RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900119 COMPONENT: ACTIVE regular

BOARD DATE: 20090709 SEPARATION DATE: 20050309

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SUMMARY OF CASE: This covered individual (CI) was an E-5 medically separated from the Army in 2005 after 10 years of active service. The medical basis for the separation was a back, hip, and leg condition. She was a petroleum platoon squad leader who originally injured her back in 1995 during PT, and reinjured her back/hip due to a fall in Mar 1999. CI underwent medical evaluation, and was diagnosed with sacroiliac joint (SI) dysfunction and right lower extremity radiculitis. Numerous non-surgical treatments including multiple SI and lumbar spine injections did not provide lasting relief sufficient for continued service. She was referred to the PEB, found unfit and separated at 10% disability. The VA rated CI using different coding at 20% (10% + 10%) from an examination within 2 months of separation for similar symptoms and complaints with CI’s numerous other not unfitting MEB diagnoses and additional claimed conditions leading to a VA combined rating of 80%. CI contends: ‘I just think I deserved more -’ ‘Rushed out as no good soldiers as brigade was being deployed to AOR.’

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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 evaluated all MEB diagnoses and all VA rated conditions and found only those diagnoses specifically relating to CI’s back (lumbosacral area; LS), SI joint, right hip, and right leg radiculitis (RLE) to rise to the level of unfitting. The PEB found the SI joint dysfunction and radicular RLE symptoms as unfitting and was supported by the commander’s letter. Although it is conceivable that CI’s abdominal condition (Endometriosis) or Post Traumatic Stress Disorder (PTSD) might have contributed to CI’s unfitting symptoms, there was no documentation and adding those conditions as unfitting would be mere speculation. Psychiatric evaluation at the time of the MEB clearly demonstrated symptoms from PTSD were resolved.

The PEB 10% rating combined two conditions into a single VASRD code and likely relied on the DODI and Army pain policy. CI’s MEB exam showed a right antalgic gait with use of cane. CI had a tender Right SI joint area, and a positive right straight leg raise test. Sensory decrease of the right lateral foot and possible muscle weakness were documented despite a normal electrical study (EMG). There was no specific LS ROM provided for, or used by, the PEB, but the PEB noted ‘Exam shows range of motion variable and limited by pain’. Given the Army pain rule at the time, further LS ROM details were not required by the PEB. Hip ROMs (which the Board attributable to the SI joint) were noted to be limited by pain. The Board considered differing diagnoses between the PEB and VA, and by majority determined that CI’s disabilities were primarily from her SI joint and LS area with radiculopathy, so did not consider separately coding for right hip joint dysfunction as the VA applied. Both the service treatment records (STRs) and VA exams clearly document abnormal gait, which under the General Rating Formula for Diseases and Injuries of the Spine (either code 5236 from the PEB or 5237 from the VA) would justify a 20% rating. Although there is a VA examination of LS ROM (30 degrees flexion) over one year post discharge that might warrant a 40% spine rating, that exam was too distant from the discharge date and opined as likely progression or an outlier to CI’s normal disability.

The Board considered the PEB determination of unfitting radiculopathy as administratively final. Although pain was the predominant symptom, there were numerous STR entries documenting at least intermittent parasthesias, dysthesias, and possible weakness (despite a normal EMG). There was discussion and contention whether the non-pain portions of the radiculopathy were sufficient to rate under the sciatic nerve code given a normal EMG. The Board considered the scope of CI’s overall disability, the location of her sensory deficit combined with her MOS requiring driving and the Board voted by a simple majority to analogously add the peripheral nerve code at 10% (8599-8520, mild). This coding was predominant to the addition of a new diagnosis of right hip dysfunction (5252). The merits and pitfalls of coding SI joint as either a hip or a back problem and potential unbundling of the PEB coding and CI’s symptoms and deficits were discussed in detail by the Board and with a VA representative present during the Board discussion. The Board voted by majority for a 20% rating under code 5236 and 10% under code 8599-8520. The single voter for dissent voted for rating only code 5236 at 20%.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| Unfitting Condition | VASRD Code | Rating |
| Sacroiliac joint dysfunction | 5236 | 20% |
| Right Sciatic Nerve, incomplete; mild | 8599-8520 | 10% |
| Combined | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090204, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

