RECORD OF PROCEEDINGS

PHYSICAL DISABILITY REVIEW BOARD

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900023 COMPONENT: ACTIVE

BOARD DATE: 20090616 SEPARATION DATE: 20050923

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SUMMARY OF CASE: This covered individual (CI) was an NCO medically separated from the Army in 2005 after 6 years of service. The medical basis for the separation was a back condition. His back was injured during a parachute jump in Iraq in 2004. He was subsequently medevac’d and underwent a single-level microdiscectomy the same year. He improved, but continued profile restrictions did not allow full MOS activities. The MEB examiner noted a persistent sensory and motor deficit of the right lower extremity. He was referred to the PEB, found unfit for his back and separated at 10% disability. The radiculopathy was elaborated in the PEB adjudication, but not separately coded. On the day after separation, the CI underwent an evaluation at the VA. His back was rated 10% that day, but this was retroactively raised to 40% based on a flare-up exam a few months later. The CI contends that his PEB rating was unfair, and also petitions for addition of PTSD and hearing loss to his separation ratings.

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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 range-of-motion (ROM) measurements for the thoracolumbar spine yielded a flexion of 50⁰. As there was no other ROM measurement (or any reliable countervailing exam) in the service treatment record (STR), this was assigned a high probative value. The initial VA exam yielded a flexion of 70⁰ as a basis for the 10% rating, but this was tempered by the much worse exam within 6 months of separation. The 50⁰ measurement by the MEB corresponds to a 20% rating under the VASRD. The PEB defended the lower rating by invoking the service-specific ‘pain rule’, in conflict with the PDBR DoDI cited above. This board, therefore, was in unanimous agreement that the proper rating for the CI’s back condition was 20%. Serious consideration was also given to the addition of a peripheral nerve code for the residual neuropathy documented in the MEB exam. The VA specifically examined the CI shortly after separation for evidence of a peripheral neuropathy and found none. It is conceded that a residual neuropathy could have been present at the time of separation, but it was of such a transient and mild nature that it could not have significantly contributed to the finding of unfitness. The addition of a peripheral nerve code as an unfitting condition was unanimously rejected by the Board. The CI contended hearing loss and PTSD were likewise considered. The hearing loss was documented in the STR and rated 0% by the VA. It would not merit a finding of unfit. The PTSD was diagnosed by the VA after separation. There was a paucity of indications in the STR of any active symptoms at separation and no indications that it had any bearing on fitness. Hearing loss and PTSD, therefore, were unanimously rejected by the Board as ratable conditions at separation.

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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** |
| Chronic low back pain | 5243 | 20% |
| **Combined** | 20% |

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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.

