RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900003 COMPONENT: ACTIVE

BOARD DATE: 20090604 SEPARATION DATE: 20070915

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SUMMARY OF CASE: This covered individual (CI) was an active duty officer medically separated from the Army in 2007. The medical basis for the separation was a back condition and ankle injury. He had an onset of back pain with disc problems in 2005, and underwent a surgical fusion in 2006. His ankle was fractured during prior service in 1993, with chronic complications requiring surgery in 2001. Both conditions were prohibiting his required duties, warranting a medical board in 2007. He was referred to the PEB, found unfit for both conditions and separated at 20% disability (10% each condition). A VA exam within four months of separation resulted in 20% ratings for each condition. Mr. Erikson contends that both of the PEB ratings were too low, citing the significant impact on his lifestyle and earning ability and noting the continuing need for an ankle brace.

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BOARD FINDINGS: The PEB and the VA used different codes for the back condition; both were appropriate and rated under the same VASRD formula. The conflicting ratings were a result of different range-of-motion findings by the military and the VA. Although there were conflicting entries in the MEB report regarding the gait, which could have resulted in a 20% VASRD rating, the PEB rating was consistent with the data present at the time of separation. The PEB and the VA used different rating codes for the ankle, and the VA coding was more specific to the condition. IAW VASRD §4.3 and §4.7, the code more closely approximating rating criteria and yielding the higher evaluation should be assigned. By a vote of 2:1, the PDBR concluded that a 20% rating under code 5271, as per the VA, was indicated for the ankle. The single voter for dissent (who recommended increasing the rating for the back under 5241 to 20%) elected not to submit a minority opinion.

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RECOMMENDATION:

The PDBR therefore recommends that the CI’s prior determination be adjusted as follows, effective as of the date of his prior medical separation.

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| Unfitting Condition | VASRD Code | Rating |
| Spinal fusion | 5241 | 10% |
| Fracture R ankle | 5271 | 20% |
| **Combined** | 30% |

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The following documentary evidence was considered:

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

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

 MICHAEL F. LoGRANDE

 President

 Physical Disability Board of Review

