RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900066 SEPARATION DATE: 20020407

BOARD DATE: 20090716

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SUMMARY OF CASE: This covered individual (CI) was a SPC/E-4 medically separated from the Army in 2002 after 8 years of service. The medical basis for the separation was a back injury. This occurred in 2001 when an armored vehicle struck his Humvee. He was treated for leg contusions, released and developed back pain a few days later. The latter worsened until he was profiled and unable to meet his MOS requirements. An MRI revealed mild disc disease at three levels. He was not a surgical candidate, and there were no significant radiculopathies. He was referred to the PEB, found unfit and separated at 10% disability.

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CI CONTENTION: The CI contends that he has multiple additional injuries and conditions related to his service, which should have been considered.

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RATING COMPARISON:

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| --- | --- |
| **Service (PEB)** | **VA ~ 5 Mos.**  |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective Date** |
| Mechanical Back Pain | 5295 | 10% | 20020226 | Degenerative Disc Disease | 5010-5292 | 10% | 20020919 | 20020408 |
|  |  |  |  | Thoracic Dysfunction (Claimed as mid-back condition)  | 5291 | 0% | 20020919 | 20020408 |
|  |  |  |  | Non-PEB X 1NSC X 5 |  |  | 20020919 | 20020408 |
| **TOTAL Combined: 10 %** | **TOTAL Combined (*incl non-PEB Dxs*): 20%**   |

ANALYSIS SUMMARY:

Contended Additional Conditions. The PDBR thoroughly reviewed the records and numerous prior correspondences from the CI for evidence that any condition or illness was overlooked. In subsequent evaluations and appeals, the VA did service-connect several other conditions, some of them sequelae to the original trauma. None of these were a reasonable tie-in to his fitness status, however. These included a chest wall condition, left shoulder injury, tibial (shin) contusion, knee injury and several other medical conditions/illnesses. Additionally the CI made numerous references to ‘leukemia (sp)’, which (the board wishes to reassure the CI) referred to an inconsequential 2000 laboratory reference to leukocytes, not to leukemia or other serious disease.

Back Rating. The back was rated under the VASRD code 5295 in effect at that time. On that scale, the criteria for elevation of the current 10% rating to even the 20% threshold are more severe than could be achieved from the clinical data in evidence. Although spasm is documented, the exam demonstrates reasonable degrees of flexion and lateral motion. The only formal range-of-motion (ROM) exam in the record is a physical therapy evaluation (Nov. 2001) noting 70⁰ flexion, 20⁰ extension and 60⁰ abduction. This would only yield a 10% rating by the current spine formula. The VA rated under 5292 (also no longer in use) based on limitation of movement, applying the ‘slight’ 10% rating. The VA exam demonstrated better ROM (flexion 95⁰) with no exam elements to meet any higher rating threshold.

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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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. Regarding other ratable conditions, the board unanimously concluded that none of the various additional conditions noted above would have had any logical relationship to fitness at the time of separation. None can be recommended for additional separation rating. Regarding the unfitting back condition, there is no documentation to attain any of the elements required for a rating higher than 10% under either 5295 or 5292 as noted above. Consideration was given to applying 5293 (for disc disease) for a 20% rating. It was concluded that neither the code nor rating was justified by the CI’s condition at separation. The Board unanimously concluded that no change in the PEB code or rating was justified.

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RECOMMENDATION: The PDBR therefore recommends that there be no re-characterization of the CI’s Physical Evaluation Board adjudication of 02 FEB 2002.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090131, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

