RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900038 BOARD DATE: 20100930

SEPARATION DATE: 20031119

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SUMMARY OF CASE: This covered individual (CI) was an Army National Guard 1LT (21B, Combat Engineer) medically separated from the Army in 2003 after 15 years of combined service (~7 years active). The medical basis for the separation was a back condition. The CI had a history of prior injuries and a prior magnetic resonance imaging (MRI) confirmation of disc disease (L4/5 with some mild left foraminal encroachment) prior to a 2003 mobilization for deployment to Iraq. Although he had been managed previously on temporary profiles, his back symptoms were exacerbated during the pre-deployment training and were associated with some left sciatic radicular symptoms. He was placed in medical hold and did not deploy. He failed to improve with conservative therapy and was not a surgical candidate. He was unable to fulfill the physical requirements of his MOS (Military Occupational Specialty), was placed on a permanent L-3 profile and was referred for a Medical Evaluation Board (MEB). The back condition was forwarded to the Physical Evaluation Board (PEB) as a medically unacceptable condition IAW AR 40-501. No other conditions were included on the DA Form 3947. Other conditions included in the Disability Evaluation System (DES) file are discussed below. The informal PEB adjudicated the back condition as the only unfitting condition, rated 10% IAW DoDI 1332.39 (E2.A1.1.20.2) and AR 635.40 (B-39). The CI did not appeal for a formal PEB and was thus medically separated with a 10% disability rating.

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CI CONTENTION: The CI states: “Degenerative disc disease lumbar spine was diagnosed as well as radiculopathy, left lower extremity secondary to service connected degenerative disc disease, LS spine. The degenerative disc disease is a factor in my state of mind. I am diagnosed with Major Depressive Disorder service connected. Combined rating for these conditions should be at minimum 50% disabling.” He additionally lists all of his VA conditions and ratings as per the chart below. A contention for their inclusion in the separation rating is therefore implied. As a matter of policy, all service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20030630** | | | **VA (Pre-Separation) – All Effective 20031120** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Back Pain… | 5299-5295 | 10% | Lumbar Spine… Condition | 5243 | 20% | 20040924 |
| Radiculopathy… | 8520 | 10% | 20040924 |
| ↓No Additional DA Form 3947 Entries.↓ | | | Sleep Apnea | 6847 | 50% | 20041001 |
| Major Depressive Disorder | 9434 | 30% | 20041001 |
| Hypertension | 7401 | 0% | 20040924 |
| NSC X 5 | | | 20041001 |
| **TOTAL Combined: 10%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 80%** | | | |

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ANALYSIS SUMMARY:

Lumbar Spine Condition. The 2003 Veteran Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004. The later standards had been effected by the time of the post-separation VA rating decision. The 2003 ratings were based on more subjective judgement as to whether the disability was mild, moderate or severe. The 2004-to-current standards are grounded in range-of-motion (ROM) measurements and are therefore more objective. The MEB and VA examinations were separated by 18 months and were documented to very different standards, thus rendering a direct comparison inappropriate. The VA also separately rated a left leg radiculopathy, symptoms of which were noted in the DES file. This Board must consider the appropriate rating for the CI’s back condition at separation, and whether radiculopathy should be recommended as a separately unfitting condition. The Board, IAW DoDI 6040.44, must base its coding and rating recommendations on the VASRD standards in effect at the time of separation (to wit, the prior 2003 standards).

At the time of the MEB examination the CI had longstanding back pain and confirmed disc disease, previously treated with epidural injections. He also gave a history of intermittent numbness in his left lateral calf. The narrative summary (NARSUM) examiner noted forward flexion to “just above his toes” and paraspinous tenderness, but no abnormal gait or contour. Following the PEB adjudication date, but prior to separation, the CI had several clinic visits for back pain and radiculopathy symptoms. A neurosurgeon noted a slight antalgic gait and mild decrease in sensation of the left lateral calf, but an otherwise normal exam. A neurologist noted a dermatomal sensory impairment without motor loss and electromyography (EMG, nerve conduction study) was normal, suggesting the absence of a functionally significant lumbar radiculopathy. A clinic note two months prior to separation noted the CI’s complaint of numbness in the left leg/foot, pain on forward flexion to the shins, decreased extension and side bending, normal spinal contour and paraspinous tenderness without spasm. At the VA examination (10 months after separation) the CI reported daily symptoms of back pain with flare-ups every few months, but no incapacitating episodes. The VA examination was similar to that in the NARSUM, but did document a mild dermatomal sensory impairment. There were no motor deficits or diminished reflexes. The measured ROM’s were 50⁰ flexion and 155⁰ combined, meeting the 2004 VASRD criteria under §4.71a for a 20% rating.

The Board must correlate the above clinical data with the 2003 rating schedule which, for convenience, is excerpted below:

**5292** Spine, limitation of motion of, lumbar:

Severe ………………………………………………………..……….………….... 40

Moderate …………………………………….……………….…….…………...…. 20

Slight ………………………………………………………..…………………..….10

**5293** Intervertebral disc syndrome:

Pronounced; with persistent symptoms compatible with: sciatic

neuropathy with characteristic pain and demonstrable muscle

spasm, absent ankle jerk, or other neurological findings appropriate

to site of diseased disc, little intermittent relief ………………..….……….….. 60

Severe; recurring attacks, with intermittent relief ……………..…….………..….…40

Moderate; recurring attacks ……………………………………………............…...20

Mild ……………………………………………………………..…………….….…10

Postoperative, cured ……………………………………………..……………....…..0

**5295** Lumbosacral strain:

Severe; with listing of whole' spine to opposite side, positive

Goldthwaite's sign, marked limitation of forward bending in

standing position, loss of lateral motion with osteo-arthritic

changes, or narrowing or irregularity of joint space, or some

of the above with abnormal mobility on forced motion …………………..…... 40

With muscle spasm on extreme forward bending, loss of lateral spine

motion, unilateral, in standing' position ……………...…………..…...….….. 20

With characteristic pain on motion ………………………………..……...…….…. 10

With slight subjective symptoms only ……………………...………………...……. 0

The PEB’s DA Form 199 reflected application of DoDI 1332.39 and AR 635.40 for rating, as referenced in the summary, but its 10% determination was consistent with the existing §4.71a standards. The Board acknowledges the eight month interval between the CI’s MEB examination and separation and the fact that there was an apparent trend of worsening severity over this period. The Board considered the PEB’s rating under the 5295 code. The 20% rating for 5295 is fairly specifically defined as noted above. The CI’s condition clearly did not meet those 20% criteria, even at the post-separation VA examination. Likewise, the Board considered a rating under the 5293 code for intervertebral disc syndrome which fit with the CI’s underlying pathology. Although a 20% rating for ‘moderate, recurring attacks’ could be justified under 5293 based on findings at the post-separation VA exam, the Board did not believe that the CI’s pre-separation treatment records could support the “moderate” rating. Finally, the Board considered the 5292 code for limitation of spine motion. The minimally impaired ROM’s in evidence at the MEB examination were not sufficient justification for a 20% rating; but, the more significantly limited ROM found in the military record just prior to separation does support a 20% rating under the 5292 code. All evidence considered, the Board finds sufficient reasonable doubt in the CI’s favor to recommend a 20% rating for the lumbar spine condition at separation under the 5299-5292 code.

Radiculopathy. Although the EMG in this case was normal, it is easily conceded that the CI suffered from a mild left L4-5 and L5/S1 (sciatic) radiculopathy based on history and physical examinations. Numerous examinations documented a mild sensory deficit in the left lateral leg, although none (including the specialist’s examination) found any abnormalities of motor strength or reflexes. The presence of functional impairment with a direct impact on fitness is a crucial factor in the Board’s decision to recommend any condition for rating as additionally unfitting. The sensory compromise in this case has no functional implications. Any motor impairment was sub-clinical and impossible to link to any functional deficit or limitation of specific physical requirements. The condition was not profiled and was not identified as an impairment in the Commander’s statement. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of the sciatic radiculopathy as an unfitting condition for separation rating.

Contended Major Depressive Disorder. No psychiatric condition was diagnosed while in service. The CI responded to the negative for all psychiatric symptoms on the MEB physical and there is no documentation of psychiatric symptoms or conditions in the NARSUM or other MEB documents. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. Thus the condition is not eligible for consideration by the Board. A causality linkage of the psychiatric condition with the unfitting back condition, even if conceded, is not a basis in itself for a separation disability rating. A concomitant condition of this nature must itself be independently unfitting to merit additional rating. No psychiatric impairment could be gleaned from the Commander’s statement, physical profile, officer evaluation reports or other sources in the service records. Thus an argument that the condition was unfitting, even if eligibility for Board jurisdiction were conceded, would be difficult to sustain. This notwithstanding, the psychiatric condition remains eligible for consideration by the Army Board for Corrections of Military Records (ABCMR).

Other Conditions. The MEB physical addressed a history of sinus and throat infections, a pulled muscle in the right leg, left knee pain, and rosacea. None of these conditions were under active treatment during the MEB period and they were not noted in the Commander’s statement or physical profile. No link to fitness is in evidence for any of them. The VA provided a 50% rating for Obstructive Sleep Apnea (OSA) at the time of separation. This condition, like the depressive disorder, was not diagnosed until after separation. It was therefore not in evidence in the DES file and ineligible for Board recommendations. No other conditions were service connected with a compensable rating by the VA within twelve months of separation. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating. The OSA condition and any other contended conditions not associated with the recommendations already rendered by the Board, remains eligible for ABMCR consideration.

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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. As discussed above, PEB reliance on DoDI 1332.39 and on AR 635.40 for rating the lumbar spine condition was operant in this case and the condition was adjudicated independently of that instruction and regulation by the Board. In the matter of the lumbar spine condition the Board unanimously recommends a rating of 20% coded 5299-5292 IAW 2003 VASRD §4.71a. In the matter of the left sciatic radiculopathy condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the sinus and throat conditions, history of right leg muscle strain, left knee pain, rosacea or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Degenerative Disc Disease, Lumbosacral Spine | 5299-5292 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090113, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

