RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900041 COMPONENT: REGULAR

BOARD DATE: 20090630 SEPARATION DATE: 20040315

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SUMMARY OF CASE: This covered individual (CI) was an SFC medically separated from the Army in 2004 after 14 years of active duty and 24 years combined service. The medical basis for the separation was a back condition. He was a battalion supply SGT who injured his back in 2000 while lifting. CI underwent medical evaluation and was diagnosed with degenerative disc disease (DDD) in the lumbosacral spine with radiation of pain down his legs (bilateral LE). CI underwent numerous non-surgical treatments that did not provide lasting relief sufficient for continued service. He was referred to the PEB, found unfit and separated at 10% disability. The VA did not do an independent examination, but rated CI’s lower back at 40% prior to separation based on his service treatment records.

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CI CONTENTION: The CI contends for 40% for lumbosacral disease as rated by the VA before separation. There were no other injuries or medical conditions contended.

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service (**PEB**)** | | | | **VA ~time of separation** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Chronic LBP w/ DDD L4/L5 | 5243 | 10 | **20031208** | Lumbosacral disc disease | 5293-5243 | 40 | **STR –rating 20040129** | **20040201** |
|  |  |  |  | HTN | 7101 | 10 | **STR –rating 20040129** | **20040201** |
|  |  |  |  | Bilateral hearing loss | 6100 | 0 | **TR –rating 20040129** | **20040201** |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  | Tinnitus | 6260 | 10 | **STR –rating 20040317** | **20040316** |
|  |  |  |  | Sinusitis | 6510 | 10 | **STR –rating 20040317** | **20040316** |
|  |  |  |  | Rhus Dermatitis | 7806-7825 | 10 | **STR –rating 20040317** | **20040316** |
|  |  |  |  | R shoulder, numb hands, HA: Not Service Connected (NSC) |  | NSC | **20041104, 17** | **-** |
| **TOTAL Combined: 10 %** | | | | **TOTAL Combined (*incl non-PEB Dxs*): 50% (20040129)** | | | | |

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CHRONIC LOW BACK PAIN: The treatment records clearly demonstrated that CI had back tenderness and only a mild degree of pain-limited ROMs except during rare exacerbations. CI’s periods of prescribed bed rest were considered periods of incapacitation, but were historical (not within a year of the PEB). Rating under the Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes would therefore have resulted in 0%, so using the General Rating Formula for Diseases and Injuries of the Spine was predominate (higher). Independently rating the back under the VASRD criteria using all available records was accomplished and the commander’s letter had significant probative value. CI’s limitation of lumbosacral range of motion (ROM) was not documented as more limited than the 10% criteria during the year prior to the PEB (flexion 60 degrees, combined 120 degrees) and he did not have abnormal gait or abnormal spinal contour. Although the Army’s former pain policy may have theoretically tempered the MEB exam pain-limited ROM of the back, the remainder of the medical records agrees with ROMs for the year prior to the PEB of at least 60 degrees and most symptoms were related to limitation of extension, with local and radicular leg pain. CI’s radiating leg pain was considered within the General Rating Formula for Diseases and Injuries of the Spine which specifically states the rating is ‘With or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease.’

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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. No other VA compensable condition was adjudged as unfitting. The Board could not follow the VA rating rationale for 40% except to hypothesize that they used a historical limitation of ROM that was not present at the time of the MEB and PEB. The historical period of CI’s incapacitation may have been deemed by the VA to meet the criteria of ‘forward flexion of the thoracolumbar spine 30 degrees or less; or, favorable ankylosis of the entire thoracolumbar spine’ which was not indicative of CI’s condition leading up to and at the time of PEB. The Board unanimously determined that a 10% rating under code 5243 was correct.

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RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s separation.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090126, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

