RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900127 BOARD DATE: 20100204

SEPARATION DATE: 20030611

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SUMMARY OF CASE: This covered individual (CI) was an active duty NCO (helicopter crewman) medically separated from the Army in 2003 after 13+ years of service. The medical basis for the separation was a back condition. He began suffering low back pain in 2001 without a specific precipitating incident. His duties at that time included moving cargo and rappelling with a heavy load. This continued to worsen over time and he underwent a protracted trial of treatment and further evaluation. Imaging results revealed S1 lumbarization with L5/S1 and S1/S2 degenerative disc disease and spondylolisthesis (Grade I) at S1/S2. No neurosurgical pathology was identified. The condition was associated with a sensory neuropathy, but no motor deficits were identified. Aggressive conservative management, including epidural injections, did not provide adequate improvement. He was placed on a permanent L3 profile, could not meet the physical requirements of his MOS and underwent a Medical Evaluation Board (MEB). The MEB forwarded degenerative disc disease and spondylolisthesis as separate medically unacceptable conditions (IAW AR 40-501) to the Physical Evaluation Board (PEB). Additional conditions supported in the disability evaluation system (DES) packet are discussed below, but were not forwarded for PEB adjudication on the DA Form 3947. The PEB combined the MEB designated conditions as a single unfitting back condition on the DA Form 199 and the CI was separated with a 10% disability rating.

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CI CONTENTION: The CI states: ‘I believe that the seriousness of my back condition was not evaluated correctly. My condition has progressively worsened exactly as I was advised by military physicians and I don't feel as if the continued deterioration was taken into account at the time of separation by the review board. My back condition has profoundly limited my employment opportunities and the pain has completely altered my quality of life.’

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RATING COMPARISON:

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| **Service PEB** | **VA (4 Mo. after Separation) – All Effective 20030612** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Low Back Pain with Degenerative Disc Disease… | 5299-5293 5295 | 10% | 20030210 | Spondylolisthesis, S1-S2 | ? 5295\* | 10% | 20031023 |
| Degenerative Joint Disease… | ? 5003\* | 10% | 20031023 |
| Peripheral Neuropathy… | 8599-8520 | 10% | 20031023 |
| No Additional DA 3947 Entries. | Non-PEB X 3 / NSC X 0 | 20031023 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 30%**   |

\* Original coding not specified on VARD in evidence. Rating was according to

 extrapolated codes entered above. Does not affect Board recommendations.

ANALYSIS SUMMARY:

Back Condition. The back condition was rated under the Veterans Administration Schedule for Rating Disabilities (VASRD) spine rating rules no longer in use. The MEB did not perform a formal goniometric range-of-motion (ROM) exam which was not a specific requirement for rating under the existing VASRD. The narrative summary (NARSUM) documented ‘Full active range of motion of the spine, forward flexion and extension.’ The VA provided goniometric measurements, noted as 90⁰ flexion and 240⁰ combined ROM. Under the current VASRD §4.71a rating formula, the VA examination in evidence would yield an unequivocal 10% rating. The 2003 VASRD rating options provided for more latitude by the examiner and rater. It is noted that the PEB chose two applicable codes for rating. The applicable rating criteria from 2003 are excerpted:

 **5293** Intervertebral disc syndrome:

Pronounced; with persistent symptoms compatible with sciatic neuropathy with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate

to site of diseased, disc, little intermittent relief 60

Severe; recurring attacks, with intermittent relief .40

Moderate; recurring attacks 20

Mild 10

Postoperative, cured 0

**5295** Lumbosacral strain:

Severe; with listing of whole spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteoarthritic changes, or narrowing or irregularity of joint space, or some

of the above with abnormal mobility on forced motion 40

With muscle spasm on extreme forward bending, loss of lateral

spine motion, unilateral, in standing position 20

With characteristic pain on motion 10

With slight subjective symptoms only 0

The CI’s examination would not support higher than a 10% rating under 5295 criteria, although the more subjective description under 5293 could allow for a 20% rating. It is significant that the VA and the PEB decisions were in agreement with a 10% rating for the spine, and the clinical picture is a reasonable match with the wording. It is acknowledged that the DES and VA personnel of that period had much more experience with rating under these criteria than contemporary reviewers. Significantly, the VA applied separate ratings for the spondylolisthesis (vertebral malalignment) and the degenerative disc components of the condition. It is reiterated that the MEB applied similar logic in making the same distinction on the DA Form 3947. The PEB’s decision to combine them under a single spine rating was defensible in that the functional disability associated with each component merges into spine limitations and cannot be clinically separated. The VA’s resort to an analogous rating for the degenerative disc disease as arthritis, rather than the better fitting 5293 spine code, was necessary to avoid duplication. It does, however, raise the possibility of pyramiding and begs the question that the pathologies are clinically merged. There is no question that both conditions together are worse than either alone, which was probably the VA rater’s motivation to apply separate codes. In essence the VA was assigning 20% disability for the back, whereas the PEB assigned 10%. For the Board this presents a picture of reasonable doubt, which should be resolved in favor of the CI. The Board, however, does not agree with the double coding resolution applied by the VA. The clinical picture is a good fit with the 5293 code, especially considering that there was a disc-specific neuropathy as discussed below. A 20% rating under 5293 is consistent with the language of the rating criteria and justified by the increased severity from the co-morbid spondylolisthesis. The Board therefore recommends that the back condition be rated 20% under the 5293 code.

The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for conditions which will predictably worsen over time. This is commonly expressed by our applicants. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration.

Peripheral Neuropathy. There is no question that the CI had a clinically apparent right L5/S1 disc neuropathy. It was confined, however, to a dermatomal sensory deficit (right great toe). Normal motor and reflex examinations are to be found throughout the record and in both the MEB and VA rating examinations. The VA was justified in its assignment of a rating for the peripheral neuropathy based solely on sensory impairment. The PEB’s DA Form 199 acknowledged intermittent radicular symptoms, but in the absence of a focal neurologic deficit did not assign an additionally rated condition for the radicular features. There actually was not a distinctly diagnosed sciatic neuropathy or EMG (nerve conduction study) pursuit of one in the service record. An EMG was not specifically indicated given the absence of any signs of motor weakness. The presence of functional impairment with a direct impact on fitness is a crucial factor in the Board’s decision to recommend any condition for rating as additionally unfitting. Diminished sensation in a small area of the foot with no loss of strength does not reach that threshold. There is not reasonable doubt in the CI’s favor to support a Board recommendation to add sciatic neuropathy as an additionally unfitting condition for separation rating.

Other Conditions. The only relevant additional conditions documented in the DES packet were an umbilical hernia, a right shoulder condition, and hearing loss. The hernia was previously repaired although there was evidence that it was again symptomatic at the time of separation. It was not tied to any of the physical limitations elaborated in the NARSUM. It was not noted in the physical profile. It therefore does not have a link to fitness which would merit a Board recommendation as additionally unfitting. Intermittent right shoulder symptoms were mentioned in the MEB physical, but the condition was chronic and stable. It was not under active treatment during the MEB period, was not noted in the Commander’s statement and the physical profile was U1. The hearing loss was rated 0% by the VA and the physical profile was H1.

The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. Any other contended conditions remain eligible for ABMCR consideration.

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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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the lumbar spine condition, the Board unanimously recommends a rating of 20% coded 5293 IAW VASRD §4.71a. In the matter of the peripheral neuropathy of the right lower extremity, umbilical hernia, right shoulder condition, hearing loss 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.

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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** |
| Low Back Pain with Degenerative Disc Disease and Spondylolisthesis | 5293 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090129, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

