RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD0900043 COMPONENT: active

BOARD DATE: 20090616 SEPARATION DATE: 20020904

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SUMMARY OF CASE: This covered individual (CI) was an active duty Army SSG/E-6 11B who was returning to his infantry MOS following service as a Drill Instructor. CI had chronic lower back pain (LBP) and could not perform normal 11B duties. CI was medically separated from the Army in 2002 after 15 years of service. The medical basis for the separation was chronic LBP which began in 1990 during heavy lifting. Despite multiple treatments and therapies CI had a permanent U3L3 profile. CI had degenerative disc disease (DDD) and a disc bulge in the lower spine (L5/S1) with minor radiating leg pain and moderate painful motion of his back. CI was referred to the PEB, found unfit and separated at 0% disability. The VA rated CI’s back at 20% with a combined 40% rating including four other conditions that were not unfitting (ears, blood pressure, left and right feet). The CI contends that he should have a higher rating and medical retirement. CI contends that a career ending disability should have been rated higher than 20% (CI believed that he was separated at 20% as noted on the DD 294).

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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. Under the older spine criteria in effect in 2002, the Army PEB awarded a rating of 0% based on VASRD 5295 coding which read ‘With slight subjective symptoms only.’ This was probably with the application of the pain rule to get a 0% since painful motion would rate 10% under that code. The VA exam on 20021127 (2 months after discharge) showed a back examination very similar to the military exam. The VA used a different code (5292 at moderate) to award a 20% rating. The Board felt that painful motion was well supported by the VA exam’s measured pain limited ranges of motion and the military treatment record. Absent the pain rule and considering VASRD Sec. 4.7 Higher of two evaluations, the Board agreed to adopt the more favorable VA coding and rating (5292 at 20%) for DDD with loss of motion, lumbar spine.

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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.

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| Unfitting Condition | VASRD Code | Rating |
| DDD with loss of motion, lumbar spine | 5292 | 20% |
| Combined | 20% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090123, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

