RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200175 SEPARATION DATE: 20070831

BOARD DATE: 20120830

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (13B20/Field Artillery Cannoneer), medically separated for lumbar degenerative disc disease (DDD). The CI did not improve adequately with treatment 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). Depression and posttraumatic stress disorder (PTSD) condition, identified in the rating chart below, were also identified and forwarded by the MEB. The PEB adjudicated the lumbar DDD condition as unfitting, rated 10% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I was shuffled out the Army and not give proper help on the out process. I was suffering from many injuries such as Back pain TBI PTSD Depression ... I tried to get help at mental health but was told VA would take care of everything. I was also being harassed by my platoon SGT Drill SGT Ward for personal reasons unbeknownst to me. I suffered headaches memory loss and a host of other problems. My back neck and knees where in terrible pain while I attempted PT. So that was the main reason I was medically discharged. I tried and tried to get help with info getting out but was turned down again and again.”

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 lumbar DDD as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and is addressed below, in addition to a review of the ratings for the not unfitting conditions, depression and PTSD. The other requested conditions 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.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20070611** | **VA (3 Mos. Pre-Separation) – All Effective Date 20070901** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbar DDD | 5299-5242 | 10% | Degen. Disc Dis. Thoracolumb. Spine | 5242 | 10% | 20070511 |
| Depression | Not Unfitting | PTSD | 9411 | 30% | 20070511 |
| PTSD | Not Unfitting |
| ↓No Additional MEB/PEB Entries↓ | Patellofemoral Syndrome, Lt Knee | 5299-5260 | 10% | 20070511 |
| Patellofemoral Syndrome, Rt Knee | 5299-5260 | 10% | 20070511 |
| Tinnitus | 6260 | 10% | 20070511 |
| 0% X 3 / Not Service-Connected x 1 | 20070511 |
| **Combined: 10%** | **Combined: 60%** |

ANALYSIS SUMMARY:

Lumbar Degenerative Disc Disease. The CI experienced intermittent low back pain since 2002 which subsequently became persistent, radiated into the lower extremities and interfered with performance of duties. Magnetic resonance imaging (MRI) in 2006 demonstrated degenerative disc disease at L4-5 and L5-S1 with disc protrusion at L4-5 impinging the L5 nerve root. Neurosurgical consultation concluded with a recommendation for non-surgical treatment. A repeat MRI on 28 February 2007 was unchanged. A 20 March 2007 examination recorded absence of radicular signs with normal strength and gait, and negative straight leg raising tests. At that examination, gait and posture were normal. At the narrative summary (NARUSM) examination, on 24 April 2007, there was tenderness and guarding but no muscle spasm. Spinal contour and gait were normal. The NARSUM cited the physical therapy examination on 10 April 2007 documenting thoracolumbar range-of-motion (ROM): flexion of 95 degrees, extension of 15 degrees, and essentially full motion in all other planes except 25 degrees in left lateral flexion (combined of 220 degrees IAW VASRD). The CI was able to squat, walk on heels and toes, and pick up objects from the floor without difficulty. Strength, reflexes and sensation were normal.

The VA Compensation and Pension (C&P) examination, on 11 May 2007, was 3 months prior to separation. The CI reported incapacitating episodes on three occasions in the prior year for a total of 9 days. On examination, thoracolumbar ROM was flexion 80 degrees, extension 26 degrees, and lateral bending and rotation of 30 degrees (combined 225 degrees) without additional limitation after repetition. There was no muscle spasm and gait and spinal contour were normal. There were no examination findings of nerve root involvement (radiculopathy); strength, reflexes and sensation were normal and straight leg raising was negative. The Board directs attention to its rating recommendation based on the above evidence. ROM evidence in the proximate evaluations supports no more than a 10% disability rating including consideration of VASRD §4.59 (painful motion), §4.40 (functional impairment), or §4.45 (Deluca). 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 (20%) or ankylosis of the entire thoracolumbar spine (40%) are not present. The Board also considered a rating for the back condition using the VASRD formula based on incapacitating episodes due to intervertebral disc syndrome (IDS). The criteria are based on the number of incapacitating episodes in the prior 12 months requiring bed rest prescribed by a physician. Although the C&P examiner recorded three episodes in the preceding 12 months totaling 9 days, no documented physician directed bed rest was evidence in the service treatment records (STR). The Board concluded the evidence did not support a higher rating using this alternate formula providing no additional benefit to the CI. Although there was a history of radiating pain, there was no evidence of an unfitting peripheral nerve impairment in this case. While the CI may have suffered additional pain from radiating pain, this is subsumed under the general spine rating criteria, which specifically states “with or without symptoms such as pain (whether or not it radiates).” 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 lumbar DDD condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were depression and PTSD. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. 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 STR reflects treatment for these conditions beginning in 2005. A performance report from June 2006 documented satisfactory duty performance. Depression and PTSD were forwarded by the MEB as medically acceptable. A psychiatry addendum for the MEB reported treatment for depression but that the condition was not disqualifying for continued military service. The conditions were not profiled and were not implicated in the commander’s statement. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions 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 any of the contended depression and PTSD; and, therefore, no additional disability ratings 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. In the matter of the lumbar DDD condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended depression and PTSD conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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** |
| Lumbar Degenerative Disc Disease | 5299-5242 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120123, 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 XXXXXXXXXXXXXXXXXXXX, AR20120016291 (PD 201200175)

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 XXXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA