RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD0900046 COMPONENT: Guard

BOARD DATE: 20090617 SEPARATION DATE: 20070723

SUMMARY OF CASE: This covered individual (CI) was an Army E-4 13E/31B Guardsman medically separated from the Army in 2007. The medical basis for the separation was due to cervical neck pain due to degenerative disc disease (DDD) that began after a fall in full gear in Iraq requiring MEDEVAC and CI left the AOR due to DDD in 2005. CI arrived at home station and treatment for his neck was not effective. CI developed major depression on return to home station and his symptoms were not controlled with medications or treatments. CI was referred to the PEB, found unfit and separated at 20% disability. The PEB rated the cervical DDD at 10% and the major depressive disorder at 10%. The PEB found lower back pain (LBP) and right arm nerve (Cubital tunnel syndrome or ulnar nerve) as not unfitting. The VA rated cervical DDD at 30%, Major depressive disorder at 30% and also rated CI’s LBP at 20%, right ulnar nerve at 10% and stomach condition at 10% for a combined 70% VA rating. The CI contends that his military rating should be higher due to strong and constant pain, medication with side effects, depression up and down, and being unemployed.

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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. The Board determined that there was insufficient evidence to add the LBP, right ulnar nerve, or stomach conditions as separately unfitting. There was significant discussion concerning the linkage and potential overlapping of the major depressive disorder and cervical DDD unfitting conditions. Consideration was given to depression ratings from 10% to 30% and cervical DDD from 10% to 30% with care taken to avoid ‘double counting’ any disability criteria. The Board considered the signs, symptoms, and impairment due to major depression using evidence from the military and VA treatment records, NARSUM addendum and PEB, and the VA rating examination (<2 months after discharge) and determined that at the time of PEB the criteria for a 30% rating IAW the VASRD General Rating Formula for Mental Disorders (versus the DoDI) had been more nearly met than the 10% level. The Board evaluated the neck DDD ranges of motion from the service treatment record (10% rating level) as having a higher probative value than those used from the Aug 2007 VA rating examinations for the VA’s 30% Cervical DDD rating.

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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 |
| Major depressive disorder | 9434 | 30% |
| Cervical degenerative disc disease | 5299-5242 | 10% |
| Combined | 40% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090117, w/atchs.

Exhibit B. Service Treatment Record.

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

