RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200286 SEPARATION DATE: 20061112

BOARD DATE: 20121101

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92A/AFSC, Automotive Logistical Specialist), medically separated for chronic non-radiating low back pain (LBP). The CI first presented for LBP in 1994 and again in 1996, but then not until 2005 when he reported aggravation from the use of the “flak vest” while deployed in 2003. Conservative treatment was inadequate for the CI to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). Hypertension, bilateral knee pain, alcohol dependence, heart murmur, mild pes planus, and smoking conditions were also identified and forwarded by the MEB to the Informal Physical Evaluation Board (IPEB) as meeting retention standards. The IPEB adjudicated the LBP as the only unfitting condition, rated 10%, with probable application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made and subsequently withdrew a request for a Formal PEB (FPEB). The CI was then medically separated with a 10% disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

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 condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The CI made no contentions in his application; accordingly, the back pain is the only condition within the purview of the Board. 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 PEB – Dated 20060728** | **VA (4 Mos. Post-Separation) – All Effective Date 20061113** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic LBP | 5299-5237 | 10% | Chronic Low Back DJD\* | 5242 | 20% | 20070207 |
| Hypertension | Not Unfitting | Hypertension | 7101 | 0% | 20070207 |
| Bilateral Knee Pain | Not Unfitting | Right Knee Chrondromalacia | 5099-5014 | 10% | 20070207 |
|  |  | Left Knee Chrondromalacia | 5099-5014 | 10% | 20070207 |
| Heart Murmur | Not Unfitting | No VA Entry |  |  |  |
| Pes Planus | Not Unfitting | No VA Entry |  |  |  |
| Smoker | Not Unfitting | Not Ratable |  |  |  |
| Alcohol Dependence | Not Unfitting | Not Ratable |  |  |  |
| ↓No Additional MEB/PEB Entries↓ | 0% X 2 / Not Service-Connected x 3 |  |
| **Combined: 10%** | **Combined: 40%** |

\*Left leg neuropathy addended on 20070503 VARD, but not separately ratable and subsumed under the 5242 rating.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member’s career, and then only to the degree of severity present at the time of final disposition. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA) but not determined to be unfitting by the PEB. However the 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’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Back Condition. There were four 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 ROMDegrees | MEB 12 Mo. Pre-Sep | FP ~8 Mo. Pre-Sep | FP ~6 Mo. Pre-Sep | VA C&P ~3 Mo. Post-Sep |
| Flexion (90 Normal) | 55 | 60 | 60 | 60 |
| Combined (240) | 155 | - | 200 | 100 |
| Comment | + Tenderness; no spasm. Limited by pain. “Soldier appeared to put minimal effort into the exam” | R/L rotation and R/L lat flexion not reported separately. Normal gait. Can stand on toes and heels. No spasm. | + Tenderness; painful motion. No spasm. Normal neurological exam. No comment on gait.  | + Tenderness and spasm; motion painful. Measurements made after fifth repetition.  |
| §4.71a Rating | 20% | 20% | 20% | 20% |

The CI was seen for LBP in 1994 and 1996, but responded to mediations and temporary light duty. In February 2005, he presented with a 3 year history of LBP aggravated by vigorous activity and was treated conservatively. In April 2005, he was placed on an L3 profile. In June 2005, he presented to the emergency room with LBP and was given quarters for 4 days. This is the only entry in the record which documents placement on quarters for his LBP. He was managed with medications, duty modification, physical therapy and chiropractic treatment. At an orthopedics appointment performed on 13 October 2005, the examiner observed tenderness along the paraspinal muscles, but with normal sensation, strength and reflexes. Magnetic resonance imaging (MRI) showed a herniated disc pulposus at L5-S1. The CI declined the use of epidural steroid injections. He was seen by a different orthopedist performed on 21 October 2005 and noted to follow no core strengthening program and that he was “falling short on his therapy”. The CI was found to be non-deployable and a MEB was recommended if he did not improve. At the MEB exam performed on 21 November 2005, a year prior to separation, the CI reported back pain and tingling in his legs. The MEB physical exam noted flexion to 90 degrees, extension of 5 degrees, and lateral flexion of 15 degrees, apparently restricted from pain (note partially illegible). However, the goniometric measurements, as documented above, showed a limitation in flexion. There was tenderness to palpation, but no spasm. The orthopedic consult for the narrative summary (NARSUM) was dictated 7 June 2006, 5 months prior to separation. The examiner noted that the CI denied neurological problems including lower extremity weakness or bowel or bladder incontinence. Gait was normal. Posture was straight. Point tenderness was noted, but without spasm. No deformities were noted. The table above documents the ROM. The CI was able to stand on his heels and toes consistent with normal strength. A provocative test for radiculopathy was negative. He was thought to not be a surgical candidate. The NARSUM was dictated one week later on 12 June 2006. The CI continued to have pain with activity, but benefitted from stretching. He noted some weakness during flares of pain. He denied any radiation of the pain into the legs or distal numbness. He reported that he could not run, lift or wear the (combat) gear or flak vest. However, his primary duties in supply were not affected. The examiner referred back to the 21 November 2005 examination for objective findings, but noted that there had been no significant changes since that examination on an Army Form 3081, dated 12 June 2006. It was noted that the CI appeared to put minimal effort in the ROM measurements, listed above. Axial loading of the spine, a maneuver not expected to produce pain in the lower spine, was painful. At the VA Compensation and Pension (C&P) exam performed on 7 February 2007, 3 months after separation, the CI reported LBP since 1995 due to the rigors of military service. He was never pain free and endorsed weakness, stiffness, fatigability and lack of endurance. He noted tingling radiating into the hips. He was able to do his administrative tasks, but not the more physically demanding soldiering duties. He did not use any form of assistive device. Six days of incapacitation were reported. Gait was normal. Tenderness and spasm were both present. The ROM is above. Minimal post ROM stiffness and tenderness without weakness or swelling was seen. Radicular pain with ROM testing was denied. X-rays showed mild degenerative joint disease at L5-S1 and of the sacroiliac joints. The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the back condition as 5299-5237, lumbosacral strain, and rated it at 10%. The VA coded the back condition as 5242, degenerative arthritis of the spine, and rated it at 20%. The Board notes that the restrictions in ROM for all four goniometric examinations in evidence support the 20% rating, but none meet the 30% or 40% criteria. While the CI did report 6 days of incapacitation at the VA examination, this is not supported by the record and would not support a higher rating in any case. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the back condition, coded 5242.

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 back condition, the Board unanimously recommends a disability rating of 20%, coded 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5242 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120306, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120020032 (PD201200286)

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 XXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA