEB and radiating hip pain was discussed in an addendum and the PEB added hip pain to the disability description without a separate diagnosis with a statement indicating it was not unfitting. An admin corrected PEB, based on NDAA 2008, adjudicated the lumbar DDD, post lumbar interbody L5-S1 fusion as unfitting, rating it 20% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “Army did not consider Adjustment Disorder shown in SMR [*sic*] VA rated as 50%.”

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 unfitting lumbar spine condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The requested condition of adjustment disorder is 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 (BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service Admin PEB – Dated 20080414** | **VA (1 Mos. Pre-Separation) – All Effective Date 20080418** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbar Degenerative Disc Disease s/p Fusion  | 5241 | 20% | Degenerative Disc Disease, Post Lumbar Interbody L5-S1 Fusion w/Radiculopathy | 5242 | 10% | 20080401 |
| ↓No Additional MEB/PEB Entries↓ | Right Hip Strain | 5252 | 0% | 20080401 |
| Left Hip Strain | 5252 | 0% | 20080401 |
| Adjustment Disorder w/Mixed Anxiety and Depressed Mood | 9499-9413 | 50% | 20080715 |
| 0% X 3 / Not Service-Connected x 2 | 20080401 |
| **Combined: 20%** | **Combined: 60%** |

ANALYSIS SUMMARY:

Lumbar Degenerative Disc Disease Post Fusion. 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 | MEB ~8 Mo. Pre-Sep | VA C&P ~1 Mo. Pre-Sep |
| Flexion (90⁰ Normal) | 55 (55/55/55) | 65⁰ |
| Ext (0-30) | 20 (20/20/20) | 10⁰ |
| R Lat Flex (0-30) | 20 (20/20/20) | 30⁰ |
| L Lat Flex 0-30) | 20 (20/20/20) | 30⁰ |
| R Rotation (0-30) | 30 (60/60/65) | 30 (45⁰) |
| L Rotation (0-30) | 30 (55/55/55) | 30 (45⁰) |
| Combined (240⁰) | 175⁰ | 195⁰ |
| Comment: Rounding per spine formula notes 2 and 4 | + tender; + spasm; normal gait/contour | - tender; normal gait & posture; “some loss of curvature” |
| §4.71a Rating | 20% | 10% |

At the MEB exam, the CI reported continued, but decreased back pain with radiating pain in both hips increased with bending sitting and repetitive motion. The MEB physical exam noted tenderness, spasm and ROM as charted above. Radiographs demonstrated DDD, retained hardware of the fusion surgery and no acute pathology. At the VA Compensation and Pension (C&P) exam prior to separation, the CI reported a similar history with continued back pain radiating down to the knees. The exam is summarized above. The Board directs attention to its rating recommendation based on the above evidence. The MEB limited ROM meets the VASRD 20% criteria for “forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees.” Although the VA exam supported a 10% rating and was closer to the date of separation, the Board considered the tenants of VASRD §4.7 (higher of two evaluations) and the DoDI provision that Board cannot lower the PEB rating award. 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 lower back 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 lower back 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lumbar Degenerative Disc Disease | 5241 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111108, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120015243 (PD201200131)

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 XXXXXXXXXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA