RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900028 SEPARATION DATE: 20060402

BOARD DATE: 20090716

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SUMMARY OF CASE: This covered individual (CI) was an NCO medically separated from the Army in 2004 after 9 years of service. The medical basis for the separation was bilateral carpal tunnel syndrome (CTS) and low back pain (LBP). He developed typical symptoms in both hands in 2000, and underwent a surgical release for CTS on his right wrist in 2004. This provided partial relief, and surgery was recommended on the left wrist. By that time, he was undergoing the MEB process and deferred surgery to the VA setting after separation. His LBP began in 1999, and gradually progressed. An MRI in 2004 demonstrated a broad-based disc bulge at L4/5. The spinal condition was not amendable to surgery, and the CI was placed on a permanent U3/L3 profile. He was referred to the PEB, found unfit for both conditions and separated at 10% disability.

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CI CONTENTION: The CI contends that the PEB rating was unfair, although he is citing his current VA combined rating of 40% as justification.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service (PEB)** | | | | **VA ~ 1 Mo.** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Bilat. Carpal Tunnel | 8799-8715 | 10%  (10 + 0) | 20060123 | R Carpal Tunnel  L Carpal Tunnel | 8799-8715 | 10% + 10% | 20060523 | 20060503 |
| Low Back Pain | 5237 | 0% | 20060123 | L/S Strain | 5237 | 20% | 20060525 | 20060503 |
|  |  |  |  | Non-PEB X 2 |  | 10% | 20060525 | 20060503 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*incl non-PEB Dxs*): 40%** | | | | |

ANALYSIS SUMMARY:

CTS. The appropriate analogous code was applied by the PEB and the VA. The PEB lumped both wrists under the single code, but apparently rated them independently. Math was shown as ‘10 + 0’, incorporating the bilateral factor. It was not designated which wrist was ‘0’, but assumed it applied to the wrist which had been surgically corrected (although still symptomatic). The rationale for this approach was not elaborated by the PEB. Unlike the 5003 analogous rating scheme, the VASRD does not allow for this approach under 8715. Had the PEB separated the condition into left and right codes, barring finding one or the other not unfitting, the 0% rating for one of the wrists could not be sustained in light of §4.59 (painful motion). Continued pain and sensory/motor impairment of both sides was elaborated in the NARSUM, MEB physical and pre-separation VA exam.

LBP. Coding was appropriate and the general rating formula for the spine was applied by the PEB and VA. The PEB justified the 0% rating as ‘does not meet the minimal rating criteria’. The range-of-motion data supplied by the MEB (active flexion 95⁰; total 260⁰) supported that opinion. It is noted, however, that pain ‘beginning at 55 degrees’ was entered by the examiner. As there was no other goniometric exam in the service record, this was assigned a high probative value. The PEB adjudication reflects application of the service-specific ‘pain rule’, since §4.59 (as noted above) mandates a minimum rating of 10%.

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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. Accordingly the PDBR adjudication for each of this CI’s conditions is independent of service-mandated pain rule consideration. Regarding the CTS, IAW VASRD §4.124a discussed above, a 10% rating for each wrist is indicated. The Board unanimously agreed on that recommendation. Likewise, the LBP minimum rating is 10% IAW VASRD §4.71a. A 20% rating, deferring to the very proximal VA rating was considered. In reviewing the basis for the VA decision, however, it was not possible to elucidate how the higher rating was achieved. Without ignoring §4.3 (reasonable doubt), the Board unanimously agreed that a 10% rating under the same code was the appropriate recommendation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| **Unfitting Condition** | **VASRD Code** | **Rating** |
| Carpal tunnel syndrome left wrist | 8799-8715 | 10% |
| Carpal tunnel syndrome right wrist | 8799-8715 | 10% |
| Chronic low back pain | 5237 | 10% |
| **Combined** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090120, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

