RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900006 BOARD DATE: 20090714

SEPARATION DATE: 20010929

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SUMMARY OF CASE: This covered individual (CI) was an E-4 communications Specialist medically separated from the Army in 2001. The medical basis for the separation was chronic low back pain following L4-5 herniated disk repair. CI injured his back in May 1999 with disk surgery in Jun 2000. Despite back surgery, CI had chronic severe back and right leg radiating pain that prevented CI from performing office duties or routine soldier tasks. CI was referred to the PEB, found unfit and separated at 10% disability. The VA rated CI’s back condition at 40% and also rated his Psoriasis at 10% for a combined 50% rating. The CI contends for a higher rating due to LBP and radiculopathy. CI mentions, nearly 1 year in physical therapy following surgery, 4 months on quarters, severe muscle spasms and chronic back pain, a cane (issued by physical therapy) needed to assist walking, adverse impact on his sex life and worsening of his condition. CI stated ‘initial disability rating of 10% was not reasonable.’

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COMPARISON OF VA AND DISABILITY RATINGS: The Army PEB rated 10% (5299-5295: Lumbosacral strain) for Low back pain with a history of back strain. The PEB specifically noted prior back surgery and no repeated herniated disk and normal electrical studies. The Army found psoriasis as not unfitting. The VA rated CI’s back condition under VASRD 5293 (5293: Intervertebral disc syndrome) at 40% due to severe; recurring attacks, with intermittent relief. VA rating was based on an examination accomplished within 4 months of separation.

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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 Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. CI had severe lower back pain and radicular leg pain and was re-hospitalized for pain 3-4 months following his surgery. Imaging showed moderately severe narrowing of the L4-L5 intervetebral disc space. CI was on months of convalescent leave with numerous extensions due to inability to sit or walk without severe pain. He was on multiple medications for pain and the sub-specialist provided narrative summary (NARSUM) indicated severe disability. The NARSUM (20010131) was written by a neurosurgeon who describes ‘severe low back pain with radiating right leg pain with mild radicular deficit’ for a chief complaint of ‘severe incapacitating low back and right leg pain.’ The record indicates that lumbosacral spine (LS) ranges of motions (ROMs) were significantly limited by pain (under the older VASRD, precise ROMs are not part of the rating criteria). The commander’s memo (20001205) confirmed ‘convalescent LV 4 of last 5 months, cannot work 8 hr desk job, or operate equipment, (*etc.*). Treatment notes also consistently demonstrated CI’s continued primary complaint of chronic severe motion-related back and leg pain, and back spasm and tenderness.

The examination by the VA accomplished within 4 months of separation was essentially unchanged from the MEB examination and there had been no intervening worsening of the condition. The Board noted that the primary difference between the Army and VA ratings was on the coding of essentially similar exams and history.

IAW DODI 1332.39 (E2.A1.1.19.4.) the Army PEB was precluded from rating CI using VASRD code 5293. The criteria for the PEB code of 5295 in combination with the Army pain rule limited CI to meeting the 5295 10% rating criteria of ‘with characteristic pain on motion’ and precluded consideration of CI’s painful radiculopathy in light of normal lab studies. The VA-used VASRD code 5293 has markedly different criteria and emphasizes characteristic sciatic pain. Given prior disc surgery, abnormal imaging studies of the LS spine (narrowing of the joint space) and probable scarring post-surgically, there is clear anatomic and physiologic rationale to support coding via 5293. CI’s LBP and radiculopathy was primarily pain in nature and appears appropriately considered with the 5293 spine coding that the VA used. The VA original rating rationale appears to well describe the CI’s disability picture. An evaluation of 40 percent is warranted based on recurring attacks of severe intervertebral disc syndrome with only intermittent relief. Although CI would likely rate 10-20% under the current VASRD’s ROMs, the Board must apply the VASRD in force at the time of CI’s discharge, and the MEB evaluation supports the similar VA 40% rating. The Board unanimously voted to rate CI’s back condition under VASRD code 5293 at 40%.

RATIONALE: The provisions of DoDI 1332.39 restricted the PEB from rating CI’s condition using VASRD code 5293. The Army pain rule also would have decreased the PEB’s rating of CI’s pain-predominant symptoms. Absent the DoDI and Army pain rule, VASRD code 5293 is the best coding option. CI’s condition at time of discharge indicated support for severe recurring attacks with intermittent relief that supports 5293’s 40% criteria.

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RECOMMENDATION: The Board recommends that the CI’s prior separation be recharacterized to reflect that rather than discharge with severance pay, the CI was permanently retired by reason of physical disability with a 40% rating as indicated below.

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| Unfitting Condition | VASRD Code | Rating |
| Traumatic degenerative disc disease, L4-5 | 5293 | 40% |
| COMBINED | 40% |

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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 Veteran's Affairs Treatment Record.

MICHAEL F. LoGRANDE

President

Physical Disability Board of Review

