RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200299 SEPARATION DATE: 20050303

BOARD DATE: 20120918

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (88M10/Motor Transport Operator), medically separated for chronic back pain after he injured his back trying to lift a heavy tire in 2003. Despite conservative management, he did not respond adequately to treatment to meet physical fitness standards or meet the full requirements of his Military Occupational Specialty (MOS). He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Chronic low back pain, secondary to mild disc degeneration and facet joint arthropathy was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the chronic back pain condition as unfitting, rated 10%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I am in pain all the time. It effects (*sic*) my daily life tremendously. I get major headaches multiple times a week, which I believe are caused by the pain. I am overweight partly due to not being able to exercise due to pain that it causes me.”

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 back pain is the sole condition within the scope of review of the Board in this case. 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 20050125** | **VA (4 Mo. After Separation) – All Effective Date 20050304** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Back Pain | 5237 | 10% | Mech LBP; Mild Discogenic Dis. w/o Radiculopathy | 5237 | 20% | 20050519 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 0/Not Service Connected x 0 | 20050519 |
| **Combined: 10%** | **Combined: 20%** |

ANALYSIS SUMMARY:

Chronic Back Pain 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 ROMDegrees | PT/MEB ~2.5 Mo. Pre-Sep(20041220) | VA C&P ~2.5 Mo. Post-Sep(20050519) |
| Flexion (90) | 90 | 80 |
| Extension (30) | 30 | 30 |
| R Lat Flex (30) | 30 | 30 |
| L Lat Flex (30) | 30 | 30 |
| R Rotation (30) | 30 | 30 |
| L Rotation (30) | 30 | 30 |
| Combined (240) | 240 | 230 |
| Comment | Tenderness w/o spasm | Examiner speculates additional loss with repetition |
| §4.71a Rating | 10% for painful motion | 10% for painful motion |

The first documented visit in evidence for the low back pain (LBP) was in January 2004 when the CI gave a history of LBP since he had lifted a heavy tire the previous October. Over the course of the next year, he was managed conservatively with medications, physical therapy, chiropractic manipulation and epidural steroid injections without long term relief from his pain. He was evaluated by neurosurgery in May 2004, 10 months prior to separation, and noted to have an essentially normal exam other than pain. The neurosurgeon interpreted the plain films as normal and the magnetic resonance imaging (MRI) as showing disk bulges at L4-5 and L5-S1 without herniation or nerve impingement. He was released to full duty; the neurosurgeon did not recommend surgery. In October 2004, 5 months prior to separation, the CI requested an MEB referral. He was issued an L3 profile and entered into the Disability Evaluation System (DES) process. At the MEB exam on 22 December 2004 the CI reported persistent LBP. The MEB physical exam was normal. The MEB narrative summary (NARSUM) was dictated 2 weeks later on 5 January 2005. The CI stated that the pain was persistent despite treatment and exacerbated by prolonged standing, running, marching, jumping, heavy lifting, bending and stooping. On examination, his gait was normal and spasm was absent as were kyphosis, lordosis and scoliosis. There was no tenderness. Sensory, motor and deep tendon reflex (DTR) examinations were normal. Straight leg raise and Patrick’s test were normal. He was thought to have mechanical LPB due to mild disc degeneration with facet joint arthropathy. At the VA Compensation and Pension (C&P) exam, 2 months after separation, the CI reported that he was employed full time as a truck driver working 70 to 80 hours a week, but did not do any heavy lifting. He noted that his back was comfortable most of the time unless he did prolonged standing, sitting without changing positions, lifting or repetitive bending. At the time of exam he was comfortable without evidence of discomfort. He was under no treatment and took no medications. He denied any flares and used no assistive devices. No incapacitating episodes were documented. On examination, he was noted to be 183 pounds, up 13 from his enlistment, but down 12 pounds from his maximum. Posture and gait were normal. The lordotic curve was normal. Sensation, motor and DTR exams were normal. No specific comment was made regarding spasm, but the examiner did note that the remainder of the examination was normal. The examiner also wrote “it might be estimated that after any heavy prolonged lifting or repetitive bending that the range of motion would be reduced particularly in flexion to 0 to 50 degrees with pain at the end point, hyperextension 0 to 10 decrees with pain at end point secondary to pain.” Imaging was unremarkable.

The Board directs attention to its rating recommendation based on the above evidence. It noted that the PEB and VA both coded the back condition 5237 for lumbosacral strain. The PEB rated the back condition at 10%; the VA, however, awarded 20% based on the hypothetical reduction with repetitive motion posited by the VA examiner. The Board found no evidence that the VA examiner actually performed repetitive measurements. The PEB measurements were obtained by a physical therapist who did perform each measurement three times. The CI met or exceeded VA normal standards in each plane measured. The Board finds that the evidence available in the record does not support the speculation on the part of the VA examiner. 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 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. 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 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 Back Pain | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120226, 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 / XXXXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXX, AR20120017735 (PD201200299)

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