RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200298 SEPARATION DATE: 20090707

BOARD DATE: 20120925

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92G1P / Food Service Operations Specialist), medically separated for a low back condition. He did not respond adequately to conservative treatment and was unable to perform within his Military Occupational Specialty (MOS) meet worldwide deployment standards or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Chronic low back pain with degenerative disc disease at L4-L5 and L5-S1 was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions, as identified in the rating chart below, were also forwarded by the MEB as non-disqualifying. The PEB adjudicated the low back condition as unfitting rated 20%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining MEB conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “Back injury due to airborne operation”

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 low back condition, as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below. 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 20090402** | | | **VA (~2 & 5 Mos. Post-Separation) – All Effective Date 20090708** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain w/DDD at L4-L5 and L5-S1 | 5237 | 20% | DDD and DJD of Lumbosacral Spine with coccygeal contusion | 5243 | 20% | 20090916 |
| Bilateral Arthritic Knee Pain | Not Unfitting | | Bilateral Patellofemoral Syndrome | 5099-5019 | NSC | 20090916 |
| Right Shoulder Pain | Not Unfitting | | DJD Right Shoulder | 5010-5201 | 30%\* | 20091203 |
| ↓No Additional MEB/PEB Entries↓ | | | Rt Hip Strain w/ Rt Thigh Adductor Muscle Strain | 5099-5019 | 10%\* | 20091203 |
| Tinnitus | 6260 | 10%\* | 20100730 |
| 0% x 2/Not Service-Connected x 19 | | | 20090916 |
| **Combined: 20%** | | | **Combined: 60%\*** | | | |

\*Original VARD dated 20090929 rated only lumbosacral DDD/DJD @ 20%. Five conditions were NSC, and three were deferred. VARD dated 20100106 added rt shoulder @ 30%, hip/thigh @ 10%, raising the combined rating to 50%, all retroactive to DOS. VARD dated 20110511 added tinnitus @ 10%, raising the combined rating to 60%, also retroactive to DOS.

ANALYSIS SUMMARY:

Low Back Condition. The CI had low back and tailbone (coccyx) pain following an airborne jump on 26 April 2006. He sought treatment after losing feeling in his buttocks. He was treated conservatively with multiple pain medications, physical therapy and chiropractic care without relief. During and after a deployment to Afghanistan he continued to attend physical therapy with no improvement of his symptoms. In May 2008 the CI was referred to a spinal surgeon and magnetic resonance imaging (MRI) and a discogram were performed. These tests revealed two-level symptomatic bulging discs at L4-L5 and L5-S1. Due to the patient’s young age and his multidisc pathology, surgery was considered but not recommended unless the disease worsened. The CI received a steroid injection in the spine which caused leg left paresthesias. The surgeon recommended that he be reassigned to a job where he would not lift heavy objects, run, or road march. There were three 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 ~11 Mos. Pre-Sep | MEB by PT ~6 Mos. Pre-Sep | VA C&P ~2 Mos. Post-Sep |
| Flexion (90⁰ Normal) | 82⁰ | 70⁰,64⁰,51⁰, avg 62⁰ | 60⁰ |
| Ext (0-30) | 22⁰ | 20⁰,15⁰,15⁰, avg 17⁰ | 30⁰ |
| R Lat Flex (0-30) | 28⁰ | 27⁰,27⁰,27⁰ | 25⁰ |
| L Lat Flex 0-30) | 28⁰ | 29⁰,29⁰,29⁰ | 25⁰ |
| R Rotation (0-30) | #⁰ | >30⁰ (35⁰) | >30⁰(50) |
| L Rotation (0-30) | #⁰ | 30⁰,30⁰,20⁰,avg17⁰ | >30⁰(50) |
| Combined (240⁰) | ##⁰ | <200⁰ (avg 197⁰) | >200⁰ |
| Comment | +TTP,painful motion, normal gait, lumbar lordosis wnl | Slow gait, no spasm | Slow gait, no spasm |
| §4.71a Rating | 10% | 20%\* | 20% |

\* with application of Deluca factors

At the MEB exam, the CI reported moderate non-radicular low back pain. He was unable to run, road march, bend forward at the waist or lift boxes without experiencing pain. The MEB physical exam documented the physical therapy ROM. The physical therapist examiner additionally documented localized tenderness along bilateral lumbar paraspinals, guarding with motion, and absence of muscle spasm, abnormal spine contour, swelling, muscle atrophy or deformity. The CI’s gait was documented as non antalgic but slow and an increased effort was noted. Passive ROMs were not performed as he had increasing pain with repetitive motion.   
X-rays of the coccyx and the sacrum revealed a suspected area of bone erosion at the anterior inferior aspect of the 5th sacral segment, but were otherwise normal. The MRI, in July 2006, revealed mild spondylotic and degenerative disc changes at L1-L2 without significant disc bulge or protrusion or evidence of nerve root compromise, and a small broad posterior disc protrusion at L5-S1 with mild bilateral neural foraminal narrowing. The medical examiner diagnosed low back pain with DDD and documented that the CI’s medical condition prevented him from performing basic soldier tasks such as running, jumping, road marching, or wearing his battle gear. Despite his best efforts, the CI was unable to perform the duties required of continued military service. The profile and commander’s statement corroborated his medical condition and limitations, and disqualified the CI from further airborne duties. At the post-separation VA Compensation and Pension (C&P) exam, the CI reported tailbone pain which worsened if he sat for greater than 20 minutes and low back pain that worsened if he stood more than 20 minutes or if he walked more than about 5 minutes, but he could walk 20 minutes if necessary and denied weakness or lack of endurance. The CI took Motrin for all of his orthopedic complaints with some relief and no side effects. He had not had any flare ups requiring hospitalization or enforced bed rest and did not use a back brace, or a cane or crutches for ambulation. His pain was aggravated by any kind of bending, stooping, lifting, or twisting. He noted occasional transient numbness or tingling in his legs. He had no problems with his activities of daily living or with conducting his business if he stayed within his physical limitations. The VA (C&P) exam documented a normal back appearance, tenderness of the tip of the tailbone and sacroiliac areas, normal neuromuscular findings and the absence of Deluca observations.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were complete, well documented, and compliant with VASRD §4.46 (accurate measurement) and similar in terms of ratable data and therefore the Board assigns both exams equal probative value. The PEB and VA applied different VASRD codes, but were subject to the same rating criteria IAW §4.71a—Schedule of ratings–musculoskeletal system, under the general rating formula for diseases and injuries of the spine. The PEB chose to use code 5237 (Lumbosacral or cervical strain) and rated the condition 20% for forward flexion not greater than 60 with observations of an antalgic gait. The PEB further cited consideration of functional loss due to factors such as pain IAW VASRD §4.10, §4.40, §4.45 and §4.59. The VA chose code 5243 (Intervertebral disc syndrome) which the Board agreed is more clinically appropriate and rated it 20% for forward flexion not greater than 60 degrees. The Board agreed both the PEB and VA ratings are IAW §4.71a and noted the Deluca observations documented at the time of the MEB but agreed this did not provide for an additional or higher rating. Although the VA increased the rating to 40% within a year of separation it did not apply the rating retroactively to the CI’s date of separation; the Board concluded this was based on a worsening back condition for which the VA is authorized to make rating adjustments should degree of impairment vary over time. The Disability Evaluation System (DES), under which the Board operates, has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. Neither the PEB nor the VA had evidence of incapacitating episodes which would provide for additional or higher rating. There was no evidence of ratable peripheral nerve impairment which would provide for additional or higher rating. 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 low back 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 low back condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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** |
| Chronic Low Back Pain w/DDD at L4-L5 and L5-S1 | 5237 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111205, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation XXXXXXXXXXXXXXXX, AR20120019092 (PD201200298)

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 XXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA