RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900083 BOARD DATE: 20101007

SEPARATION DATE: 20020513

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SUMMARY OF CASE: This covered individual (CI) was an Army SPC/E-4 (MOS 31R, Transmission Systems Operator) medically separated in May 2002 after 2 years of active duty, and over six years in the Army Reserve. The medical basis for separation was Chronic Low Back Pain. Despite medications and physical therapy, he did not respond adequately to perform within his military occupational specialty (MOS), or participate in the Army Physical Fitness Test (APFT). He was issued a permanent L-3 profile and underwent a Medical Evaluation Board (MEB) for Low Back Pain. No other conditions were listed on the DA Form 3947. The Low Back Pain was determined to be medically unacceptable IAW AR 40-501. The CI was referred to the Physical Evaluation Board (PEB), and was found unfit for continued military service. CI accepted the findings of the PEB, and was separated at 10% combined disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Army and DoD regulations.

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CI’s CONTENTION (20090122): The CI states “MEB separation for lower back strain claimed as facet syndrome rated at 10%. Please see VA Rating exams, VA treatment records and C&P exam, LOD investigation. Currently rated at 40% by VA, was rated at 30% by VA within 1 year of separation.”

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RATING COMPARISON:

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| **Service IPEB – Dated 20020226** | **VA (<1 Mo. after Separation) – Effective 20020514** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain | 5299-5295 | 10% | Lower Back Strain | 5295 | 10%then20% | 20020515 then20020917 |
| not in DES Package |  | not rated | Sciatica (Left Leg) associatedwith Lower Back Strain  | 8520 | 10% | 20030326effective20021126 |
| not in DES Package |  | not rated | Right Thumb Strain  | 5299-5224 | 0% | 20020515 |
|  |  | NSCx1 |  |  |  |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes non-DES Conditions*): 10% initially,****20% from 20020514 (DRO Decision)**   |

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ANALYSIS SUMMARY:

Chronic Low Back Pain – The CI injured his back in a motor vehicle accident (MVA) in December 2000, when he was rear-ended by another vehicle. X-rays of the back were negative. He was given pain medication, and was told to follow-up at the troop medical clinic. The back pain did not resolve, so he was started on physical therapy in March 2001. Over the course of the next several weeks he was treated with transcutaneous electrical nerve stimulation (TENS), spinal traction, back manipulation, strengthening exercises and various medications. The CI had only minimal improvement with this therapeutic regimen, so he was referred to a pain clinic (Brooke Army Medical Center) in August 2001. A CT scan was ordered and it was read as normal. At that time, it was determined that the CI’s back pain was non-radicular and he appeared to have a soft tissue (musculo-ligamentous etiology) condition. With no significant improvement by October 2001, the CI was put on a permanent L-3 profile and a MEB was initiated. His MEB back evaluation was completed in December 2001, and revealed a slight decrease in thoracolumbar range-of-motion (ROM) and pain during certain motions (see comment section of chart below). The exam was negative for radiculopathy. Reflexes and muscle strength were normal. He had some tenderness to palpation, but no paravertebral muscle spasm was noted. At the PEB, his unfitting diagnosis on the DA Form 199 was: Chronic Mechanical Low Back Pain, without Neurologic Abnormality or documented Chronic Paravertebral Muscle Spasms on Repeated Examinations, with Characteristic Pain on Motion. The CI’s VA compensation and pension (C&P) exam done on 15 May 2002 revealed similar ROM findings (see chart below). There were no signs of herniated disc or radiculopathy. The VA C&P diagnosis was Lower Back Strain. Two goniometric range-of-motion (ROM) evaluations were considered by the Board to have significant probative value:

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| Thoracolumbar | (Separation Date: 13 May 2002) |
| Goniometric ROM | MEB eval – 12 Dec 2001(6 months pre-separation) | VA C&P – 15 May 2002(at time of separation) |
| Flexion (90⁰ is normal) | 90⁰ | 90⁰ |
| Lat. Flex. (30⁰ is normal) | 30⁰ Left & Right | 35⁰ Left & Right |
| Combined (240⁰ is normal)  | 230⁰ | 230⁰ |
| §4.71a Rating | 10% | 10% |
| Comments | Extension, L lateral flexion & L rotation all increased pain.No mention of muscle spasm | Flexion: pain at 90⁰ Exten: pain from 15⁰- 30⁰No mention of muscle spasm |

The Board carefully examined all of the evidentiary information available. Following thoughtful deliberation, the Board unanimously recommends a disability rating of 10% for chronic low back pain. The low back pain condition is appropriately coded 5299-5295, and IAW VASRD §4.71a, meets criteria for the 10% rating.

It is important to note that the VASRD in effect at the time of the CI’s separation (7-1-2001 Edition) had a spinal diagnostic code (5295) that uses the degree of Lumbosacral Strain as the rating factor, instead of measured ROM. “Characteristic pain on motion” justifies a 10% rating. To qualify for a 20% rating, there should be “muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position.”

History of Other Conditions (documented in Disability Evaluation System package) – Left inguinal hernia, Tonsillectomy, and Adenoidectomy were all discussed and considered by the Board. There is no clearly documented evidence that any of these conditions caused a significant adverse effect on the performance of required military duties. These other conditions are all judged by the Board to be not unfitting at the time of separation from service, and are not relevant for disability rating. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

History of Other Conditions (not documented in Disability Evaluation System (DES) package) – Sciatica and Right thumb strain were also considered by the Board. There is no clearly documented evidence that these conditions were a matter of record in the DES package. Therefore, these conditions are judged to be outside the scope of this Board.

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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.

In the matter of the painful back condition, the Board unanimously recommends a rating of 10% for Chronic Low Back Pain without neurologic abnormality (coded 5299-5295), IAW VASRD §4.71a (7-1-2001 Edition).

In the matter of the Left inguinal hernia, Tonsillectomy, Adenoidectomy, or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

Sciatica and Right thumb strain, rated by the VA, were not mentioned in the DES package and are therefore outside the scope of the Board. The CI retains the right to request his service Board for Correction of Military Records (BCMR) to consider adding these conditions as unfitting.

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RECOMMENDATION:

The Board therefore recommends that there be no re-characterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5299-5295 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090122, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

