RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900011 COMPONENT: guard

BOARD DATE: 20090609 SEPARATION DATE: 20051014

SUMMARY OF CASE: This covered individual (CI) was an Army Guard E-4 medically separated from the Army in 2005 after over 13 years of service (under 3 years active). The medical basis for the separation was chronic lower back pain (LBP). The CI had a line of duty injury during unit training assembly in 2002. Her LBP continued without significant relief despite treatments. Imaging (MRI) demonstrated moderate degenerative changes and disc bulging L5-S1 without herniation, and CI was not a surgical candidate. CI could not stand or sit for long periods and the commander recommended release from the ARNG. CI was referred to the PEB, found unfit and separated at 10% disability. The VA rating accomplished from an exam within 3 months of service discharge also rated the CI at 10% for the same condition and 10% overall. The CI contends that she should have her medical discharge of 10% reconsidered for a higher rating.

Although the CI may be presumed to have contended for all of the other diagnoses she claimed from the VA. The PEB specifically addressed migraine headaches as existed prior to service (EPTS). The other claimed diagnoses did not have service connection (no LODs) and would not have met the level of being unfitting even were there a service connection.

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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.

The Board did not find any other conditions as unfitting. The Board extensively considered the probative values of the numerous thoracolumbar ranges of motion (ROMs) limited by pain, radicular signs including normal electro-diagnostic studies, and moderate degeneration noted on imaging. The primary issue in this case is the variability of the thoracolumbar ROMs. Although there are two Army PT evaluations demonstrating significant limited ROMs, the orthopedic physician evaluation was detailed, closer to the PEB date, clearly addressed those evaluations and provided sufficient evidence to overcome their specifically noted limited ROMs (4/4 Waddell’s: histrionic behavior, hypersensitivity, nonanatomic distribution, simulation, and distraction). This did not appear to be an application of the Army Pain Rule, but a determination of prior unreliable subjective exams by a highly trained and thorough specialist. The VA detailed back evaluations and ratings were also considered and supported the 10% rating.

RECOMMENDATION: The Board recommends that there be no recharacterization of the CI’s separation.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090122, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 MICHAEL F. LoGRANDE

 President

 Physical Disability Board of Review

