RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900084 COMPONENT: GUARD

BOARD DATE: 20090813 SEPARATION DATE: 20040318

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SUMMARY OF CASE: This covered individual (CI) was an NCO in the Army National Guard medically separated in 2004 after 20 years of combined service. The medical basis for the separation was a back condition. He suffered a fall down steps, loaded with gear, in 2004 during an OEF mobilization. The back injury occurred in CONUS. It did not respond well enough to conservative management (including physical therapy and epidural injections) for deployment or continued service, resulting in a medical board. The CI was noted with hypertension (HTN) during his orthopedic work-up and was referred for medical management. This was related as a new condition, although subsequent VA documentation revealed prior HTN and treatment as early as 1992. The blood pressure remained elevated, even with treatment titrated to three medications. The MEB form 3847 referred the HTN condition as not meeting retention standards. The PEB adjudicated the HTN as not unfitting and the CI was separated at 10% for the back condition.

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CI CONTENTION: The CI contends for rating of his back injury and uncontrolled hypertension.

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RATING COMPARISON:

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| --- | --- |
| **Service PEB** | **VA (1 Mo. from Separation)** |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| CHRONIC BACK PAIN, SUBJECTIVE, WITHOUT NEUROLOGIC ASNORMALITY. | 5299- 5237 | 10% | 20040220 | LUMBOSACRAL STRAIN  | 5237 | 10% | 2004050820040618 | 20040319 |
|  |  |  |  | HYPERTENSION | 7101 | 20% | 20040930 | 20040319 |
| **TOTAL Combined: 10 %** | **TOTAL Combined (*incl non-PEB Dxs*): 10%**   |

ANALYSIS SUMMARY:

Back Rating. The goniometric exam for thoracolumbar range-of-motion forwarded in the NARSUM was 70⁰ flexion (>240⁰ total), with spinal tenderness noted. Pain parameters were not specified. The VA exam yielded 90⁰ flexion (>240⁰ total). The VA 10% rating rested on the examiner’s description of painful motion. The PEB rating was accurate, accounting for the 70⁰ flexion and the tenderness. There is no reason to suspect that application of the USAPDA pain policy, mitigating the VASRD rating IAW §4.71a, was a factor in this case.

HTN Unfitting. The PEB did not elaborate its rationale for the finding of fitness regarding HTN, even though the MEB judged it to be below retention standards. In general, however, none of the service PEB’s tend to adjudicate HTN as unfitting unless there are complications or frequent requirement for inpatient management. The exact language in the NARSUM was, ‘Blood pressure medications may well interfere with the soldier performing his job in extreme environmental conditions such as extreme heat. Physical Evaluation Board will have to adjudicate on the possible impairment on blood pressure medications in extreme desert conditions’. The adjustment of blood pressure medications was ongoing at the time of PEB referral. The NARSUM stated that it was controlled well enough to avoid acute complications, but that continued civilian management was indicated. The Commander’s statement implies that the HTN is unfitting because the physical demands of his MOS ‘under a variety of tactical conditions predisposes him to a stroke’. The source of the C.O.’s opinion is unknown, but it is obviously speculative and carries little probative weight. The physical profile (313111) states, ‘Cannot participate in vigorous aerobic activities. The aerobic proscription is assumed to apply to cardiovascular limitations or risk, although parameters for ‘vigorous’ are not defined. This would be a prudent profile for a member undergoing titration of anti-hypertensive medications, but it does not follow that it is an anticipated permanent profile. AR 40-501 conveys no specific recommendations for unacceptability of HTN (except parameters for flight status). The MEB referenced the general principles of AR 40-501, 3-41e, for its recommendation. On review, however, none of these seem to be particularly implicated in this case. Of additional relevance is that, even if added as unfitting, it would be difficult to rate the HTN above 10%. Although the VA rating decision quoted ‘predominant’ readings in the service record for its rating, the conclusions are not supported by the record. Excluding readings during flares of back pain or missed medications, a representative majority (12) of them during the MEB period averaged 163 systolic and 97 diastolic. Even conceding this reflected the condition prior to optimal control, it would rate only 10% IAW §4.10. A default to the 30% VA rating would not accurately reflect the relevant medical evidence at the time of separation. Therefore, even if the BOARD surmounted the PEB expertise in its fitness determination, the appropriately rated condition would be of no monetary benefit to the CI.

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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. The Board unanimously agreed that the PEB coding and rating of the back was fair and IAW VASRD §4.71a. No change is recommended. In the matter of the HTN, the Board unanimously concluded that our threshold for opposing the PEB expertise in its fitness adjudication was not reached.

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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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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 2009127, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

