RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200239 SEPARATION DATE: 20011231

BOARD DATE: 20120829

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (88N, Transportation Management Coordinator), medically separated for chronic low back pain due to degenerative disc disease (DDD) of the lumbar spine. The back pain began in 1993 after a motor vehicle accident (MVA) during his first enlistment period which ended in January 1995. The CI’s second period of active service began in July 1997 and within 8 months his low back pain returned. He was treated conservatively with physical therapy, non-steroidal anti-inflammatory drugs (NSAIDs), muscle relaxers and intermittent narcotic use. After neurosurgical evaluation determined the CI was not a surgical candidate, a Military Occupational Specialty (MOS) change was granted. The CI could not meet the physical requirements of his new MOS or satisfy physical fitness standards; he was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded the DDD in the lumbar region and no other conditions to the Physical Evaluation Board (PEB). The PEB adjudicated the chronic low back condition as unfitting and rated at 10% with specified application of Department of Defense Instruction (DoDI) 1332.39. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “My MEB proceedings state degenerative discs at L4, L5 and L5, S1 without nerve impingement or radiculopathy but after reviewing the narrative study and attached imaging studies they both state that I have nerve impingement or neurological findings. I have also researched AR 635-40, page 51, B·39, which states a 40-60 percent rating will be predicted upon medical findings of neurological involvement. I have had to request twelve days from work in the past six months for incapacitating episodes with my back (dates listed on DD294). A request for a disabled parking permit that states my inability to walk without the use of a device or another persons (sic) assistance and a severe limitation to walk due to a neurological condition.”

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 service ratings for unfitting conditions will be reviewed in all cases; in this case, chronic mechanical low back pain. The issue of nerve impingement or neurological findings as mentioned in the CI’s contention will be addressed in the review of the service rating of the unfitting low back pain condition. 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 IPEB – Dated 20011113** | | | **VA– All Effective Date 20020101** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low back pain due to lumbar DDD | 5299-5295 | 10% | DDD, lumbar spine\* | 5293\* | 10% | STR |
| ↓No Additional MEB/PEB Entries↓ | | | 0% X 0 / Not Service-Connected x 5 | | | STR |
| **Combined: 10%** | | | **Combined: 20%\*** | | | |

\* Service treatment record (STR); 5293 (DDD, lumbar spine) changed to5293-5243 (DDD, Lumbar Spine w/radiculopathy right lower extremity) maintaining the 10% rating following exam of 20051216; Hypertension, 7101 rated 10% effective 20050819 (combined 20%)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the gravity of his condition and the significant impairment with which his service-connected condition continues to burden him. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate 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 utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of service rating and fitness determinations at separation, as elaborated above.

Chronic low back pain condition. The 2001 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed on 23 September 2002 for code 5293 (intervertebral disc syndrome) criteria, and then changed to the current §4.71a rating standards in 26 September 2003. The 2001 standards for rating based on range-of-motion (ROM) impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. The 5293 criteria also specifically included symptoms compatible with sciatica which were present in this case. For the reader’s convenience, the 2001 rating codes under discussion in this case are excerpted below.

5292 Spine, limitation of motion of, lumbar:

Severe........................................................ 40

Moderate...................................................... 20

Slight........................................................ 10

5293 Intervertebral disc syndrome:

Pronounced; with persistent symptoms compatible with sciatic

neuropathy with characteristic pain and demonstrable muscle

spasm, absent ankle jerk, or other neurological findings

appropriate to site of diseased disc, little intermittent

relief........................................................ 60

Severe; recurring attacks, with intermittent relief........... 40

Moderate; recurring attacks................................... 20

Mild.......................................................... 10

Postoperative, cured.......................................... 0

5295 Lumbosacral strain:

Severe; with listing of whole spine to opposite side, positive

Goldthwaite's sign, marked limitation of forward bending in

standing position, loss of lateral motion with osteoarthritic

changes, or narrowing or irregularity of joint

space, or some of the above with abnormal mobility on forced

motion....................................................... 40

With muscle spasm on extreme forward bending, loss of lateral

spine motion, unilateral, in standing position............... 20

With characteristic pain on motion............................ 10

With slight subjective symptoms only.......................... 0

The PEB disability description was “chronic mechanical low back pain due to lumbar DDD, without neurologic abnormality or documented chronic paravertebral muscle spasms on repeated examinations, with characteristic pain on motion. Your case was adjudicated IAW DODI 1332.39, …” There was only one formal ROM evaluation in evidence between 1997 and 2001, however; documentation of additional ratable criteria was present and utilized by the Board in arriving at its rating recommendation. The chart below summarizes the probative data:

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | MEB ~4 Mo. Pre-Sep | VA C&P ~4 yrs. Post-Sep |
| Flexion (90⁰ Normal) | 80⁰ | 80⁰ |
| Ext (0-30) | 20⁰ | 15⁰ |
| R Lat Flex (0-30) | 30⁰ (35⁰) | 30⁰ |
| L Lat Flex 0-30) | 30⁰ (35⁰) | 30⁰ |
| R Rotation (0-30) | 30⁰ (45⁰) | 20⁰ |
| L Rotation (0-30) | 30⁰ (45⁰) | 20⁰ |
| Combined (240⁰) | 220⁰ | 195⁰ |
| Comment | No atrophy;- SLR bilat; motor and reflexes normal; nl neurologic exam; can walk on heels and toes | Gait normal; pain at ends ROM; no additional ROM loss following repetitive use; mild degen. changes w/ disk protrusion @ L4-L5 & L5-S1 w/o significant canal stenosis. Some sensory sx in R Leg - likely to be 2nd to radiation / radiculopathy in RLE 2nd to service LB condition |
| §4.71a Rating | 10% | 10% |

The narrative summary elaborated the CI’s back history and indicated the CI had constant slight back pain “if not doing any strenuous activities.” The CI’s medications included intermittent narcotic pain medication. The exam is summarized above. Magnetic resonance imaging (MRI) documented “right paracentral disc herniation at the level of L4-5, but without nerve root impingement and right paracentral disc herniation at the level of L5-S1 with impingement on the right nerve root at this level.” Neurosurgical assessment three months prior to separation indicated “minimal mechanical low back pain without evidence of any radiculopathy or myelopathy. The patient is able to remain relatively asymptomatic with activity modification.” Profile indicated L3 for “herniated disk, L4-L5, L5-S1, chronic lower back pain with radiculopathy.” Treatment notes indicated episodes of complaints of back pain on movement/activity and episodic subjective complaints of leg numbness and shooting pain.

The initial VA rating relied solely on the CI’s service treatment records for their rating decision. The first VA Compensation and Pension (C&P) exam was 5 years remote from separation and indicated painful ROM as charted above. There was subjective right lower extremity radiculopathy without objective neurologic deficits.

The Board directs attention to its rating recommendation based on the above evidence. The Board considered that coding under 5292 (spine, limitation of motion of, lumbar) would not exceed the 10% (slight) criteria. Coding under 5295 (lumbosacral strain) was closest to the 10% criteria for characteristic pain on motion and did not approach the 20% criteria listed above.

The CI’s contention that he had nerve root impingement is correct as evidenced by the MRI findings. However, the neurosurgeon’s assessment indicated there were not any objective signs or symptoms of neurological involvement. Board deliberations focused on coding under 5293 (intervertebral disc syndrome) as the CI had herniated discs with radicular complaints. The CI had not undergone surgery and there was minimal muscle spasm documented in the STRs spanning a 4.5 year period. The Board considered if the CI’s history of intermittent narcotic pain medication supported “Severe; recurring attacks, with intermittent relief (40%), “Moderate; recurring attacks” (20%), or “Mild” symptoms (10%). Given the totality of the record, the Board adjudged that ideal coding and rating under 5292-5293 would be at the 10% level. This offers no benefit to the PEB rating of 10% under code 5299-5295. 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 chronic low back pain 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. As discussed above, PEB reliance on DoDI 1332.39 for rating chronic low back due to degenerative disk disease was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic low back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. The Board additionally recommends no additional finding of unfitting for the contended peripheral nerve/radicular pain condition. 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** |
| Chronic mechanical low back pain due to lumbar DDD | 5299-5295 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120219, 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 XXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120016296 (PD201200239)

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 XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA