RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900107 COMPONENT: REGULAR

BOARD DATE: 20090806 SEPARATION DATE: 20060111

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SUMMARY OF CASE: This covered individual (CI) was a SGT Parachute Rigger who was medically separated from the Army in 2006 after 11.5 years of service. The medical basis for the separation was chronic low back pain (LBP) with a tethered spinal cord. LBP began in 1995 following a hard parachute landing. Conservative treatment of physical therapy and medication failed to relieve worsening LBP. Back surgery was reasonably declined and the CI had continued duty-limiting restrictions. The CI was referred via the MMRB to the PEB, found unfit and separated at 10% disability. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: "Service member was rendered unfit for condition of Tethered Spinal Cord and received a 0% rating and given the 10% for Hypertension during final disability rating awarded by service." *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA ~7 months post discharge** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Chronic Low Back Pain. | 5299 5237 | 10% | **20051219** | TETHERED SPINAL CORD | 5242 | 0%  Then  10% | STR/Med Records  20060830 | **20060112**  **20060112** |
|  |  |  |  | HYPERTENSION | 7101 | 10% | 20060830 | **20060112** |
|  |  |  |  | RETROPATELLAR PAIN SYNDROME, BILATERAL | 5099-5024 | 0% | 20060830 | **20060112** |
|  |  |  |  | KNEE CONDITION WITH PAIN | 5260 | NSC |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  | RADICULOPATHY RIGHT LOWER EXTREMITY ASSOCIATED WITH LUMBOSACRAL STRAIN WITH TETHERED SPINAL CORD | 8520 | 10% | 20060830 | **20060830** |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*incl non-PEB Dxs): 10***% from 20060112  20% from 20060112  30% from 20060830 | | | | |

ANALYSIS SUMMARY:

**Chronic Low Back Pain.** The CI reported start of chronic LBP in 1995 after he had a hard parachute landing when stationed at Ft. Bragg. Treatment with profiles, medication, and physical therapy led to decreased LBP; however, the CI experienced recurrent LBP with physical activity. NARSUM stated no bowel or bladder dysfunction, no numbness, tingling, or weakness of lower extremities. MRI's of 2002 and 2004 demonstrated a tethered cord to L4-L5 level. Continued LBP, not responsive to conservative treatment led to spine surgery referral in Sep 2004. The PEB stated: "A surgical procedure was suggested, but the Soldier declined intervention. This is considered reasonable and acceptable." At MEB, the CI reported 4-years of progressively worsened LBP including a constant LBP (6-7/10) with more severe exacerbations. LBP was worse with running, jumping, heavy lifting, ruck marching, wearing heavy field gear, repetitive activities such as stooping, bending, or lifting; with no sustained improvement with physical therapy, medications, and profiles. NARSUM exam noted painful motion, tenderness and a positive left straight leg raise (SLR). There was slight back curvature seen with active flexion. No muscle spasm. No parasthesias or radicular pain with straight leg raise. Normal reflexes, strength and sensation to legs. No muscle wasting or spasticity. Normal gait and heel and toe walking, equal leg lengths, and equal pulses bilateral. Waddell's negative. Range of motion (ROM) measurements was beyond the VASRD normal limits on average of 3 trials; however, left and right rotation measurements were absent. The VA exam (20060830) for LBP with tethered spinal cord demonstrated no spasms, tenderness, weakness, atrophy or guarding. There was a positive Lasegue's sign (*SLR*) on the right and pain with motion including a more limited ROM than the military exam. There was no additional loss of motion with repetitive use. The LS X-rays noted some LS flattening.

VASRD rating for either the military or VA exams would be at the 10% level. The very mild LS flattening does not meet the 20% rating criteria of "abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis."

**Radiculopathy, Right leg.** The NARSUM and records clearly indicate that the CI's neurological examination was non-focal. The CI's predominate radiculopathy noted was pain, and it was not to the level of loss of use. The VA exam demonstrated radicular right leg pain without focal motor or neurologic findings. The VA noted increased radicular pain (from the military exam) to the right leg and granted a 10% rating effective 20060830 "the date of the VA exam as there was no medical evidence showing a diagnosis for this condition prior to VA examination." The VA evaluation of 10 percent was Radiculopathy, right lower extremity associated with lumbosacral strain with tethered spinal cord, assigned for incomplete paralysis below the knee rated as mild. The VA did not apply their rating to the day following military separation, but adjudged initial indication of that level of disability as first noted at their exam of 20060830.

The CI's radicular pain was considered by the PEB and found not to be unfitting. Additionally, the criteria for rating diseases and injuries of the spine apply with or without 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. There is no indication in the record that at the time of discharge that radicular pain should have been found unfitting. Even if it had been found to be unfitting, radicular pain would appropriately have been included in the general spine rating and not increased the CI's 10% LBP rating.

**Hypertension.** Hypertension (HTN) was clearly evaluated by the PEB and there were no indication in the record that there were any unfitting symptoms or residuals of hypertension at the time of discharge. The VA HTN rating was based solely on high blood pressure reading (HTN) requiring continuous medication for control with an otherwise normal cardiovascular exam. This did not appear to be an unfitting 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 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 determined that hypertension did not limit the CI's performance of duty and should not be added as a new unfitting condition. The CI's right leg painful radiculopathy had no significant focal neurological findings and was adjudged to be not ratable as a radiculopathy, but more appropriately considered in the General Rating Formula for Diseases and Injuries of the Spine as "with or without symptoms such as pain (whether or not it radiates)." The CI's unfitting LBP was appropriately rated at 10% by the PEB and is in agreement with the VA rating exam and rating. The Board agreed that the VA finding of lumbosacral flattening on X-ray was after discharge and could have been due to worsening of the CI's condition, and that it did not meet the requirements for the 20% rating criteria of "abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis." The Board unanimously voted for no re-characterization of the PEB disability determination.

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RECOMMENDATION: The PDBR 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 20090206, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

