RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900034 BOARD DATE: 20100610

SEPARATION DATE: 20071127

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SUMMARY OF CASE: This Covered Individual (CI) was an Army SSG/E-6, Military Policeman (31B) medically separated in November 2007 (at age 30) after more than 10 years of active duty service. Medical basis for separation was chronic low back pain, status post microdiscectomy and disc arthroplasty. The chronic low back pain was determined to be medically unacceptable IAW AR 40-501, and it was the only condition listed on DA Form 3947 (Medical Evaluation Board Proceedings). CI was referred to the Physical Evaluation Board (PEB), found unfit for continued military service due to the painful back condition, and separated at 0% disability using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Army and Department of Defense regulations.

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CI’s CONTENTION (20090118): The CI states: “Prior to OEF I had no existing back problems. During my deployment in 2003, I suffered with a back injury, due to sustained mountain operations. During the deployment I was treated with pain medication and continued my deployment. Upon return I was informed I needed back surgery. After recovery I returned to full duty and during train up for OIF I continued to suffer from my prior back injury. At the last minute my status was changed to undeployable. I had an additional back surgery to replace the original disk injury with an artificial disk. After returning to full duty I deployed again to OEF and was eventually medivaced and subsequently chaptered. After almost 12 years my Army career was put to a halt and left me & my family with no pension or health benefits. I still have ongoing pain from my back and my surgeries and I am being treated at the VA hospital in Northport. If it was not for my back injury, I would still be serving out my career in the United States Army. Thank you for your time in reviewing my case.”

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RATING COMPARISON:

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| --- | --- |
| **Army IPEB** | **VA (3 Mo. after Separation)** |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Chronic Low Back Pain | 5299-5242 | 0% | 20071011 | Chronic Low Back Pain (failed spinal surgery) | 5299-5243 | 40% |  | 20071128 |
|  |  |  |  | Peri-Umbilical Scar, from arthroplasty of the spine | 7804 | 0% |  | 20071128 |
| **TOTAL Combined: 0%** | **TOTAL Combined (*Includes Non-PEB Conditions*):** **40% from 20071128**   |

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ANALYSIS SUMMARY:

Low Back Pain: Problem with low back pain began in summer or fall of 2002, while CI was at Fort Stewart preparing for deployment. CI does not recall any specific episode of injury or traumatic event. He started seeing a chiropractor for care. In early 2003 he deployed to Afghanistan, and while deployed was involved in frequent foot patrols through mountainous terrain, routinely carrying 100 pounds of gear. Back treatment at that time consisted mainly of ibuprofen and intermittent rest periods. After returning to CONUS, he was referred to Neurosurgery. In March 2004, he underwent partial hemi-laminectomy, and microdiscectomy. After surgery, he continued to have back problems. Then in 2005, he began to experience weakness and numbness in the legs. He was again evaluated by Neurosurgery, and he underwent L4-L5 disk arthroplasty (disc replacement surgery) in September of 2005. CI stated that after that surgery, his back pain went from 90% to 10%, and his leg symptoms also improved. However, during a subsequent deployment to Afghanistan, he started again having back pain, and also had onset of urinary incontinence. CI was aeromedically evacuated to Landstuhl Army Medical Center in Germany, and then was returned to CONUS. At that time, he was not considered a candidate for further surgery. It was decided to treat him with conservative measures, and to begin the Medical Evaluation Board (MEB) process. During the MEB exam by Dr. B (30 Aug 2007), motor strength and deep tendon reflexes of both lower extremities were normal. Forward flexion at the waist was limited to 47 degrees, with pain beginning at 30 degrees. His combined thoraco-lumbar ROM was 133 degrees. The Informal PEB convened on 11 Oct 2007 and found him unfit, due to the chronic Low Back Pain condition. He was separated from service with a combined disability rating of 0%. For rating the back condition, it appears that the PEB may have relied upon U.S. Army Physical Disability Agency (USAPDA) Policy/Guidance Memorandum #13, dated 28 Feb 2005, subject: Rating Pain. Six weeks following separation, CI was evaluated by the VA. On 8 Jan 2008, he was examined by Dr. O, and was found to have some tenderness to palpation over the right lower paravertebral region. Forward flexion at the waist was limited to 40 degrees, with pain beginning at 25 degrees. His combined thoraco-lumbar ROM was 115 degrees. Thoraco-lumbar range of motion (ROM) is summarized in the following table:

|  |  |  |
| --- | --- | --- |
| Thoraco-lumbar ROM | MEB – 2007/08/30 | VA C&P – 2008/01/08 |
| Flexion | 47⁰ (pain at 30) | 40⁰ (pain at 25) |
| Combined | 133⁰ | 115⁰  |

All evidence considered and IAW VASRD §4.3, reasonable doubt is resolved in favor of the CI. After lengthy discussion and careful consideration of all available evidentiary information, the Board unanimously recommends a disability rating of 40% for the Chronic Low Back Pain condition. It is appropriately coded 5299-5243, and IAW VASRD §4.71a meets criteria for the 40% rating. Thoraco-lumbar flexion caused pain at 30 degrees (on 30 Aug 2007) and at 25 degrees (on 8 Jan 2008). When forward flexion of the thoraco-lumbar spine is 30 degrees or less, a rating of 40% is warranted.

History of Other Conditions (documented in Disability Evaluation System (DES) package): Hypercholesterolemia, Right shoulder pain, Scarring of skin, Insomnia, and Thoracic scoliosis were all discussed and considered by the Board. There is no clearly documented evidence that any of these other conditions caused any significant adverse effect on the performance of required military duties. These other conditions are all judged by the Board to be not unfitting at the time of separation from service, and are not relevant for disability rating. The Board therefore has no reasonable basis for recommending any additional unfitting conditions.

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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. In addition, as discussed above, PEB reliance on the USAPDA pain policy for rating the back condition may have been operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the Chronic Low Back Pain condition, the Board recommends by unanimous decision a rating of 40% coded 5299-5243 IAW VASRD §4.71a.

The Board also considered Hypercholesterolemia, Right shoulder pain, Scarring of skin, Insomnia, and Thoracic scoliosis. In the matter of these other conditions, the Board unanimously determined that none were unfitting at the time of separation from service. There is no compelling evidence that any of these conditions significantly interfered with performance of required military duties, and therefore no rating is applied.

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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.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5299-5243 | 40% |
| **COMBINED** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090118, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

