RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900134 BOARD DATE: 20100304

SEPARATION DATE: 20070601

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SUMMARY OF CASE: This covered individual (CI) was an active duty NCO (Construction Equipment Operator) medically separated from the Army in 2007 after 18 years of combined service (10 years active duty). The medical bases for the separation were post-traumatic stress disorder (PTSD) and a back condition. The CI’s career had included multiple combat deployments (Persian Gulf, Bosnia and Operation Iraqi Freedom (OIF) X 2). He was involved in mine clearing operations for all of the deployments, with multiple exposures to close detonations and casualties. He was medically evacuated from his last OIF deployment after an Improvised Explosive Device (IED) injury. His vehicle was struck and he incurred vertebral fractures requiring surgical pinning and stabilization (L 4/5 and L5/S1). He had a preceding history of back pain dating to a training injury in 2003. His lumbar condition was associated with left L5/S1 radicular pain and sensory symptoms, but EMG (nerve conduction) and motor exams were normal. A Magnetic Resonance Imaging (MRI) demonstrated L5/S1 moderate disc protrusion, but repeat surgery was not indicated. He developed typical PTSD symptoms soon after his evacuation from Landstuhl to Ft. Campbell, KY in early 2006. He was treated as an outpatient, but required psychoactive medications. He received permanent L3 and S3 profiles for the lumbar and PTSD conditions and was referred for a Medical Evaluation Board (MEB). The MEB forwarded three conditions to the PEB, i.e., PTSD, back pain and radiculopathy, as medically unacceptable IAW AR 40-501. Additional conditions are discussed below, but were not forwarded for Physical Evaluation Board (PEB) adjudication on the DA Form 3947. The PEB combined the back pain and radiculopathy as a single unfitting condition rated 10% and found the PTSD unfitting at 10%. The CI was medically separated with a combined disability rating of 20%.

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CI CONTENTION: The CI’s application simply provides descriptions of his back and PTSD conditions without stated contentions.

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RATING COMPARISON:

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| **Service PEB** | **VA (14 Mo. after Separation) – All Effective 20080604** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | 20070531 | General Anxiety Disorder | 9400  | 50% | 20080731 |
| Chronic Radiating Low Back Pain | 5241 | 10% | 20070531 | …Degen. Disc Disease L4/5… | 5241 | 20% | 20080717 |
| LLE Radicular Pain > Combined with back rating. | 20070531 | Radiculopathy, LLE | 5241-8520 | 10% | 20080717 |
| ↓No Additional DA 3947 Entries.↓ | Degen. Disc Disease, Cervical | 5242 | 10% | 20080717 |
|  | …Migraine Headaches | 8045-8100 | 10% | 20080717 |
|  | Memory Deficits…TBI | 8045-9304 | 10% | 20080717 |
|  | Healed Fx L Wrist | 5299-5215 | 0% | 20080717 |
|  | Arthritis; Bilateral Hips | 5010-5253 | 0% | 20080717 |
|  | Kidney Stones | 7508 | 0% | 20080717 |
| **TOTAL Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 70%**   |

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ANALYSIS SUMMARY:

PTSD. The difference in the MEB psychiatric diagnosis of PTSD and the VA psychiatrist’s diagnosis of generalized anxiety disorder appears to reflect a change in symptoms rather than a difference of opinion. Typical hyperarousal, exaggerated startle response, flashbacks, nightmares, etc., were documented during the MEB period but had resolved by the time of the VA psychiatric exam (14 months later). Some VA clinical notes during that interval are in evidence. These document resolving PTSD-specific symptoms, although his anxiety and depression appeared to worsen over time. He developed occasional suicidal ideation and increasing withdrawal and social isolation. In addition he began to manifest headache and cognitive dysfunction consistent with traumatic brain injury (TBI). He was determined to be unemployable by the VA, although that status was not solely the result of psychiatric impairment. There were significant contributions from his pain and physical limitations, and from his evolving memory and cognitive impairments. The PEB rating of 10% invoked DoDI 1332.39 guidelines. The DA Form 199 referenced the Commander’s statement in rationale for the rating. The Commander stated ‘duty performance has been and remains outstanding even with his injuries physically impairing him...He is a quality NCO’. It is clear that the CI remained motivated and quite functional within his physical limitations while on active duty, although he did not fare well in civilian life after separation. The psychiatric addendum to the narrative summary (NARSUM), in addition to establishing ample DSM IV criteria for an Axis I diagnosis of PTSD, opined that impairment for social and industrial adaptability was marked. The global assessment of functioning (GAF) score was 55 representative of moderate impairment. He carried a profile restricting access to firearms. Although his mental status and cognitive examination was normal for the most part, he displayed an ‘empty and frustrated’ mood. The Action Officer opines that a fair VASRD §4.130 rating at separation would have been 30%, although a 10% rating could be defended on the basis of his functional status. Since the separation diagnosis was PTSD, however, the Board is obligated to recommend retroactive application of §4.130. This mandates a six month TDRL rating of 50% at separation.

The Board faces in this case a common issue with retroactive application of §4.129, i.e., there was no formal psychiatric examination performed at the six month interval to provide a timely source for its permanent rating recommendation. There are appropriately timed VA clinical notes documenting that suicidal ideation was not yet present at six months. He was described as ‘somewhat depressed and irritable’ with ‘intense social anxiety’. As already noted, he was unemployed on a multi-factorial basis. The VA psychiatric rating examination at 14 months from separation was referenced in support of a 50% rating decision citing §4.130 criteria. Since the CI had not applied for VA disability within 12 months, the effective date was not retroactive to separation. That exam documented intermittent suicidal ideation and ‘weekly’ panic attacks. He was noted with an ‘anxious, depressed’ mood and memory impairment, but his mental status examination was otherwise normal. He remained on three psychoactive medications. Activities of daily living were slightly impaired and his GAF was recorded as 53 (similar to that at separation). There was social isolation but his marriage and family relationships were intact. The psychiatrist opined ‘reduced reliability and productivity’, but elaborated that there was not total occupational impairment on the basis of mental disorder. The Action Officer opines that the §4.130 rating of 50% based on the one year exam is fair, although some VA raters would grant 70% based on suicidal ideation alone. There was a close fit with the 30% ‘due to’ descriptors, but occupational and social impairment was verbatim for 50%. Given the marked difference between functional status at separation versus one year later and especially considering that the PTSD mandate for applying a post-separation rating was no longer operant, the Board cannot justify a permanent rating recommendation based solely on the 2008 VA psychiatric examination. In addition to the absence of suicidal ideation, it can be established that DSM IV criteria for PTSD had resolved at the six month mark. If the speculative impact of pure mental disorder on the GAF and occupational impairment is disregarded, the one year rating would be closer to 30%. If actual performance was the sole basis for a §4.130 rating at separation, it would have been 10%. In extrapolating a six month rating, the Board believes that 30% is fair middle ground. There is not enough reasonable doubt in the CI’s favor to justify a 50% permanent rating recommendation in the face of the mitigating factors already discussed. The Board recommends a permanent rating of 30% with a change in the VASRD code from 9411 at separation to 9400 (generalized anxiety disorder) after TDRL.

Back Condition. There were two goniometric range-of-motion (ROM) exams documented during the MEB period. One was performed by a contracted VA physician as part of the MEB procedure and the other by Physical Therapy (PT). The latter was quoted in the NARSUM; the former was quoted in the DA Form 199. Those exams (MEB = contracted VA) and the VA rating examination (14 month) are summarized in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| Thoracolumbar ROM | MEB – 9/29/06 | PT – 10/20/06 | VA C&P – 7/17/08 |
| Flexion | 64⁰ | 25⁰ | 50⁰ |
| Combined | 185⁰ | 125⁰  | 140⁰ |
| §4.71a Rating | 10% | 40% | 20% |

Although the contracted MEB examiner did not specify if ROM was based on painful motion or not, the DA Form 199 noted the 64⁰ as ‘mechanical’. This may well have been noted to mitigate the PT measurements by application of the US Army Physical Disability Agency (USAPDA) pain policy. The PT and VA exams specified pain as end-point for measurements. The contracted MEB exam noted the use of a cane, but not antalgic gait. None of the exams noted abnormal contour applicable to rating. The PT ROM measurements would support a §4.71a rating of 40%, but appears to be an ‘outlier’ relative probative value for the Board’s rating recommendation. No other entries in the record reflected ROM impairment to this severity. A note by the neurologist performing the electromyogram (EMG) stated ‘fingertips able to reach mid-tibia’ which would connote thoracolumbar flexion of 60-70⁰ on that occasion. Albeit outside the 12 month window, the VA examination carries enough probative value (in concert with the competing NARSUM exam) to discourage a 10% recommendation based solely on the contracted exam. Thus the Board finds enough reasonable doubt in the CI’s favor to recommend a 20% rating for the back condition.

Radiculopathy. By combining the separately submitted spine and radiculopathy conditions into a single condition rated for the spine, the PEB essentially concluded that the radiculopathy was not separately unfitting or ratable. The Board’s evaluation will therefore be directed at the fitness implications of the sciatic neuropathy. It is clear that a distinct L4/L5 radiculopathy was present, as evidenced by the MEB’s designation on the DA Form 3947. Disc involvement at that level was demonstrated by imaging. It is also noted that the VA examiner identified it as a separate condition; thus the VA coded and rated it. The neurologic impairment, as evidenced by EMG and physical examination, did not involve a detectable loss of motor function. The sensory impairment was confined to the left foot. In general the Board agrees that a radiculopathy must have functional implications, not just pain radiation and/or inconsequential sensory symptoms, in order to merit a recommendation as additionally unfitting and ratable at separation. In this case, however, functional limitation is stipulated by the MEB examiner. The NARSUM states, ‘If he has to walk long distances at times, he will take a cane because of his left lower extremity radicular symptoms.’ There can be no question that this limitation becomes unfitting for a soldier. After due deliberation, the Board could not find enough strength in the PEB position to overcome reasonable doubt in the CI’s favor regarding its adjudication for the sciatic radiculopathy. The Board, therefore, recommends that it be rated as an additionally unfitting condition. Appropriate VASRD rating is 10% for mild impairment under code 8520.

Other Conditions. The only additional conditions documented in the Disability Evaluation System (DES) packet were hypertension, hyperlipidemia and a history of kidney stone. All of these were asymptomatic conditions without fitness implications. The CI did have several other chronic conditions and injuries documented in the service record and captured by the VA examiner. These included cervical spine, left wrist and bilateral hip orthopedic conditions. None of these were entered on the MEB physical or covered in the NARSUM. None of these or other conditions were under active treatment during the MEB period, noted in the Commander’s statement or covered by the physical profile. It is noteworthy that the CI manifested headache and cognitive impairment within a year of separation, linked to TBI. Certainly his OIF trauma was suggestive as the etiology. It is clear, however, that clinical manifestations were not readily apparent during the MEB. Headache, head injury and memory loss were denied on the physical exam, and normal cognitive function was documented by several examiners. Slow evolution of TBI is a common presentation. 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. If contended, TBI or any other VA-rated conditions remain eligible for Army Board of Corrections for Military Records (ABMCR) consideration.

The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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. As discussed above, PEB reliance on the USAPDA pain policy for rating the back condition was possibly operant and reliance on DoDI 1332.39 for rating PTSD was operant in this case. The conditions were adjudicated independently of that policy and instruction by the Board. In the matter of the PTSD condition, the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed; and a 30% permanent rating at 6 months (with a diagnosis of generalized anxiety disorder coded 9400) IAW VASRD §4.130. In the matter of the lumbar spine condition, the Board unanimously recommends a rating of 20% coded 5241 IAW VASRD §4.71a. In the matter of the left sciatic radiculopathy, the Board by a 3:2 vote recommends that it be added as an additionally unfitting condition for separation rating; coded 8520 and rated 10% IAW VASRD §4.124a. The dissenting voter (who did not believe the radiculopathy met the threshold for unfitting) did not elect to submit a minority opinion. The Board unanimously agrees that there was no other condition eligible for review which was relevant for consideration as additionally unfitting.

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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** | **TDRL RATING** | **PERMANENT****RATING** |
| Post-Traumatic Stress Disorder***Then***, Generalized Anxiety Disorder | 94119400 | 50%→ | → 30% |
| Lumbar Degenerative Disease, Status-Post Vertebral Fractures and Spinal Fusion L4/5 and L5/S1 | 5241 | 20% | 20% |
| Left L5/S1 Spinal Radiculopathy | 8520 | 10% | 10% |
| **COMBINED** | **60%** | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090130, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

