RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200139 SEPARATION DATE: 20070210

BOARD DATE: 20120821

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated Reserve SPC/E-4 (88M10/Motor Transport Operator), medically separated for chronic right hip pain and chronic low back pain (LBP). The conditions began in 2003 after straining himself while getting out of a vehicle. He did not respond adequately to operative treatment of the hip and conservative treatment of the back, and was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3/L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded right hip degenerative arthritis and degenerative disc disease (DDD) to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Type II diabetes mellitus was also identified and forwarded by the MEB. The PEB adjudicated the chronic right hip pain and chronic LBP conditions as unfitting, rated 0% each, with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The type II diabetes mellitus condition was determined to be not unfitting. The CI made no appeals and was medically separated with a 0% disability rating.

CI CONTENTION: “The Army issued me a 0% rating at time of separation. This rating should be changed due to the fact that the VA gave me a rating of 70% on November 9, 2007.”

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 type II diabetes mellitus condition requested for consideration and the unfitting right hip pain and LBP conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The right and left lower extremity diabetic neuropathy, hypertension and posttraumatic stress disorder   
(PTSD) 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 – Dated 20070117** | | | **VA (1.5 Mos. Post-Separation) – All Effective Date 20070211** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Hip Pain | 5003 | 0% | Right Hip Resurfacing | 5010-5255 | 10% | 20070329 |
| Chronic Low Back Pain | 5299-5237 | 0% | Lumbosacral DDD | 5243 | 20% | 20070329 |
| Type 2 Diabetes Mellitus | Not Unfitting | | Diabetes Mellitus Type II | 7913 | 20% | 20070329 |
| ↓No Additional MEB/PEB Entries↓ | | | Diabetic Neuropathy Right Leg | 8620 | 20% | 20070329 |
| Diabetic Neuropathy Left Leg | 8620 | 20% | 20070329 |
| Hypertension | 7101 | 10% | 20070329 |
| Post Traumatic Stress Disorder | 9411 | 50% | 20101117 |
| Not Service-Connected x 2 | | | 20070329 |
| **Combined: 0%** | | | **Combined: 80%** | | | |

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, some of which were evaluated and determined not to be individually unfitting for continued service. 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. The 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. 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 re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board is empowered to evaluate the fairness of fitness determinations, and to make recommendations for rating of conditions which it concludes would have independently prevented the performance of required duties (at the time of separation). The Board’s threshold for countering DES 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.

Right Hip Condition. The orthopedic narrative summary (NARSUM) notes the condition began as a consequence of a stretching-type injury to the hip while deployed in August 2003. Pain subsequently worsened and did not respond well to hip injections. Femoral head resurfacing surgery was performed one year prior to separation for what was deemed end stage osteoarthritis. An outpatient physical exam, performed 8 months prior to separation, noted that he was “pain free.” The orthopedic NARSUM, performed 3 months prior to separation, stated that the CI could walk approximately a mile without significant pain and also reported complaints of pain located along the right groin and inguinal area which worsened with bending forward and climbing stairs. Mild stretching was helpful.

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.

|  |  |  |
| --- | --- | --- |
| Right Hip (Thigh) ROM | Ortho/MEB ~3 Mo. Pre-Sep | VA C&P ~1.5 Mo. Post-Sep |
| Flexion (0-125⁰) | 90⁰ | 90⁰ |
| Extension (0-20⁰) | Not recorded | 20⁰ (40⁰) |
| Internal Rotation (0-45⁰) | 30⁰ | 40⁰ |
| External Rotation (0-45⁰) | 40⁰ | 90⁰ |
| Abduction (0-45⁰) | 40⁰ | 40⁰ |
| Adduction (0-45⁰) | 30⁰ | 20⁰ |
| Comment | Painful motion; antalgic gait | Pain free movement |
| §4.71a Rating | 10% | 10% |

The orthopedic NARSUM physical exam noted a slightly antalgic gait, although it is not clear if this gait was due to hip pain or LBP. Hip pain was noted at 90⁰ of flexion, but there was no pain with hip distraction. An endocrinology NARSUM examiner, 3 months prior to separation, noted a normal gait and stance. At the VA Compensation and Pension (C&P) exam 1 1/2 months after separation, the CI reported doing very well after the hip surgery. He was generally pain-free but could experience pain after prolonged standing, denied flare-ups, did not require an assistive device and could walk two blocks. The examination revealed an unremarkable gait, limitation of adduction as noted in the ROM chart, but hip movements that were “quick, brisk and pain-free.” X-rays showed post-surgical changes.

The Board directs attention to its rating recommendation based on the above evidence. A compensable limitation of motion was not present on either exam (VASRD codes 5252 and 5253). The PEB assigned a 0% rating under the 5003 code despite acknowledging the presence of pain-limited motion, likely due to application of the USAPDA pain policy. The VA gave a 10% rating for limited motion under the 5255 code (impairment of femur). The Board agreed that a 10% rating was justified under either the 5003, 5252, 5253 or 5255 codes for limitation of motion, pain with use (§4.40) or painful motion (§4.59). Extension in degrees was not specified at the service exam, but the maximum rating for compensable limitation under the 5251 code is 10%. 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 right hip condition, coded 5003.

Low Back Condition. The NARSUM examiner noted that the back pain began while deployed in August 2003, when he fell out of a vehicle. He subsequently experienced increased pain and some right lower extremity numbness and pain. The back pain was located in the right lumbar area and was described as constant; it worsened with prolonged sitting, standing, driving, repeated bending and lifting, or any impact activities. Medications, stretching and ice were helpful. Symptoms remained unchanged since 2003, although an outpatient note, dated 10 months prior to separation, stated the LBP was “almost gone” since his hip surgery, and a physical exam, performed 8 months prior to separation, noted that he was “pain free.” As documented in the hip discussion above, the orthopedic NARSUM examiner, 3 months prior to separation, reported the CI could walk a mile.

There were two 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 | Ortho/PT/MEB ~3 Mo. Pre-Sep | VA C&P ~1.5 Mo. Post-Sep |
| Flexion (90⁰ Normal) | “FAROM” | 45⁰ |
| Ext (0-30) | 5⁰ |
| R Lat Flex (0-30) | 10⁰ |
| L Lat Flex 0-30) | 10⁰ |
| R Rotation (0-30) | 15⁰ |
| L Rotation (0-30) | 15⁰ |
| Combined (240⁰) | ~~--~~ | 100⁰ |
| Comment | No spasm or tenderness; antalgic gait | + Tenderness; painful motion |
| §4.71a Rating | 10%\* | 20% |

\*Conceding pain with use

The MEB physical therapist (PT) documented that goniometric ROM was performed on 3 November 2006, and further stated that the results were recorded in degrees. Although those results are not in evidence, the examiner did document that “ROM is normal for body type.” The NARSUM examiner refers to the PT documentation as stating “full active range of motion” (FAROM) of the thoracolumbar spine was present. Examination by the orthopedist NARSUM, 3 months prior to separation, revealed a slightly antalgic gait, as noted in the hip condition discussion. Tandem gait was normal, and the CI could heel and toe walk. The examination was silent regarding spinal contour and tenderness. Muscle strength was normal, deep tendon reflexes (DTR) were symmetric and sensation of the lower extremities was intact. Straight leg raise (SLR) testing was negative. The MEB examiner, 3 months prior to separation, noted the absence of muscle spasm. An MEB endocrinology examiner, 3 months prior to separation, noted a normal gait and no back tenderness. X-rays showed degenerative changes. Lumbar spine magnetic resonance imaging (MRI) showed severe discogenic disease, mild to moderate central canal stenosis and bilateral neuroforaminal narrowing from disc protrusion.

The C&P examiner reported that the back pain began in 2001 or 2002. It increased to the point that it was present 80% of the time and was associated with radiation of pain to the thigh. The CI could only walk 2 blocks. Pain medication was taken twice per week and was helpful. He did not use a brace, cane or crutch. Flare-ups occurred two to three times per month and lasted 2 days, but there were no incapacitating episodes. Examination revealed an unremarkable gait, but spinal contour and spasm were not mentioned. The examiner stated, “He has a considerable amount of pain with all movements from inception to completion including getting on and off the examining table and going from sitting to lying and lying to sitting, sitting to standing.” There was no tenderness. SLR testing was limited to 80⁰ bilaterally. There was a considerable amount of pain with all movements, but no additional limitation after repetition. Muscle strength was normal but sensory loss was noted at the tips of the toes. Lumbar spine X-rays showed disc space narrowing and osteophytes.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 0% rating for no mechanical loss of motion under an analogous 5237 code (lumbar strain), with likely application of the USAPDA pain policy. Board members discussed the missing ROM data performed by the MEB physical therapist, and debated the value of “FAROM” recorded by the NARSUM examiner. The Board agreed there is strong evidence the PEB relied on actual goniometric measurements, and that these values at least approximated VASRD normal values. The ROM values reported by the VA examiner were significantly worse than those reported by the MEB. There is no record of recurrent injury or other development to explain the more marked impairment reflected by the VA measurements, the CI having a “pain-free” condition 8 months prior to separation; but, pain with all movements at the VA exam, or the CI being able to walk a mile at the time of the NARSUM exam but only two blocks at the time of the VA exam. The ROM values reported by the VA examiner were performed in the context of expressly providing a basis for disability rating, thus subject to loss of objectivity. Board members agreed that the totality of the evidence and underlying pathology provided sufficient justification to reasonably concede a 10% rating. Although spinal contour and guarding were not mentioned, there was no spasm; evidence of abnormal gait was insufficient to justify a 20% rating. There was no evidence of ratable peripheral nerve impairment due to the spine condition, or documentation of incapacitating episodes which would provide for additional or higher rating. 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 chronic LBP condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was type II diabetes mellitus. The Board’s first charge with respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudication. 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 endocrinology consultant examiner noted the condition was not well-controlled on his current oral medications. The examiner judged the condition to not meet retention standards due to the possibility that the stress of field or combat environments could adversely impact the CI’s diabetic control. The condition was consequently profiled (P3). The CI had experienced no episodes of hypoglycemia, no symptoms caused by his diabetes and no diabetic complications. It should be noted that the AR 40-501 retention standards for diabetes trigger a MEB by virtue of the diagnosis alone, although controlled diabetes is not generally considered unfitting or prohibitive of deployment. The condition was reviewed by the action officer and considered by the Board. There was no indication from the record that it 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 type II diabetes mellitus condition and therefore, no additional disability rating 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right hip condition and low back condition was likely operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic right hip pain condition, the Board unanimously recommends a disability rating of 10%, coded 5003 IAW VASRD §4.71a. In the matter of the chronic LBP condition, the Board unanimously recommends a disability rating of 10%, coded 5299-5237 IAW VASRD §4.71a. In the matter of the contended type II diabetes mellitus condition, the Board unanimously recommends no change from the PEB determination 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 Right Hip Pain | 5003 | 10% |
| Chronic Low Back Pain | 5299-5237 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120212, 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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20120015671 (PD201200139)

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