RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200327 SEPARATION DATE: 20090827

BOARD DATE: 20120918

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (31B2P, Military Police), medically separated for back strain related to armor wear in Iraq during 2007. The chronic non-radicular thoracic spine pain with spondylosis condition did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). Anxiety, chest pain (non-cardiac), left shoulder pain (intermittent), temporomandibular joint (TMJ) dysfunction, and dyspepsia, identified in the rating chart below, were also identified and forwarded by the MEB as meeting retention standards. The Physical Evaluation Board (PEB) adjudicated lumbosacral strain as unfitting, rated 10%, with application of the Veteran’s Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals and was 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 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. Only the thoracic spine pain condition meets the criteria prescribed in DoDI 6040.44 for Board 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 20090521** | | | **VA (~2 Mos. Post-Separation) – All Effective Date 20090828** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbosacral Strain | 5237 | 10% | Thoracic Spine Spondylosis | 5239 | 0% | 20091106 |
| Anxiety | Not Unfitting | | Anxiety | 9413 | 30% | 20091106 |
| Chest Pain (non-cardiac) | Not Unfitting | | Heart Condition | 7015 | 0% | 20091106 |
| Left Shoulder Pain | Not Unfitting | | Left Shoulder Strain | 5201 | 10% | 20091106 |
| TMJ Dysfunction | Not Unfitting | | TMJ Condition | 9905 | 10% | 20091106 |
| Dyspepsia | Not Unfitting | | Dyspepsia | 7399-7304 | 0% | 20091106 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% X 3 / Not Service-Connected x 4\* | | | 20091106 |
| **Combined: 10%** | | | **Combined: 40%\*\*** | | | |

\*From 20110401 VARD, Tinnitus added at 10% and four other NSC conditions added. \*\*Total combined overall rating changed to 50% retroactive to 20090828 (separation).

ANALYSIS SUMMARY:

Lumbosacral Strain 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 ROM  Degrees | MEB ~7 Mos. Pre-Sep | VA C&P ~2 Mos. Post-Sep |
| Flexion (90 Normal) | 90 | 90 |
| Ext (0-30) | 20 | 30 |
| R Lat Flex (0-30) | 20 | 30 |
| L Lat Flex 0-30) | 20 | 30 |
| R Rotation (0-30) | 30 | 30 |
| L Rotation (0-30) | 30 | 30 |
| Combined (240⁰) | 210 | 240 |
| Comment | + Tenderness; DeLuca positive for pain, fatigue, weakness, endurance and in-coordination | Tenderness; no painful motion |
| §4.71a Rating | 10% (for combined ROM) | 0% |

Per the MEB narrative summary (NARSUM), dictated 16 March 2009, the CI first noted back pain in 2005 during basic training and thoracic spine pain in 2006 during field training. He did not seek treatment for these episodes. He did well afterwards until he deployed in October 2006. He noted the onset of mid-back pain after carrying the combat load almost immediately, but denied a specific inciting event including trauma. Despite his pain, he was able to complete his tour and his duties. He did take non-steroidal anti-inflammatory drugs (NSAIDs) for analgesia. His pain persisted following his return from deployment leading to further evaluation. Plain film imaging was normal, but a magnetic resonance image showed slight scoliosis, degenerative disc disease and a small bulging disc at T10-11. Physical therapy and chiropractic treatment provided minimal improvement as did trials of various NSAIDs and duty limitation. He remained symptomatic from carrying weight on his back and from lifting and was referred to MEB. At the MEB separation exam on 26 January 2009, 7 months prior to separation, the CI reported back pain without further elaboration. The examiner noted scoliosis. At the time of the NARSUM, 5 months prior to separation, the CI reported daily pain which ranged from 3-7/10 in intensity, the latter occurring 3 to 4 times a month. The pain was described as a dull ache with occasional lateral extension, but without radicular symptoms. He had recently stopped running. The pain was aggravated by carrying any weight on his back and limited him to lifting 20-30 pounds. He noted that NSAIDs were no longer beneficial, but that a heating pad did help. Walking was unrestricted. He had been limited to administrative duties. The examiner documented that the CI sat comfortably and was able to transition from sitting to the exam table without difficulty or distress. The gait was antalgic. Trace scoliosis was noted on examination. There was no tenderness to palpation or spasm on exam. He had full ROM with pain at end range especially with rotation. There were no signs of radiculopathy. At the VA Compensation and Pension (C&P) exam, performed 2 months after separation, the CI noted that he had back pain daily since separation. He denied any incapacitation in the prior 12 months. Gait was noted to be normal. There was no spasm, guarding or tenderness. The sensory, motor and deep tendon reflex exams were normal. The straight leg raise was normal. ROM was normal. There was no pain with motion.

The Board directs attention to its rating recommendation based on the above evidence. Although the PEB DA 199 form described the back strain as lumbosacral rather than thoracic strain this did not affect the rating determination since the thoracolumbar spine is rated as a single unit under the VASRD general rating formula for diseases and injuries of the spine. The PEB rated the thoracic spin pain condition at 10% for painful motion coded 5237 (cervical or lumbosacral strain). The MEB examination also met the 10% rating based on limited combined ROM. The VA rated the condition 0% based on the C&P examination showing normal ROM, coded 5239, spondylolisthesis. The Board noted that the rating criteria for the two coding options chosen are identical and that no other coding option provides an advantage to the CI. Although the VA C&P examination supporting a 0% rating was considered a thorough examination and was more proximate to separation, the Board does not recommend combined ratings less than that of the PEB. 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 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. In the matter of the back pain 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lumbosacral Strain | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120315, 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 for XXXXXXXXXXXXXXXXXXXX, AR20120019972 (PD201200327)\

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