RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900163 BOARD DATE: 20100401

SEPARATION DATE: 20070118

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SUMMARY OF CASE: This covered individual (CI) was a Reserve SSG/Material Control and Accounting Specialist (Supply) medically separated from the Army in 2007 after 16 years of service (4 years active duty). The medical basis for the separation was a back condition. He developed back pain in 2003 during physical training while on active duty. This was associated with bilateral sciatic radiation and gradually worsened. A Magnetic Resonance Imaging (MRI) demonstrated L5/S1 disc disease with some mild compression of both S1 nerve roots. In 2004 he underwent a surgical diskectomy and L5/S1 anterior fusion. This was successful in relieving symptoms for some time, but his back pain returned. It was now associated with left sciatic radicular pain and sensory symptoms. A repeat MRI in 2006 demonstrated normal post-operative changes without nerve root encroachment at L5/S1, but mild central disc bulging at L3/4. Conservative therapy, including epidural injections, was pursued with limited success. He could not perform within his MOS, was placed on a permanent L3 profile and underwent a Medical Evaluation Board (MEB). The back condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. A separately diagnosed radiculopathy was not identified on the DA Form 3957, and no other significant medical conditions were identified in the narrative summary (NARSUM) or forwarded for PEB adjudication. The PEB found the CI unfit for the back condition and he was medically separated with a disability rating of 0%.

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CI CONTENTION: The CI states: ‘Chronic low back pain should have been rated at a higher percentage...I have also had other disabilities secondary to my back condition as listed on my VA Rating.’

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RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20070307** | **VA (8 Mo. after Separation) – All Effective 20070119** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain… | 5241 | 0% | Residuals Of Lumbosacral Fusion | 5241 | 20% | 20070913 |
| Left Lower Extremity Radiculopathy | 8520 | 20% | 20070913 |
| ↓No Additional DA 3947 Entries.↓ | OSA | 6847 | 50% | 20070913 |
| Left Ulnar Neuropathy | 8516 | 20% | 20070913 |
| **TOTAL Combined: 0%** | **TOTAL Combined (*No Unlisted Conditions*): 70%**   |

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ANALYSIS SUMMARY:

Back Condition. The PEB’s DA Form 199 invoked application of the US Army Physical Disability Agency (USAPDA) pain policy in justification of its 0% rating determination. Formal goniometric range-of-motion (ROM) measurements were provided in the NARSUM and by the VA rating examiner on which the Board can base its rating recommendation IAW Veterans Administration Schedule for Rating Disabilities (VASRD) §4.71a. The exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | MEB – 1/11/07 | VA C&P – 9/13/07 |
| Flexion | 35⁰ | 55⁰ |
| Combined | 205⁰  | 115⁰ |
| §4.71a Rating | 20% | 20% |

Both examiners specified pain as the end-point of measurement. The MEB examiner stated the gait was normal; the VA examiner stated it was antalgic. Neither noted abnormal contour. Similar ROM’s were also documented in Physical Therapy (PT) notes during the MEB period. All of the evidence in this case supports a 20% rating under the VASRD spine formula. There was no evidence in support of a higher rating. The VASRD code (5241 for spinal fusion) applied by the PEB and the VA is accurate. The Board therefore recommends a 20% rating for the lumbosacral spine condition.

Sciatic Neuropathy. Although there was no confirmatory Electromyogram (EMG) (nerve conduction study) performed, there is abundant clinical evidence in the service record to support the diagnosis of a left L5/S1 radiculopathy in this case. It was clearly identified and rated by the VA. Although not forwarded as a distinct condition on the DA Form 3947 or diagnosed as such in the NARSUM, both the NARSUM and the MEB physical evidenced its existence. The NARSUM chief complaint was ‘low back pain with left lower extremity sciatica’. The Board deliberated if the peripheral neuropathy in this case was of such severity as to be characterized as additionally unfitting for separation rating. Undeniably the CI suffered additional pain from the sciatic involvement, but this is subsumed under the general spine rating. §4.71a specifically states, ‘with or without symptoms such as pain (whether or not it radiates)’. The presence of functional impairment with a direct impact on fitness is the crucial factor in the Board’s decision to recommend any condition for rating as additionally unfitting. The sensory component of a sciatic neuropathy does not generally have fitness implications unless it is dense enough to affect proprioception and balance; not the case in this presentation. The critical decision is therefore whether or not there was a significant motor weakness which would impact MOS-specific activities. There is no service examination in evidence which documented a motor weakness. The NARSUM exam stated, ‘Deep tendon reflexes are symmetric throughout. There is no motor weakness in lower extremities. There is diminished sensation in the L5 distribution of the left dermatome.’ There were two comprehensive PT exams during the MEB period which documented normal lower motor strength, although one of them noted an absent left Achilles reflex. A VA primary care ‘comprehensive note’ documented a normal motor exam 4 months after separation. The VA rating examination at 8 months, however, noted 3/5 motor strength for extension and flexion at the ankle as well as an absent Achilles reflex. Although outside the 12 month window of most relevance to the Board, two subsequent VA examinations documented normal motor findings. The motor weakness documented on the 8 month rating examination is credible given that it matched the affected spinal level and that the exam was quite thorough. Conversely, the normal service examinations and normal flanking VA examinations, along with the interval from separation of the abnormal exam, detract greatly from an argument that significant weakness was present at the time of separation. It is also quite possible that weakness developed after separation since the VA performed L4/5 fusion surgery in June, 2008. There is also no convincing evidence that weakness, even if present, had any functional implications. There were scattered notes of subjective experiences that the leg was ‘giving way’ but no objective findings to implicate peripheral nerve impairment as the culprit. Subsequent VA exams (> 12 months after separation) documented weakness negotiating inclines and climbing steps and ladders. There was nothing in the service record suggesting that such impairments existed or impacted specific activities at the time of separation. All evidence considered, the Board cannot find enough reasonable doubt in the CI’s favor to recommend the sciatic neuropathy as an additionally unfitting condition for separation rating.

Other Conditions. The only additional medical history documented in the NARSUM was a history of umbilical and hernia repairs and a history of kidney stones. None of these conditions were associated with complications or under active treatment at the time of the MEB. They do not have any fitness implications and were appropriately omitted from entry on the DA Form 3947. On the MEB physical the CI related a history of left shoulder and left foot injuries. These were not coded by the VA. There is no evidence that these conditions were symptomatic at the time of separation and they are therefore not relevant for Board consideration as additionally unfitting. An anal fissure was documented by the examiner on the MEB physical. This could appropriately be characterized as an incidental finding and likewise is not relevant for Board consideration. The CI was given a 20% rating by the VA for a left ulnar neuropathy. This was documented on the MEB physical as a wrist condition. It was not noted in the Commander’s statement and the physical profile was U1. There is no reasonable basis for a Board recommendation to add it as separately unfitting for service rating. The VA also service connected obstructive sleep apnea (OSA). This was diagnosed prior to separation, but after the MEB physical examination and most of the MEB process. It was not submitted by the CI for PEB consideration and is therefore not considered to be in the Disability Evaluation Systems (DES) packet eligible for Board review. Even if it were, the physical profile was P1 and there was nothing regarding OSA in the Commander’s statement. 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 operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the back condition, the Board unanimously recommends a rating of 20% coded 5241 IAW VASRD §4.71a. In the matter of the sciatic peripheral neuropathy, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the left ulnar neuropathy, prior hernia surgeries, kidney stone condition, left shoulder injury, left foot injury, anal fissure 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** |
| Residuals of Lumbosacral Fusion | 5241 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090212, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

