RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900264 SEPARATION DATE: 20050614

BOARD DATE: 20110120

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Army National Guard SPC/E-4 (42A, Human Resources) medically separated in June 2005 after 5 years of combined service. The medical basis for separation was Chronic Low Back Pain. The CI injured his back in November 2003. In spite of treatment (including back surgery), he did not respond adequately to fully perform the duties of his military occupational specialty (MOS) or participate in the Army physical fitness test (APFT). He was issued a permanent profile, and underwent a Medical Evaluation Board (MEB). At the MEB, his back condition (Low back pain, Failed back syndrome, status post Spinal fusion) was found medically unacceptable IAW AR 40-501. The CI was referred to the Informal Physical Evaluation Board (IPEB). The IPEB adjudicated the Chronic Low Back Pain as unfitting, and rated it 20% using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Army and DoD regulations. The CI did not accept the IPEB findings and demanded a formal hearing. The Formal PEB (FPEB) concurred with the previous IPEB determination, and CI was separated with a 20% disability rating.

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CI’s CONTENTION: “I was rated at 30% from the VA for the same condition only a few weeks after I underwent my PEB 20% for loss of motion (Failed Back Syndrome) and 10% for my scar (tenderness and pain). Please reevaluate my case and authorize my 30% PDRL. I had filed an appeal against the PEB at one point but it still came out the same as the original rating.”

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RATING COMPARISON:

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| **Army FPEB (dated 20050525)** | | | **VA (1 mo. after Separation) – Effective 20050615** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5241 | 20% | Residuals, L5-S1 Spinal Fusion | 5241 | 20% | 20050706 |
| (no corresponding PEB entry for Scar) | | | Scar, Low Back | 7804 | 10% | 20050706 |
| Mild Seasonal Allergies | Not unfitting | | (no corresponding VA entry for Allergies) | | | |
|  | | |
| NSC x 4 |  |  |  |
| **TOTAL Combined: 20%** | | | **TOTAL Combined: 30%** | | | |

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ANALYSIS SUMMARY:

Low Back Pain. The CI hurt his lower back on 17 November 2003. He was lifting a desk and felt a “pop” in his lower back, and noted some tingling sensation in the legs. He was evaluated at the Emergency Room that day and a pelvic manipulation was done. CI was given pain medication and put on temporary profile. One month later he was prescribed a course of physical therapy (PT) and nonsteroidal anti-inflammatory drugs (NSAIDs). He had no significant improvement and was referred to a civilian neurosurgeon. On 7 June 2004, the CI underwent an L5-S1 spinal fusion. The CI reported that right after surgery his symptoms were relieved. However, three months later (September 2004) the pain recurred. In October 2004, the CI complained of bilateral leg pain (right>left) which radiated from his buttocks to the lateral aspect of the feet. He was issued a permanent L-3 profile and an MEB was initiated. In January 2005 the CI was seen by Neurosurgery. Exam revealed normal gait, normal muscle strength, and negative straight leg raise. There was a mild decrease of sensation along the outside of the left foot, as well as a slightly decreased left Achilles tendon reflex. During his MEB back exam (16 February 2005) the CI stated that he was in constant pain. His back pain was aggravated by exercise, bending, lifting, or prolonged sitting. Examination revealed mild tenderness at the lumbosacral junction and over the left sacroiliac joint. No muscle spasm was noted. Neurological examination revealed normal deep tendon reflexes and normal motor strength of both lower extremities. There was some decrease in sensation on the right medial calf. Thoracolumbar range-of-motion (ROM) testing revealed forward flexion of 49⁰ (normal is 90⁰), and combined ROM of 186⁰ (normal is 240⁰). Electrodiagnostic studies were done in April 2005, and showed no evidence of lumbosacral radiculopathy or peripheral neuropathy involving the lower extremities. On 6 July 2005, CI had a VA Compensation and Pension (C&P) exam (3 weeks after separation). He reported constant back pain with occasional flare-ups. The flare-ups usually lasted a few hours and were associated with a dull ache down the posterior right leg into the right calf. The examiner reported normal gait, and there was no mention of abnormal posture. The CI had some tenderness of the lumbar spine, but no muscle spasm. Exam of the lower extremities showed normal strength, sensation and reflexes bilaterally. Thoracolumbar range-of-motion (ROM) testing revealed forward flexion of 60⁰ (normal is 90⁰), and combined ROM of 175⁰ (normal is 240⁰). The two thoracolumbar goniometric ROM evaluations are summarized in the chart that follows:

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| Thoracolumbar | Separation Date: 20050614 | |
| Goniometric ROM | MEB – 20050216 | VA C&P – 20050706 |
| Flexion (90⁰ normal) | 49⁰ | 60⁰ |
| Combined (240⁰ normal) | 186⁰ | 175⁰ |
| §4.71a Rating | 20% | 20% |

The Board carefully examined all of the evidentiary information available. IAW VASRD §4.71a, when forward flexion of the thoracolumbar spine is greater than 30 degrees but not greater than 60 degrees, the rating agency should assign an evaluation of 20 percent. Resolving reasonable doubt in favor of the CI, the Board determined that the CI’s forward flexion was greater than 30 degrees but not greater than 60 degrees. Following thoughtful deliberation, the Board recommends a disability rating of 20% for Low Back Pain.

The Board then directed its attention to the issue of Low back (Lumbar) radiculopathy. The CI complained of lower extremity symptoms that are consistent with a diagnosis of lumbar nerve root impingement or radiculopathy. The Board discussed whether or not the radicular signs and symptoms were so severe, that the radiculopathy itself should be considered an unfitting condition. The presence of functional impairment, and the impact on duty performance are crucial factors in the Board’s decision to recommend any condition as additionally unfitting. The critical decision is whether or not there was significant motor weakness which would impact MOS-specific activities. All evidence considered, the Board cannot find sufficient evidence to support recommending lumbar radiculopathy as additionally unfitting.

History of Other Conditions (documented in Disability Evaluation System package) – Seasonal allergy symptoms and Scarring of the skin were discussed and considered by the Board. There was no clearly documented evidence that these conditions caused a significant adverse effect on the performance of required military duties. These conditions were judged by the Board to be not unfitting at the time of separation from service, and not relevant for disability 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.

In the matter of the painful back condition, the Board unanimously recommends a rating of 20% for Chronic Low Back Pain (coded 5241) IAW VASRD §4.71a.

In the matter of the Lumbar radiculopathy, Seasonal allergies, Skin scars, or any other medical condition 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 unanimously recommends that there be no re-characterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5241 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090325, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

