RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900241 BOARD DATE: 20100107

SEPARATION DATE: 20070719

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SUMMARY OF CASE: This covered individual (CI) was an active duty NCO (communications) medically separated from the Army in 2007 after nearly 4 years of service. The medical basis for the separation was a back condition. He suffered a non-traumatic onset of back pain in 2004. This worsened over time with inadequate response to physical therapy (P.T.), medications and conservative management. An MRI in 2006 revealed mild to moderate degenerative changes with spondylosis and bilateral foraminal narrowing at L4/5 and L5/S1. Other than intermittent numbness in his feet, there were no significant radicular symptoms and he was not a surgical candidate. He was issued a permanent L3 profile and could not resume full MOS duties. He underwent an MEB which referred the back condition to the PEB as medically unacceptable. There were no other active medical conditions of significance at that time, and no additional entries on the MEB’s DA 3947. The PEB found the CI unfit for the back condition and he was separated with a 10% rating.

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CI CONTENTION: The CI (via his VSO representative) states: ‘Rating should be higher or equivalent to VA's rating decision. Army rated service member at 10%. VA rated service member at 20% for the same condition found unfit. Service member has been awarded other service connected conditions by VA.’

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (Pre-Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Lumbar Degenerative Disc Disease | 5299- 5242 | 10% | 20070611 | Degenerative Disc Disease, Lumbar | 5243 | 20% | 20070615 | 20070720 |
| No Additional DA 3947 Entries. | | | | Non-PEB X 1 / NSC X 1 | | |  |  |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 20%** | | | | |

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ANALYSIS SUMMARY:

Back Condition. The language of the DA 199 reflects application of the USAPDA pain policy, but there is no evidence that this affected the 10% rating determined by the PEB. There are complete goniometric and spinal exams in evidence from the MEB and the VA. Both reflected pain as the end-point of measurement. The MEB exam noted spasm and tenderness; the VA exam did not. Neither noted an abnormal gait, abnormal contour or neurologic deficits. There were also P.T. notes and referral notes from a civilian physiatrist in evidence as a source of additional information reflecting on degree of impairment. Relevant determinants of the Board rating recommendation are summarized in the table below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Thoracolumbar  ROM | MEB  5/22/07 | VA C&P Exam  6/15/07 | P.T. Comments  4/9/07 | Physiatrist Note  8/16/06 |
| Flex | 64⁰ | 60⁰ | ‘Active flexion of the LS spine 45⁰ limited by pain.’ | ‘The patient was able to bend to nearly 90⁰ without pain.’ |
| Combined | 145⁰ | 200⁰ |

The MEB exam supports a 10% rating IAW VASRD §4.71a. The VA examination supports the 20% VA decision, based on 60⁰ flexion. The exams are almost contemporaneous, although the VA exam is closest to separation. The flexion measurements are on the cusp between the 10% and 20% criteria in the general spine formula. The two non-goniometric exams referenced above probably reflect the ‘good day, bad day’ spectrum. The P.T. data is in the separation period, whereas the physiatrist note is nearly a year before. With deference to VASRD §4.3 (reasonable doubt), the Board recommends that the CI be given the benefit of the 20% rating. The PEB’s 5242 degenerative spine code is a better clinical fit than the VA’s 5243 disc code, although the analogous prefix is unnecessary. There are no ratable peripheral nerve impairments associated with the case.

Other Conditions. The only additional conditions documented in the DES packet (entered on the MEB physical) were stable hypertension, a history of gastric reflux and a history of right knee swelling. There is no evidence of any acuity associated with these issues at the time of separation. His physical profile and Commander’s statement noted only the back condition as an impairment to performance. The CI was subsequently rated by the VA for PTSD symptoms related to a 2005 OIF deployment. The CI denied psychiatric symptoms on the post-deployment health assessment and MEB physical. The VA rating decision for PTSD stated ‘Your service treatment records do not note a diagnosis or any treatment for post traumatic stress disorder.’ The CI was also subsequently rated by the VA for patellofemoral pain syndrome of both knees. No extremity complaints or exam abnormalities were noted on the VA pre-separation rating examination, and there were no physical findings associated with the knee complaint on the MEB physical. Other than the back condition, only hypertension and reflux disease were coded by the VA from the pre-separation exam. Neither of the latter achieved a compensable rating. 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 application of the USAPDA pain policy to the back condition was operant in this case and adjudicated independently of that policy by the Board. In the matter of the lumbar spine condition, the Board unanimously recommends a rating of 20% coded 5242 IAW VASRD §4.71a. In the matter of the hypertension, reflux disease, PTSD, knee conditions and all of the CI’s other medical conditions; 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** |
| Lumbar Degenerative Disc Disease | 5242 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090315, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

