RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900210 BOARD DATE: 20100708

SEPARATION DATE: 20070914

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SUMMARY OF CASE: This covered individual (CI) was a Reserve SPC (MOS 92A, Automated Logistics Specialist) medically separated from the Army in 2007 after 7 years of combined service. The medical basis for the separation was a lumbar spine condition. The CI developed low back pain in 2004 while training on a small arms range. The pain was worse with activity, required temporary profiles and was managed conservatively. A Magnetic Resonance Imaging (MRI) noted L5/S1 disc disease with a small central disc protrusion, and was deemed to be non-surgical. Concurrently, the CI had been evaluated by military and civilian Behavioral Health providers for a variety of suspected psychiatric conditions. This will be detailed below, but was opined by the Medical Evaluation Board (MEB) psychiatrist to be ‘not medically disqualifying’. The back condition did not improve adequately for Army Physical Fitness Test (APFT) participation or to meet basic soldiering requirements. She was issued a permanent L-3 profile and underwent an MEB. The lumbar condition was forwarded to the Physical Evaluation Board (PEB) on the DA Form 3947 as medically unacceptable IAW AR 40-501; the psychiatric condition(s) was forwarded as medically acceptable. The MEB also addressed a hearing condition, forwarded as medically acceptable. Additional conditions supported in the Disability Evaluation System (DES) packet are discussed below, but were not forwarded on the DA Form 3947. An informal PEB adjudicated the back condition as unfitting, rated 0%. The hearing loss and mental conditions were adjudicated as not unfitting. On appeal to a formal PEB, the spine rating was raised to 10%. The fitness adjudications for the other conditions were unchanged. The CI was thus medically separated with a combined disability rating of 10%.

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CI CONTENTION: The CI states: "I have paranoid personality a disorder which allows me to not function socially, normally. Migraine headaches, paranoid disorder, Chronic PTSD, biporlarism [Sic], hearing loss due to firing range without hearing protection, Anxiety, Lumbago. ... The military and VA need to grant my unemployability and 100% because I do not want to live in my car again." She elaborates her current difficulties and impairments, citing Army disabilities as the reason. She states no specific contentions regarding rating or coding and lists no other conditions not stated above.

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RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20070726** | **VA (1 Mo. after Separation) – All Effective 20060901** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5237 | 10% | Lumbar spine DDD … | 5243 | 10% | 20070703 |
| Hearing Loss | Not Unfitting | Hearing loss | 6100 | NSC | 20070703 |
| Adjustment/Personality Disorders | Not Unfitting | Personality disorder | 9499 -9400 | NSC | 20070703 |
| ↓No Additional DA Form 3947 Entries.↓ | Residuals, L Thigh Fracture | 5299 -5251 | 0% | 20070703 |
| Tingling in fingers and toes | 8699 -8621 | NSC | 20070703 |
| Non-PEB X 7 / NSC X 7 | 20070703 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 10%**   |

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ANALYSIS SUMMARY:

Back Condition. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams used pain as an endpoint and are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | MEB – 07/02/13 | VA - 07/10/09 |
| Flexion | 65⁰ | 70⁰ |
| Combined | 215⁰ | 130⁰ |
| §4.71a Rating | 10% | 10% |

Neither exam identified gait or contour abnormalities. The Veterans Administration (VA) rating examination yielded a similar measurement for flexion, although the combined ROM was diminished by reported pain at 0⁰ of extension and lateral flexion. Combined ROM on the VA exam, however, still fell within the §4.71a range for a 10% rating. The PEB and VA chose different coding options for the condition, but this did not bear on the rating. The PEB’s DA Form 199 reflected application of the US Army Physical Disability Agency (USAPDA) pain policy, but its 10% rating determination was consistent with §4.71a standards. There is not reasonable doubt in the CI’s favor, therefore, to justify a Board recommendation for other than the 10% rating assigned by the PEB for the back condition.

The Board deliberated if additional disability rating was justified by peripheral nerve impairment in this case. Intermittent extremity paresthesias were referenced in the narrative summary (NARSUM) and by the VA rating examiner. 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, however. No examination in evidence documented any associated motor weakness or significant sensory deficit. Radicular impairments were not noted on the profile or referenced in the Commander’s statement. A ratable peripheral neuropathy was not identified by the VA and the MEB physical specified that there was no radiculopathy. The Board therefore has no reasonable foundation to support a recommendation for additional rating on this basis.

Psychiatric Conditions. The psychiatric addendum to the NARSUM characterized the preceding provisional diagnoses by other providers as "Bipolar / Schizophrenia / Delusional Disorder / Depression / Anxiety." The CI was managed with several psychotropic medications at the time of the MEB, and had required one psychiatric admission. She reported fairly good symptom control on these medications without side effects. A normal mental status exam was documented by the MEB psychiatrist. The Axis I condition listed was "adjustment disorder with disturbance of emotions and conduct". "Borderline personality disorder [with] histrionic traits" was listed as an Axis II diagnosis. The S-3 profile which had been in place was lifted, although weapon access was still restricted (now attributed to the back condition). Despite the MEB psychiatric opinion that there was no "medically disqualifying" impairment, the continued profile limitations (which still ‘sheltered’ the psychiatric dysfunction) and the Commander’s statement are a challenge to the PEB’s fitness adjudication. The latter specifically stated, "Based on [CI]’s physical profile and her emotional instability at this time she is not capable of continuing her military service."

This case has the added complexity of non-service connected (EPTS) mental health issues and mental health conditions that are not considered to be a disability for DES purposes IAW DoDI 1332.38 (both adjustment disorder and borderline personality disorder). The DA Form 199 did not invoke these factors in denying a rating, however. Moreover the MEB psychiatrist did not invoke them regarding his opinion, which indicated that the mental health conditions were within AR 40-501 retention standards. It can be argued that the non-compensable mental conditions may have rendered the CI unsuited for continued military service, albeit on an administrative (not medical) basis. The Board finds no evidence, however, of a formal psychiatric condition that is both compensable and associated with unfitting impairment. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the mental health conditions.

Hearing Loss and Other Conditions. Hearing loss was not identified in the Commander’s letter as a contributing factor in the CI’s duty limitations, and was within AR 40-501 retention standards. The NARSUM did not formally identify any other medical conditions at separation. The MEB physical, in addition to the back and psychiatric conditions, identified a knee condition, abdominal pain and a left femur fracture incurred during military training. The latter received a non-compensable rating by the VA. These conditions were all chronic and stable. They were not under active treatment during the MEB period and were not profiled or noted in the Commander’s statement. No link to fitness is in evidence for any of them. The CI’s contended condition of anxiety was addressed in the psychiatric discussion above. Her contended conditions of migraine headaches and chronic Post-Traumatic Stress Disorder (PTSD) were not addressed by the MEB. Neither was noted on the MEB physical or contended to the DES prior to separation, and neither was identified by the VA as a compensable condition at the time of separation. 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 migraine headaches, chronic PTSD and any contended conditions not covered above remain eligible for Army Board of Correction for Military Records (ABCMR) consideration. No other conditions were service connected with a compensable rating by the VA within twelve months of separation.

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 back condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the low back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matters of the chronic adjustment disorder/borderline personality disorder and the hearing loss conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. In the matter of the knee condition, Depressive Disorder with psychotic features, schizophrenia, bipolar disorder, delusional disorder, bilateral paresthesias of the legs 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090301, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

