RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200220 SEPARATION DATE: 20050915

BOARD DATE: 20121022

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (42A20/Human Resource Specialist), medically separated for chronic low back pain (LBP), mechanical in nature, onset due to strain with findings of mild degenerative disc disease (DDD) at L4/L5, no neural impingement or radiculopathy. The CI had an insidious onset of low back pain with progressive worsening in 1996 which resulted from wearing a backpack and wearing an armored vest. Despite the use of a TENS unit, steroid injections, facet nerve blocks, medications and aggressive Physical Therapy (PT) and several Neurosurgical evaluations, the CI failed to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent P2, L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded low back pain secondary to herniated L4-5 Disk on DA Form 3947 to the Informal Physical Evaluation Board (IPEB). Hypertension (HTN), hyperlipidemia, and right shoulder pain secondary to trapezius muscle strain conditions, identified in the rating chart below, were also identified and forwarded by the MEB as meeting retention standards. The IPEB adjudicated the chronic LBP condition as unfitting, rated 0%, with likely application of AR 635-40. The CI initially did not concur with the IPEB findings and requested a Formal PEB, which she later withdrew. The CI was thus medically separated with a 0% disability rating.

CI CONTENTION: “CHRONIC LOW BACK PAIN (DEGENERATIVE DISC DISEASE AT L4/L5).”

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 conditions “identified but not determined to be unfitting by the PEB. The ratings for unfitting conditions will be reviewed in all cases. The Chronic LBP and DDD L4/L5 condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The remaining conditions rated by the VA at separation and listed on the DA Form 294 application 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 Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20050412** | **VA (~1 Mos. Post-Separation) – All Effective Date 20050916** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic LBP... | 5237 | 0% | DDD and Strain, TL Spine | 5242 | 20%\* | 20050818 |
| Hypertension  | Not Unfitting | HTN | 7101 | 0%\* | 20050818 |
| Hyperlipidemia | Not Unfitting | NO VA ENTRY |
| Right Shoulder Pain Secondary to Trapezius Muscle Strain | Not Unfitting | Shoulder Degenerative Joint Disease, Right | 5010 | 10% | 20050818 |
| ↓No Additional MEB/PEB Entries↓ | Right Knee DJD … | 5003 | 10% | 20050818 |
| Epicondylitis, Right Elbow | 5024 | 10% | 20050818 |
| Plantar Fasciitis with Calcaneal Spur, Left Foot | 5299-5278 | 10% | 20050818 |
| 0% X 6 / Not Service-Connected x 7 | 20050818 |
| **Combined: 0%** | **Combined: 50%** |

\* DDD decreased to 10% effective 20071117 based on exam of that date; HTN increased to 10% effective 20060912; Subsequent VARDs made additional rating changes more distant from the DOS for a combined 80% rating effective 20091104

ANALYSIS SUMMARY:

Chronic LBP Condition. There were three 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 ~10 Mo. Pre-Sep | MEB ~6 Mo. Pre-Sep | VA C&P ~1 Mo. Pre-Sep |
| Flexion (90⁰ Normal) | “50% decreased flexion”\* | 45⁰, 45⁰, 45⁰\* | 45⁰\* |
| Ext (0-30) | “Full” | (10⁰) 15⁰, 15⁰, 10⁰\* | 10⁰\* |
| R Lat Flex (0-30) |  | 15⁰, 15⁰, 15⁰\* | 10⁰\* |
| L Lat Flex 0-30) | 15⁰, 15⁰, 15⁰\* | 10⁰\* |
| R Rotation (0-30) | (15⁰) 20⁰, 20⁰, 15⁰\* | 10⁰\* |
| L Rotation (0-30) | 15⁰, 15⁰, 15⁰\* | 10⁰\* |
| Combined (240⁰) | 115⁰ | 95⁰ |
| Comment  | \* secondary to central back paintenderness PROM; positive tightness R>L; reflexes nml; motor/sensory nml | \*Limited by pain; abnormal gait; no tenderness to palpation (TTP); 1 positive Waddell’s for pain with axial loading; straight leg raise neg; reflexes nml; motor/sensory nml | \*Pain at maximum ROM; repetitive ROM increased pain without decreasing ROM; pain limited ROM; reflexes wnl; motor/sensory wnl |
| §4.71a Rating | 20% | 20% (PEB 0%)  | 20% |

The CI had a well documented history of chronic LBP in the service treatment record (STR). The MEB examination, 6 months prior to separation, documented complaints of constant aching pain in the lower back that worsens with sitting for more than 30 minutes or walking for more than 3 miles. The functional impairment is mechanical LBP limited by pain. Radiographs in 1998 indicated minimal DDD at L3-4, with a magnetic resonance imaging (MRI) in 2003 indicating disc bulges (DDD) without canal stenosis or foraminal narrowing. All radicular symptoms were of pain. The examination findings are noted in the chart above (Note: The charted ROM is with consideration of DeLuca for decreased ROM on repetition).

The VA Compensation & Pension (C&P) examination performed a month prior to separation noted a constant daily dull aching pain with “occasional radicular symptoms going down into the left lower extremity.” The VA C&P exam findings are noted in the chart above. There was no history of incapacitating episodes.

The Board directs attention to its rating recommendation based on the above evidence. The PEB disability description stated “Flexion to 45⁰ due to pain alone (no mechanical block)” which is likely a reference to coding IAW AR 635-40, B-29. The PEB rated the chronic LBP as code 5237 **(l**umbosacral or cervical strain) at 0%. The VA coded the condition as 5242 (degenerative arthritis of the spine) at 20%. The PEB and the VA chose different coding options, but either coding uses “The General Rating Formula for Diseases and Injuries of the Spine.” The spine ratings consider the CI’s pain symptoms with or without symptoms such as pain (whether or not it radiates), stiffness or aching in the area of the spine affected by residuals of injury or disease.

Both exams proximate to separation met the 20% rating criteria for pain-limited forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees, or for the combined ROM not greater than 120 degrees. The Board reviewed the C&P exam and concluded that this was closer to the time of separation as a comprehensive examination and had a higher probative value.After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the chronic LBP condition coded 5237.

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 AR 635-40 for rating the chronic LBP was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic LBP 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 her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic LBP | 5237 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120214, 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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20120020034 (PD201200220)

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 XXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA