RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900100 BOARD DATE: 20100331

SEPARATION DATE: 20030307

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SUMMARY OF CASE: This covered individual (CI) was a First Lieutenant/O-2 serving as a Contracting Officer medically separated from the Air Force in 2003 after more than 3 years of active duty service and nine years of total service. The medical basis for the separation was Chronic Lower Back with Weakness of Anterior Tibial Nerve.

The CI was referred to the Physical Evaluation Board (PEB), found unfit for continued military service, and separated at 10% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations.

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CI CONTENTION: “The percent assigned by the USAF evaluation board was a 10% disability rating for my back condition but the VA gave me a 30% disability rating, within a 9 month period since my separation, effective March 8, 2003 for the same condition. Also, I had several other conditions that were not reviewed by the USAF evaluation board that I was suffering from at the time and the VA gave me a disability rating on.

I have tinnitus that the VA gave me a 10% disability rating on and they determined this to be service connected, and I also have chronic prostatitis, chronic epididymitis and bilateral patellofemoral syndrome. My total VA disability rating was 40%. I feel that the USAF rating should be changed because the VA and DOD are supposed to use the same rating scale and this would have given me a 30% rating for the conditions that the USAF found me unfit for and 40% if the tinnitus is added. I should have been medically retired with at least a 30% rating instead of medically separated with a 10% rating.”

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RATING COMPARISON:

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| --- | --- |
| **Service** | **VA (8 months after Separation)** |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Chronic Lower Back Pain with Weakness of Anterior Tibial Nerve.  | 5293-8523 | 10% | 20030122 | Degenerative Joint Disease Lumbar Spine | 5293-5292 | 20% | **20031124** | **20030308** |
| Right L5 Radiculopathy | 5293-8523 | 10% | **20031124** | **20030308** |
| No PEB Entry | Medical Assessment DD Form 2697 (20030225): Tinnitus | Tinnitus | 6260 | 10% | **20031124** | **20030308** |
| No PEB Entry | NARSUM: Past Hx-Patellofemoral Syndrome and DD Form 2697 | Bilateral Patellofemoral Syndrome | 5275-5010 | 0% | **20031124** | **20030308** |
| No PEB Entry | NARSUM: Other Dx-Epididymitis | Chronic Epididymitis | 7599-7522 | 0% | **20031124** | **20030308** |
| No PEB Entry | DD Form 2697 | Chronic Prostatitis | 7527 | 0% | **20031124** | **20030308** |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 40%** |

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ANALYSIS SUMMARY:

Back Pain with Radiculopathy

The CI was first evaluated for back pain in February 2000 after physical fitness training in Officer Training School. He was seen periodically for back pain over the next few years. He also had pain that radiated down his right leg to the right foot with tingling paresthesias in the right foot. He received physical therapy, acupuncture and chiropractic manipulation as well as lumbar steroid injections but nothing relieved his pain.

The narrative summary (NARSUM) examination reported no sensory or motor deficits, reflexes 2+, no clonus, no foot drop, and strength 5/5. The NARSUM also reported pain with extension of the thoracolumbar spine but otherwise full range of motion (ROM). The VA examination done eight months after separation reported decreased sensation to pinprick in the medial aspect of the right lower leg and the anterior right foot. Motor strength was 5/5 except for the right tibialis anterior which was 5-/5. Thoracolumbar ROM measurements are documented in the chart below.

A Magnetic Resonance Imaging (MRI) done 20021011 documented relatively short distal lumbar pedicles with secondary narrowing of the L4-5 and L5-S1 neural foramina as well as asymmetric facet joint hypertrophy at L4-5 and L5-S1, right more than left. The combination of these factors lead to relative narrowing of the right L4-5 and L5-S1 neural foramina and impression of the right L5, and to lesser degree, L4 nerve root cannot be excluded. The impression was: Narrowing of the Right L4-L5 and L5-S1 Neural Foramina as described. Clinical correlation for Right L4 and L5 Radiculopathy is suggested. An Electromyogram (EMG) and Nerve Conduction Velocity (NCV) test done 20020821 was consistent with a Right L5 Radiculopathy with evidence of Denervation in Tibialis Anterior, Extensor Hallicus Longus (EHL), Peroneus Longus, and Paraspinals. X-rays of the spine done 20031124 were normal.

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| **Thoraco-lumbar**5235-5243Movement | Normal ROM | NARSUM  | C&P (Neurological D/O) 20031124 |
| Flex | 0-90 | Not measured | 45 |
| Ext | 0-30 | Not measured | 15 |
| R Lat flex | 0-30 | Not measured | 45 (30) |
| L lat flex | 0-30 | Not measured | 45 (30) |
| R rotation | 0-30 | Not measured | 30 |
| L rotation | 0-30 | Not measured | 30 |
| TOTAL |  240=VA normal | Not measured | 180 |
| Notes: |  | Pain with extension, o/w full ROM; no motor or sensory deficits  | - Motor strength 5/5 except 5-/5 in the right tibialis anterior- Pin sensation is decreased in the medial aspect of the right lower leg and the right foot. -Tender to palpation- Gait is normal with good tandem |

The VA examination eight months after separation shows thoracolumbar flexion limited to 45 degrees. The service exam did not measure ROM but stated pain with extension otherwise full ROM. The VA exam is more complete, was done within 12 months of separation, and there is no evidence of an intervening event. More likely than not, the VA ROM exam was representative of the CI’s ROM at the time of separation.

New VASRD rating criteria for diseases and injuries of the spine were in effect soon after the CI’s separation. If new criteria were applied this limited ROM would warrant a 20% rating. Under the VASRD in effect at the time, a 20% rating for moderate, recurrent attacks of intervertebral disc disease appears appropriate.

The MRI was consistent with Right L5 and possibly L4 Radiculopathy. The EMG was abnormal and consistent with Right L5 Radiculopathy with evidence of denervation in Tibialis Anterior, EHL, Peroneus Longus and Paraspinals. NARSUM exam simply stated no motor or sensory deficits but did not document how testing was accomplished and which muscles and nerves were tested. Informal Physical Evaluation Board (IPEB) considered “Chronic Low Back Pain with Weakness of Anterior Tibial Nerve” as an unfitting condition and rated it as 5293-8523 at 10% stating “lack of objective findings precludes award of a higher disability rating.” However, the MRI and EMG both show objective findings of Radiculopathy. The VA sensory exam was much more detailed and documented both motor and sensory deficits.

The VA rated this Radiculopathy at 10% for moderate incomplete paralysis. However, the functional impairment from this condition appears to be mild, not moderate and therefore warrants a 0% rating.

Other conditions rated by the VA--Mentioned either in NARSUM or DD Form 2697: Tinnitus, Left Patellofemoral Syndrome, Chronic Epididymitis, Chronic Prostatitis: No evidence any of these conditions were unfitting. There is no information in the Commander’s letter and no duty restrictions attributable to any of these conditions.

Not in Disability Evaluation System (DES) Package: Right Patellofemoral Syndrome

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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. After careful consideration of all available information the Board determined by simple majority that the CI’s condition is most appropriately rated at a combined 20% with 20% for 5293 Chronic Lower Back Pain and 0% for 8523 Weakness of Anterior Tibial Nerve. The single voter for dissent (who recommended rating 5293 at 20% and a determination of not unfitting for the Anterior Tibial Nerve Weakness) did not elect to submit a minority opinion

A 20% rating is warranted for the back pain based on thoracolumbar flexion limited to 45 degrees. A Radiculopathy was present but the Board considered the functional limitation due to the incomplete paralysis of foot movements to be mild. The decrease in strength was minimal and there was no affect on gait or ability to ambulate. A mild incomplete paralysis is properly rated at 0%.

The Board also considered Tinnitus, Left Patellofemoral Syndrome, Chronic Epididymitis, and Chronic Prostatitis and unanimously determined that none of these conditions were unfitting at the time of separation form service and therefore no rating is applied.

The other diagnosis rated by the VA (Right Patellofemoral Syndrome) was 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 of Correction for Military Records (BCMR) to consider adding these conditions as unfitting.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation.

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| UNFITTING CONDITION | VASRD CODE | RATING |
| Chronic Lower Back Pain | 5293 | 20% |
| Weakness of Anterior Tibial Nerve | 8523 | 0%  |
| COMBINED | 20%  |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090203, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

PDBR PD-2009-00100

MEMORANDUM FOR THE CHIEF OF STAFF

 Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) it is directed that:

 The pertinent military records of the Department of the Air Force relating XXXX be corrected to show that the AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board,* dated 23 Janunary 2003, be corrected in Section 9(A) to reflect “1) Chronic Lower Back Pain, VASRD code 5293, rated at 20% and 2) Weakness of Anterior Tibial Nerve, VASRD code 8523, rated at 0%” rather than “Chronic Low Back Pain with Weakness of Anterior Tibial Nerve, VASRD code 5293-8523, rated at 10%.”

 JOE G. LINEBERGER

 Director

 Air Force Review Boards Agency