RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900139 BOARD DATE: 20100408

SEPARATION DATE: 20060619

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SUMMARY OF CASE: This covered individual (CI) was a Guard SGT/Military Policeman medically separated from the Army in 2006 after 14 years of combined service (2+ active duty). The medical bases for the separation were cervical and thoracolumbar spine conditions. The CI was injured during a 2005 Operation Iraqi Freedom tour. His vehicle was proximal to an Improvised Explosive Device (IED) detonation and was bounced off the ground by the force of the explosion. There was no penetrating or excessive blunt trauma, and no significant concussive injury. He did not report immediate neck and back pain, but these developed soon afterwards. He was initially medically cleared, but his symptoms worsened to the point that he could not tolerate protective gear and he was medically evacuated from theater. He was managed conservatively with medications and physical therapy (PT), and was not deemed to be a surgical candidate. Magnetic Resonance Imagings (MRIs) are not in evidence, although x-rays revealed multi-level degenerative disc disease and spondylosis on the cervical and lumbar studies. No clinical radiculopathies were manifest. The conditions did not improve adequately for the CI to resume his Military Occupational Specialty (MOS) duties or participate in the Army Physical Fitness Test (APFT). He was issued permanent U3 and L3 profiles and underwent a Medical Evaluation Board (MEB). The MEB combined his spinal pathology as ‘multi-level spondylosis’ and forwarded it to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. 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 split the combined MEB diagnosis into separately unfitting thoracolumbar and cervical conditions, rated 10% each. The CI was thus medically separated with a combined disability rating of 20%.

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CI CONTENTION: The CI states: ‘The lumbar condition rated 10 percent by the Army was subsequently rated 40 percent by VA. The neck condition rated 10 percent by the Army was rated 10 percent by VA but the evaluation is currently under appeal...’ He elaborates no additionally contended conditions.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060518** | | | **VA (6 Mo. after Separation) – All Effective 20060620** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Back Pain… | 5237 | 10% | Lumbosacral spondylosis… | 5243 | 40% | 20061227 |
| Chronic Neck Pain… | 5237 | 10% | Cervical Disc Disease | 5243 | 10% | 20061227 |
| ↓No Additional DA Form 3947 Entries.↓ | | | Adjustment Disorder | 9440 | 30% | 20070104 |
| Non-PEB X 3 / NSC X 1 | | | 20061227 |
| **TOTAL Combined: 20%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 60%** | | | |

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ANALYSIS SUMMARY:

Spine Ratings. The appropriate ratings for the thoracolumbar and cervical conditions are better considered in concert since their goniometric range-of-motion (ROM) measurements were performed concurrently on each of several examinations in evidence. There are disparate results with better lumbar measurements by the MEB examiner as noted in the narrative summary (NARSUM) and better cervical measurements by the VA examiner. An initial PT goniometric examination prior an informal PEB noted ‘mechanical block’ to passive ROM’s. An initial PEB adjudication (40% lumbar and 20% cervical) was premised on these measurements. Given that the ‘mechanical block’ was not credible based on the medical records, the US Army Physical Disability Agency (USAPDA) directed a repeat examination and re-adjudication which resulted in the definitive separation ratings. The MEB goniometric exam, repeat PT exam and VA goniometric exams are summarized in the chart below.

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| --- | --- | --- | --- | --- | --- | --- |
| Goniometric ROM | MEB – 3/20/06 | | PT – 5/11/06 | | VA C&P – 12/27/06 | |
| Lumbar | Cervical | Lumbar | Cervical | Lumbar | Cervical |
| Flexion | 65⁰ | 25⁰ | 20⁰ | 20⁰ | 25⁰ | 35⁰ |
| Combined | 165⁰ | 145⁰ | 110⁰ | 110⁰ | 90⁰ | 135⁰ |
| §4.71a Rating | 10% | 20% | 40% | 20% | 40% | 10% |

The NARSUM examination did not state if pain was the end-point of measurement; the VA measurements noted above were those specified as degrees at onset of pain. The NARSUM documented a normal gait and the VA examiner documented an antalgic gait. No exam noted abnormal contour. The PT measurements entered above are averages for active ROM. A relevant examination was documented by an orthopedic consultant during the MEB period a few months prior to the NARSUM goniometric examination recorded above. It was cited in the USAPDA correspondence to the PEB. The examination did not provide ROM values, but was reasonably detailed. It noted normal ROM for the cervical, thoracic and lumbar spines. Tenderness to palpation was noted for all three segments. No pain with motion was documented for the cervical spine and pain with flexion was documented for the lumbar spine. This examination is quite consistent with the one quoted in the NARSUM as well as less detailed PT and other outpatient notes during the MEB period. These examinations, unlike the PT goniometric and VA goniometric examinations, were not performed in the context of expressly providing a basis for disability rating. They were therefore less subject to the natural exaggeration which understandably occurs when members know that impaired ROM is directly linked to financial benefit.

It is incongruent for the Board to assign a higher probative value to one exam in its rating recommendation for the neck condition and then assign a higher probative value to a different exam for the back condition. It was unanimously agreed by the Board members that ‘cherry picking’ measurements from different examinations to obtain a single spine rating was illogical. PT exams are subject to variability based on the experience of the therapist and degree of physician oversight. Thus the Board deliberated chiefly whether to base its recommendation on the NARSUM measurements or the VA measurements. Although the disparate findings in all of the examinations could be explained by ‘good day, bad day’ differences, the Board chose to derive its §4.71a-based recommendation from the findings of the NARSUM examination. This was based on the facts that it was closer to separation, less subject to patient bias and consistent with a reliable examination during the same period by an orthopedist. Although the PEB’s DA Form 199 stated ‘rated for tenderness’ in each of its rating decisions, the USAPDA pain policy was *de facto* invoked for justification of the cervical rating. The Board therefore recommends a 10% rating for the thoracolumbar condition and a 20% rating for the cervical condition. The 5242 code is the best fit with the pathology in evidence.

Other Conditions. The only additional conditions noted in the NARSUM and MEB physical were hypertension, hyperlipidemia, allergies, actinic keratosis, rosacea, and thrombosed hemorrhoids. All of these conditions were chronic and stable. They were not associated with acute medical issues during the MEB period and were not noted in the Commander’s statement or physical profile. No link to fitness is in evidence for any of them. The CI made a VA claim at separation for post-traumatic stress disorder (PTSD) and was diagnosed with adjustment disorder, rated 30%. Although the CI noted ‘trouble sleeping’ on the MEB physical, for which he was prescribed Trazadone, no psychiatric diagnosis was attached. The VA rating decision granting the psychiatric condition stated, ‘Your service medical records are silent for any reports or treatment for post traumatic stress disorder or any other mental disorder.’ 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. The psychiatric disorder and any contended conditions not covered above remain eligible for Army Board of Correction 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 Veterans Administration Schedule for Rating Disabilities (VASRD) in effect at the time of the adjudication. As discussed above, PEB reliance on the USAPDA pain policy for rating the cervical condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the cervical condition, the Board by a 2:1 vote recommends a rating of 20% coded 5242 IAW VASRD §4.71a. In the matter of thoracolumbar condition and IAW VASRD §4.71a, the Board by a 2:1 vote recommends no change in the PEB rating of 10% but a change in VASRD code to 5242. The minority votes were by the same member who recommended spine ratings based on the VA examination, i.e., 10% for cervical and 40% for thoracolumbar. The dissenting member did not elect to submit a minority opinion. In the matter of the hypertension, hyperlipidemia, allergies, actinic keratosis, rosacea, thrombosed hemorrhoids 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 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** |
| Degenerative Disc Disease, Cervical Spine | 5242 | 20% |
| Degenerative Disc Disease, Thoracolumbar Spine | 5242 | 10% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090218, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

