RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200203 SEPARATION DATE: 20080427

BOARD DATE: 20121019

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (13M34 / Multiple Launch Rocket Systems [MLRS]/HIMARS Crew), medically separated for degenerative disc disease (DDD) with broad-based disc bulge at L5-S1. The CI had insidious onset (no specific trauma) of low back pain while deployed to Iraq in July 2003. The DDD with low back pain condition could not be adequately rehabilitated and there was no indication for surgery. 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). Lumbago with DDD was the single condition forwarded for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the DDD with broad-based disc bulge at LS-S1 condition as unfitting, rated 0% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% service disability rating.

CI CONTENTION: “Veteran was diagnosed with PTSD at 50% from the VA after discharge.”

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 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” Although the Board will review the rating for the unfitting lower back condition, the requested condition of PTSD does not meet the criteria prescribed in DoDI 6040.44 for Board 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 Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB (Admin Corrected) – Dated 20080426** | **VA (3 Mos. Pre-Separation) – All Effective Date 20080428** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| DDD w/ Broad-Based Disc Bulge at L5-S1 | 5299-5242 | 0% | Degen Arthritis Thoracolumbar Spine / Rt L5-S1 Disc Protrusion  | 5299-5242 | 10% | 20080130 |
| ↓No Additional MEB/PEB Entries↓ | Degen Arthritis C-Spine | 5299-5242 | 10% | 20080130 |
| Lt Knee PFS . . . . .  | 5299-5261 | 10% | 20080130 |
| Rt Knee PFS . . . . .  | 5299-5261 | 10% | 20080130 |
| OSA | 6847 | 50%\* | 20090921 |
| PTSD | 9411 | 30%\* | 20090921 |
| 0% X 4 / Not Service-Connected x 0 | 20080130 |
| **Combined: 0%** | **Combined: 80%\*** |

\*VARD 20090929 added the OSA and PTSD ratings retroactive to DOS. Combined raised from 40% to 80% also retroactive.

ANALYSIS SUMMARY:

Degenerative Disc Disease with Broad-Based Disc Bulge at LS-S1 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 | PT ~6 Mo. Pre-Sep | VA C&P ~3 Mo. Pre-Sep |
| Flexion (90⁰ Normal) | 90⁰ (100⁰) | 90⁰ |
| Ext (0-30) | 30⁰ | 30⁰ |
| R Lat Flex (0-30) | 30⁰ | 30⁰ |
| L Lat Flex 0-30) | 25⁰ | 30⁰ |
| R Rotation (0-30) | 30⁰ (45⁰) | 30⁰ |
| L Rotation (0-30) | 30⁰ (45⁰) | 30⁰ |
| Combined (240⁰) | 235⁰\* | 240⁰ |
| Comment:  | Pain on movement: normal gait; no tenderness; motor, sensory, squat, heel/toe walk all normal | No tenderness; gait normal; no additional limitations on repetition; Symptom of pain with activity |
| §4.71a Rating | 10% (PEB 0%) | 0% (VA 10%) |

\* Note (2) for maximum of normal VA ROM and Note (4): for rounding ROM were applied to the PEB source ROM exam above

The narrative summary (NARSUM) documented a long history of lower back pain including magnetic resonance imaging (MRI) evidence of a broad-based bulge at L5-S1 with unsuccessful epidural steroid injections and potential for surgical fusion. The CI was not deemed to be a good surgical candidate due to his young age and being a smoker. Symptoms included pain and radiating pain. The MEB physical exam noted no abnormal motor or sensory findings and referenced the ROMs charted above with passive ROM limited by pain. At the VA Compensation and Pension (C&P) exam prior to separation, the CI reported similar history of painful motion with activity and radiating symptoms. Pain-free ROM was as charted above.

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and VA rated the condition under the same coding of 5299-5242. Although the revised PEB disability description stated “Thoracolumbar range of motion is greater than 235 degrees,” analysis of the source ROM exam indicated pain-limited ROM at 235 degrees when Note 2 of the general spine formula was applied to limit each ROM to the VA normal ROM from Plate V: “The normal ranges of motion for each component of spinal motion provided in this note are the maximum that can be used for calculation of the combined range of motion.” The exam also indicated painful motion, which meets the criteria for a 10% rating IAW VASRD §4.59 (painful motion). Although the VA exam objective findings did not support a 10% rating, the subjective complaints of increased pain with activity were adjudged by the VA to meet the 10% rating criteria.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.59 (painful motion), the Board recommends a disability rating of 10% for the DDD with broad-based disc bulge at LS-S1 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 degenerative disc disease with broad-based disc bulge at LS-S1 condition, the Board unanimously recommends a service disability rating of 10%, coded 5299-5242 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** |
| Degenerative disc disease with broad-based disc bulge at LS-S1 | 5299-5242 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120121, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXX

 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120019883 (PD201200203)

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 10% 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 XXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA