RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900078 COMPONENT: regular

BOARD DATE: 20090714 SEPARATION DATE: 20041109

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SUMMARY OF CASE: This covered individual (CI) was an E-5 watercraft engineer medically separated from the Army in 2004. The medical basis for the separation was history of low back pain (LBP) with resolved non-pain radicular findings. CI injured his back during physical training and underwent multiple back surgeries in 1992, 1996 and 1999. Despite back surgeries, physical therapy, injections, and an implanted spine stimulator, CI had continued back pain and radicular symptoms. CI was referred to the PEB, found unfit and placed on TDRL for his radicular symptoms (loss of strength and sensation) using coding for bilateral sciatic radiculopathy (8599-8520). CI’s final TDRL reevaluation in 2004 showed resolution of objective radicular findings and CI was separated at 10% under code 5243 (intervertebral disc syndrome) for back tenderness. The VA rated CI’s back condition at 60% (under the VASRD in effect in 2001, code 5293 intervertebral disc syndrome) and also rated his tender back surgical scar at 10% for a combined 60% rating. The CI contends for a higher rating due to LBP and radiculopathy. CI states ‘Original findings looked at my neurological problems from my back condition in my lower extremities (bilateral). The second findings did not take into account my neurological problems only my loss of range of motion. The president referred to VASRAD during the hearing without taking it into consideration.’

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COMPARISON OF VA AND DISABILITY RATINGS: The Army PEB rated CI at 10% (5243 intervertebral disc syndrome) for back tenderness without spasm or objective signs of radiculopathy on 20040923. The VA rated CI’s back at 60% for herniated disc surgery with loss of motion and radiculopathy with nerve stimulator implant, using code 5293 (intervertebral disc syndrome) based on an exam in 2002, early in CI’s TDRL period. There is no evidence of a more recent VA back examination or re-rating for that condition.

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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. While on TDRL, CI continued treatment for his back condition with the VA included epidural steroid injections and relocation of his implanted nerve stimulator. CI’s pain level had decreased from 8-9 to 5-7 on a daily basis. He continued to experience less severe parasthesias and pain in both legs with normal motor and sensory exams. The final TDRL NARSUM references prior TDRL evaluations from the same provider. There were comprehensive lumbosacral (LS) range of motion (ROM) measurements performed during CI’s final TDRL evaluation that were not mentioned in the NARSUM. LS AROM showed flexion limited by pain at 20 degrees, and passive ROM flexion limited by pain: with guarded endpoint at 38 degrees. Since there was no mention of mechanical limit to LS ROMs, the Board opined that the PEB applied the DoDI and Army pain rule and did not rate CI on his pain-limited ROMs.

VASRD code 5243 Intervertebral disc syndrome uses the General Rating Formula for Diseases and Injuries of the Spine. Application of the VASRD includes LS ROM endpoints due to pain. The rating formula specifically lists ‘forward flexion of the thoracolumbar spine 30 degrees or less’ as a single criterion sufficient to rate 40%. 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 is included in the general rating. The Board unanimously voted to rate CI’s back condition and pain-limited LS ROM under VASRD code 5243 at 40%.

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RATIONALE: The Army pain rule and DoDI 1332.39 language for a similar back code, stating ‘Demonstrable pain on spinal motion associated with positive radiographic findings shall warrant a 10 percent rating’ limited the PEB from rating CI’s non-mechanical LS ROM endpoints above 10%. Absent these rules, CI’s pain-limited LS flexion of 20 degrees meets the 40% criteria.

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RECOMMENDATION: The Board recommends that CI’s prior separation be recharacterized to reflect that rather than discharge with severance pay, the CI was permanently retired by reason of physical disability with a 40% rating as indicated below.

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| Unfitting Condition | VASRD Code | Rating |
| HNP L4-S1 S/P DISCECTOMY WITH LOSS OF MOTION AND PAINFUL RADICULOPATHY | 5243 | 40% |
| COMBINED | 40% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091104, w/atchs.

Exhibit B. Service Treatment Record.

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

