RECORD OF PROCEEDINGS

PHYSICAL DISABILITY REVIEW BOARD

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900021 COMPONENT: ACTIVE

BOARD DATE: 20090616 SEPARATION DATE: 20060616

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SUMMARY OF CASE: This covered individual (CI) was an NCO medically separated from the Army in 2006 after 8 years of service. The medical bases for the separation were a back condition and knee injury. His back was injured during duty in 2004 and re-injured in 2005. By MRI he was diagnosed with two-level disc disease. He was treated conservatively and was not a surgical candidate. His left knee was injured in basic training, requiring arthroscopic intervention in 2006. Neither condition improved to the point of permitting full MOS functions. He was referred to the PEB, found unfit for both conditions and separated at 10% disability for his back and 0% for his knee. Within 3 months of separation, these were rated 20% and 10% respectively by the VA. The CI contends that his PEB ratings were unfair and further petitioned for addition of a cervical condition which he stated was incurred concurrently with the back injury.

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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. The MEB examination of his back yielded a flexion of 65⁰ with pain at 55⁰; the VA examination similarly yielded a flexion of 70⁰ with pain at 50⁰. The PEB invoked the service-specific ‘pain rule’ and rated based on total range; the VA rated IAW VASRD §4.59, based on painful motion (DeLuca factor). The difference in the knee ratings was based on exactly the same principle. As cited above, this Board is mandated to rate solely by VASRD criteria and unanimously agreed that proper ratings were equivalent to those in the VA rating decision. The contended cervical condition was unanimously rejected by this Board, given that it was not clinically active until two years after separation.

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RECOMMENDATION: The Board 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** |
| Chronic back pain | 5235 | 20% |
| Chronic L knee pain | 5010 | 10% |
| **Combined** | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090116, w/atchs.

Exhibit B. Service Treatment Record.

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

