RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900002 BOARD DATE: 20091110

SEPARATION DATE: 20020627

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SUMMARY OF CASE: This covered individual (CI) was a Specialist, microwave operator maintainer who was medically separated from the Army in 2002 after 3 years of service. The medical basis for the separation was Low Back Pain. Appropriate therapy failed to alleviate his symptoms and he was referred to the Service Physical Evaluation Board (PEB). The Informal PEB determined he was unfit for continued military service and he was then separated with a 10% disability for Low Back Pain using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Service and Department of Defense regulations.

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CI CONTENTION: “Increased by V.A. to 20%. Range of motion decreasing over time.”

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RATING COMPARISON:

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| **Previous Determinations**  |
| **Service** | **VA** (Exam 1 month pre-discharge) |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Chronic low back pain with positive FABER. Physical exam notes flexion to 65 degrees and extension to 5 lateral flexion 15% right and left. (Range of motion is 10% Whole person impairment in AMA Guide). Neurological exam is within normal as is the muscle strength. X-rays essentially within normal. Rated for limitation of range of motion (slight) 10% | 5292 | 10% | **20020325** | MECHANICAL LOW BACK PAIN | 5292then5237 | 10%then 20% | 20020514 | **20020628****then** **20060725** |
| **TOTAL Combined: 10%** | **TOTAL Combined (*incl non-PEB Dxs)*: 10%** from 20020628 **20%** from 20060725 |

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**ANALYSIS SUMMARY:** The CI had non-traumatic LBP for 2 years and a profile limit and inability to complete the AFPT for a year. His LBP was the only MEB/PEB condition, the only condition rated by the VA, and the only contended condition. There were no non-pain radicular symptoms and the CI was otherwise without deficits. This case was adjudicated using the VASRD in effect in 2002 ("old spine rules") where specific ROMs were not directly tied to rating levels.

**LBP.** The CI had 2 years of chronic LBP without any known injury following PT. Pain was intermittent and sharp, 2-6/10; exacerbated with running, jumping, lifting greater than 20 pounds, wearing a rucksack, flak vest, or any amount of marching; Alleviating factors of rest, change in position, and stretching. Most of the CI's pain was in the lower lumbar and sacral region with pain radiation to both hips. The pain was worse in the late afternoon and evenings especially with days of increased activity. The CI denied sensation loss, weakness, bowel or bladder incontinence, night sweats, fevers, or unexplained weight loss. Medications tried include Motrin and Robaxin with no lasting relief of symptoms. A trial of Physical Therapy has included lumbar stabilization and stretching with no relief of symptoms. The CI had been on serial temporary profiling for six months and was unable to pass an Army Physical Fitness Test in the last year. Exam noted: On inspection of the lumbar spine, paraspinal musculature appeared symmetric and there was no curvature of the thoracic, lumbar, or cervical spine. He had tenderness to palpation in multiple areas with reproduction of his back pain. He was tender at the L4-5 spinous processes as well as in the lumbosacral junction at the midline. He also had tenderness to palpation in bilateral iliolumbar spinal muscles as well as, bilateral posterior sacroiliac ligaments in the gluteus medii. Straight leg raise was negative. FABER test was positive bilaterally. Range of motion of the lumbar spine was taken using bubble goniometry with 65 degrees of flexion, 5 degrees of extension, and 15 degrees of right and left lateral flexion. On neurologic examination he was intact to light touch and pinprick. Strength was 5/5 bilateral lower extremities and symmetric. Deep tendon reflexes were normoreflexive and symmetric in the patella, Achilles tendons. Babinski response was flexor and there was no abnormal clonus. The Commander's statement of 20020124 noted the CI as unable to accomplish the physically demanding aspects of his MOS.

**VA:** Using an evaluation (**20020514)** completed 1 month prior to separation from the Army the Veterans Administration (VA) rated this disability as Low Back Pain at 10% (**Rating Decision 20020628):** An evaluation of 10 percent is granted for slightly limited motion of the lumbar spine, or demonstrable deformity of a vertebral body from fracture with muscle spasm or limited motion. A higher evaluation of 20 percent is not warranted unless there is a moderate limitation of motion of the lumbar spine, or demonstrable deformity of a vertebral body from fracture with slight limitation of motion. During the current VA examination the veteran reported he has experienced chronic low back pain for two years. He stated there is no known trauma. He reported the pain is intermittent and sharp and is rated as 4-6/10, He stated the pain increases with sit-ups, running, jumping, lifting greater than 20 pounds, or marching. He reported improvement of symptoms with rest and stretching. The veteran denied weakness, numbness, tingling or bowel or bladder incontinence. He stated he takes 800 mg of Motrin and cyclobenzaprine (Flexeril) every night and on an as-needed for pain. On physical examination of the lumbar spine there was tenderness to palpation at the IA-L5 area. The straight leg raising test was negative. There was no curvature of the spine and no evidence of muscle spasm. His range of motion was measured as flexion 60 degrees (\*), extension 5 degrees, bilateral side bending 15 degrees, and bilateral rotation of 30 degrees. There was pain with all ranges of motion. The veteran's gait and posture were described as normal. His sensory perception was considered to be within normal limits. Strength of the lower extremities was 5/5 and symmetric. X-ray of the lumbar spine revealed possible segmentation anomaly of doubtful clinical significance. The current diagnosis is chronic mechanical low back pain secondary to facet syndrome in the lumbar spine.(deleted) The medical evidence does not show that there is additional significant orthopedic disability manifested by limitation of motion, or restriction of activity, or functional impairment, that is caused by pain during periods of flare-up, or when the body part is used repeatedly over a period of time (\*). [\* NOTE: The actual exam report (20020514) indicated that flexion was further limited to 55˚ due to increased pain following repetition.] The VA exam of 20060721 was rated at 20% using the newer VASRD Spine Criteria and pain limited thoracolumbar flexion greater than 30˚ but not greater than 60˚ (50˚).

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| Movement**Thoracolumbar** | Normal ROM | ROM Mil20020109Positive FABER | ROM VA20020514(DeLuca >5 reps) | ROM VA **20060721**  | Mil & VA evals noted tenderness and painful limited motion.  |
| Flex | 0-**90** | 65 | 55  | 0 to 50 |
| Ext | 0-**30** | 5 | 5  | 0 to 20 |
| R Lat flex | 0-**30** | 15 | 10 | 0 to 25 |
| L lat flex | 0-**30** | 15 | 15  | 0 to 25 |
| R rotation | 0-**30** | unk | 30  | 0 to 25 |
| L rotation | 0-**30** | unk | 30  | 0 to 25 |
| COMBINED |  **240** | unk  | 145  | 170  |

The CI did not have documented periods of incapacitation. His gait, posture, and spine contour were normal until VA exam of 2006. There was no non-pain radiculopathy. The military exam and VA exam in 2002 are in substantial agreement with the same pain-limited decreased ROM and tenderness without spasm. Both exams were rated 10% using 5292 Spine, limitation of motion of lumbar; slight.

The CI's LBP subjectively worsened over the 4 years post- separation; However, exam demonstrated similar ROM from his 2002 exams (see chart). The VA evaluation of 20060721 was rated at 20% for decreased thoracolumbar flexion not greater than 60˚. DOD ratings are for a snapshot in time at separation and there is no indication that there was a missed diagnosis or error in evaluation of the CI's condition at the time of separation. The Board must apply the VASRD in effect at the time (2002).

There are no quantitative measures to differentiate between "slight 10%" and "Moderate 20%" using code 5292 in the VASRD in effect at the time of separation. The pre-discharge VA exam documents a decreased pain-limited ROM from the MEB exam and is between "slight" and "moderate". The three ROMs available for the CI indicate a stable and consistent pain-limited ROM. The VA pre-discharge exam is closest to the CI's date of separation and demonstrated decreased thoracolumbar ROM, was more complete, and has the highest probative value for rating. In addition to pain-limited ROM, the CI's LBP demonstrated a positive FABER's, abnormal imaging, radicular pain to both hips, tenderness on all exams, and daily use of medication including cyclobenzaprine for PM symptoms and to assist in sleep. The CI's exam closest to time of separation was between "Slight" and "Moderate" and the CI should be given the benefit IAW VASRD §4.3 (reasonable doubt) with reasonable doubt being resolved in favor of the CI in recommending raising his rating to 20% "Moderate".

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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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. After careful consideration of all available information, the Board unanimously concluded that the CI’s condition is appropriately rated at 20% for chronic low back pain using the VASRD rating for the spine 5292, Spine, limitation of motion of, lumbar (Moderate). A common issue with these cases is whether the Army engaged its prerogative of applying the service-specific ‘pain rule’ which tempers its rating vs. the strictly-applied VASRD. In this case, there is no evidence of application of the USAPDA pain policy to the back rating. The Board did not apply any post-separation worsening of the CI's condition, the ROM limitations from the 2006 VA exam, or the newer VASRD criteria. The Board determined that the VA pre-discharge exam (20020514) had the greatest probative value for rating the CI and it demonstrated worsening of CI's thoracolumbar ROMs. Additionally, the non-ROM aspects of the CI's thoracolumbar condition including tenderness, radicular pain bilaterally, and required daily and nightly prescription medication use indicated a disability picture between the "Slight" and "Moderate" VASRD criteria. The Board unanimously voted that IAW VASRD §4.3, that reasonable doubt should be resolved in favor of the CI in characterizing his LBP as "Moderate", and that he should be rated under 5292 at 20%.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of the CI’s prior medical separation.

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| Unfitting Condition | VASRD Code | Rating |
| Chronic low back pain. Rated for limitation of range of motion AND PAIN (MODERATE) | 5292 | 20% |
| Combined | 20% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090113, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

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