RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900077 BOARD DATE: 20091210

SEPARATION DATE: 20050110

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SUMMARY OF CASE: This covered individual (CI) was a Guard NCO (Heavy Mechanic) medically separated from the Army in 2005 after 23 years of combined service. The medical bases for the separation were cervical and lumbar spine conditions. These dated to a fall (head first from a height) in 2002 while on active duty. He suffered neck and mid-back pain with upper and lower extremity radiation. A Cervical MRI demonstrated disc disease and an EMG (nerve conduction study) demonstrated a left C4-5 radiculopathy. Plain radiographs of the thoracic spine showed minimal spondylolysis (slippage) and mild degenerative changes. Physical exam demonstrated some motor weakness in his left arm, with otherwise normal neurologic exams of the extremities. He did not respond adequately to conservative management for resumption of his full MOS duties, and surgery was under discussion with the VA. He underwent an MEB and was referred to the PEB with unacceptable (AR 40-501) conditions of neck pain with radiculopathy and thoracic back pain. He was placed on the TDRL on December 18, 2003 with ratings as reflected in the chart below. On his TDRL evaluation in November, 2004 he suffered continued neck and back pain. Although he suffered some persistent radicular symptoms, he now had a normal neurologic exam of all extremities. Upper and lower EMG’s were performed which yielded normal results for all nerve groups. At this point the PEB found him unfit for neck pain and back pain, rated 10% each. No ratable radiculopathies were identified. These findings were upheld on appeal, and the CI was medically separated with a combined disability rating of 20%.

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CI CONTENTION: The CI states: ‘I think that my rating for the condition was not looked at well and that I was treated unfair and unjustice [sic], also not respected as a soldier. That is why I think my rating should be increase [sic].’

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RATING COMPARISON:

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| --- | --- |
| **Service PEB** | **VA (11 Mo. after Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| **To TDRL:** |  |  | **20030929** | No VA exam at time of TDRL. |
| C4-5 Herniated Nucleus Pulposus… | 5243 | 20% |  | Cervical Spine …Herniated Nucleus Pulposus | 5010-5290 | 20% | 20051205 | 20020728 |
| Left C5 Radiculopathy | 8599-8510 | 20% |  | LUE Radiculopathy | 8510 | 20% | 20051205 | 20031219 |
| Chronic Thoracic Back Pain… | 5099-5003 | 0% |  | Thoracic Spine with Spondylosis | 5242 | 10% | 20051205 | 20031219 |
| **Off TDRL:** |  |  | **20041213** | RLE Radiculopathy | 8520 | 40% | 20051205 | 20031219 |
| Chronic Neck Pain… | 5299-5242 | 10% |  | LLE Radiculopathy | 8520 | 40% | 20051205 | 20031219 |
| Chronic Low Back Pain… | 5299-5237 | 10% |  | **---** | **---** | **---** | **---** | **---** |
| No Additional DA 3947 Entries. | Non-PEB X 2 / NSC X 5 |  |  |
| **TOTAL Combined (Off TDRL): 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 80%**   |

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ANALYSIS SUMMARY:

Cervical Spine. The initial 20% rating onto TDRL was based on a goniometric range-of-motion (ROM) exam performed by the MEB which demonstrated 30⁰ flexion and 135⁰ combined ROM. As noted in the rating chart, there was no concurrent VA exam. The PEB rating going into TDRL was IAW VASRD §4.71a. A goniometric exam was repeated during the evaluation prior to release from TDRL. This yielded 25⁰ flexion and 150⁰ combined ROM. The VA rating examination (11 months later) yielded 10⁰ flexion and 85⁰ combined ROM. It is noted that the CI carried a 20% VA rating for the cervical spine dating to 2002 from an earlier period of service. Although the VA rating exam cited above would yield a 30% rating, no repeat rating decision is in evidence. The PEB DA 199 for the 10% separation rating of the cervical spine clearly invoked the USAPDA pain policy. The ROM examination from the TDRL evaluation would yield a 20% rating IAW §4.71a. Since the VA examination was nearly a year later, its probative value is lessened relative to the proximal TDRL examination. The TDRL measurements were also more aligned with the initial MEB measurements, suggesting they more accurately reflect the baseline impairment. Board recommendation is therefore most reasonably based on the TDRL goniometry data, which yields a VASRD-mandated rating of 20%. PEB coding is accurate, although the analogous prefix is unnecessary.

Thoracolumbar Spine. The NARSUM from the initial MEB did not provide formal goniometric ROM’s for the thoracolumbar spine. It was focused on the thoracic spine and stated only that the CI was able to ‘forward flex his spine to enable him to touch his fingers to about his knee’. This infers some significant ROM impairment, but the PEB did not request formal measurements. A 0% rating, based on the USAPDA pain policy, was applied going into TDRL. Since this does not impact the contended separation rating and accurate rating is now impractical, it is of no consequence. The TDRL evaluation provided goniometric ROM measurements, demonstrating 40⁰ flexion and 130⁰ combined ROM. This would yield a 20% rating IAW §4.71a. As with the cervical spine, the PEB DA 199 for the 10% separation rating of the thoracolumbar spine invoked the USAPDA pain policy. The VA rating examination 11 months later did not provide full goniometric ROM measurements for the thoracolumbar spine, stating the CI was too unsteady to cooperate with them. The examiner did approximate 70⁰ of observed flexion and noted ‘a mildly antalgic gait’. The subsequent VA rating decision, acknowledging the lack of formal measurements, did not comment on the antalgic gait and provided a 10% rating based on painful motion. The probative value of the VA exam and rating is compromised for lack of complete objective data, and the TDRL examination is complete and proximal to separation. As with the cervical recommendation, the Board relies on the TDRL examination for a fair adjudication and recommends a VASRD-mandated rating of 20% for the thoracolumbar condition. PEB coding is accurate, although the analogous prefix is unnecessary.

Radiculopathies. The cervical radiculopathy rated by the PEB going into TDRL was based on objective physical exam and EMG findings demonstrating motor impairment. This was appropriate and the ‘mild’ designation under 8510 was commensurate with the relatively modest weakness which was documented. The omission of ratable lower radiculopathies in the PEB’s initial TDRL decision was also appropriate, since no evidence of functional motor or sensory impairment existed which would impact fitness. The VA rating for the cervical radiculopathy was equivalent to that initially determined by the PEB. The bilateral lower extremity radiculopathies applied by the VA and rated for ‘moderately severe’ under 8520 were derived from the same 11-month rating examination referenced for the spine conditions. Bilateral radiation of pain to the ankles, the use of a cane, decreased sensation, 3+ reflexes (clinically normal), 4/5 bilateral strength and inability to complete ROM testing were all cited in the rating decision. The VA did not perform EMG testing or reference the one obtained by the Army. The attribution of the findings referenced above to moderately severe weakness is speculative at best. The TDRL examination specifically cited intermittent ‘pins and needles’ paresthesias down the left leg as the only radicular symptom and documented 5/5 strength with only proximal ‘give-away weakness’ (implying pain-mediated, not motor impairment) of the legs. There was a non-dermatomal (not consistent with spinal nerve impairment) sensory decrement to pinprick in the left leg. This exam, coupled with the normal EMG testing, is convincing evidence that there were no lower extremity radiculopathies at the time of separation which would have any significant functional impact. Therefore, even if present, they would not have the link to fitness necessary to justify them for separation rating. It is furthermore dubious that they could even be considered since they would technically have arisen on TDRL. As documented by exam and repeat EMG, the initially unfitting cervical radiculopathy had resolved by the end of the TDRL period. There is not reasonable doubt in the CI’s favor, therefore, to support a Board recommendation for any peripheral nerve impairments as additionally unfitting conditions.

Other Conditions. The CI was diagnosed with PTSD (non-combat Criterion A stressors) by a VA provider five months after separation. It was not service connected on the 2006 rating decision. There were no clinically active psychiatric symptoms at the time of the original PEB, and no such symptoms were noted on the MEB physical. Albeit not relevant for PEB consideration at the time of TDRL evaluation, there is also no evidence that it was clinically significant at that point either. Only peptic ulcer disease was noted in the NARSUM as an additional condition at the time of placement on TDRL. It was not clinically acute at the time and was rated 0% by the VA. In his application the CI attributes several other chronic conditions to his injury. These include headache, brain injury and shoulder conditions. The headache and traumatic brain injury (TBI) were addressed in the VA rating examination. The headache condition was rated 0% and TBI has not yet been service connected. A shoulder condition was not identified by the VA. Intermittent headache ‘2⁰ to neck pain’ is noted on the MEB physical, although head injury was denied by the CI. Left shoulder pain was mentioned as well. There is nothing in concurrent medical records, the Commander’s statement or the medical profiles that would link any of these conditions to fitness. Only three of them, in fact, were in the DES packet and subject to Board review, i.e., peptic ulcer disease, headache and the left shoulder condition. All of the others would require BCMR application for consideration of any compensation to the CI. There were no additional conditions, beyond the spinal ones and the radiculopathies, which received compensable ratings from the VA.

The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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 the USAPDA pain policy for rating the cervical and thoracolumbar conditions was operant in this case and they were adjudicated independently of that policy by the Board. In the matter of the chronic neck pain condition, the Board unanimously recommends a rating of 20% coded 5242 IAW VASRD §4.71a. In the matter of the chronic back pain condition, the Board unanimously recommends a rating of 20% coded 5237 IAW VASRD §4.71a. In the matter of the upper and lower extremity radicular conditions; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. In the matter of post-traumatic stress disorder, peptic ulcer disease, headache, traumatic brain injury, shoulder injury and all of the CI’s other medical conditions; 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 and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Neck Pain | 5242 | 20% |
| Chronic Back Pain | 5237 | 20% |
| **COMBINED** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090127, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

