RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100729 SEPARATION DATE: 20080206

BOARD DATE: 20120315

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (68K10 / Medical Laboratory Specialist), medically separated for lumbosacral strain. Her symptoms of low back pain with radiation down her left leg began in 2004 after heavy lifting at work. MRI revealed two-level disc herniation with mild neural foraminal narrowing and degenerative joint changes. Her treatment included medications, physical therapy, chiropractic manipulation, and epidural steroid injections (x2). She did not respond adequately to perform within her Military Occupational Specialty (MOS) or meet physical fitness standards. She was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Chronic low back pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Six other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the lumbar strain condition as unfitting, rated 0% with likely application application of the U.S. Army Physical Disability Agency (USPDA) pain policy. The USPDA issued an administrative correction to the PEB (DA Form 18) dated 17 March 2009, assigning a 20% rating, noting forward flexion between 31 and 60 degrees and including consideration of additional functional loss due to repeated use or flare-ups which was IAW application of the Veterans Administration Schedule for Rating Disabilities. The CI did not appeal, and was medically separated with a 20% disability rating.

CI CONTENTION: “I feel the rating was unfair. I have several elements (12 elements) was only given 10% on 2. I have major back injury. I have a major back injury and was only given 10%, which I feel was very unfair as a rating. I have other elements that were not given a percentage at all that are things that effect me on a daily bases [sic] that desired a percentage greater than 0.”

RATING COMPARISON:

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| **Service PEB (Admin Correction – Dated 20090317** | **VA (2 Mos. Pre-Separation) – All Effective 20080207** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbosacral Strain | 5237 | 20% | Lumbosacral Strain with DDD and DJD | 5242 | 10% | 20071205 |
| Left Sided Sciatica | Not Unfitting |
| Left Hip Greater Trochanteric Bursitis | Not Unfitting | Left Hip Bursitis | 5099-5019 | 0% | 20071205 |
| Left Cuboid Bone Fracture | Not Unfitting | Avulsion Fracture Left Cuboid (foot) | 5284 | 10% | 20071205 |
| Alport’s Syndrome (kidney) | Not Unfitting | Alport’s Syndrome | 7599-7536 | 0% | 20071205 |
| Hyperlipidemia | Not Unfitting | Hyperlipidemia | 7999-7913 | NSC | 20071205 |
| Hypertension | Not Unfitting | Hypertension | 7101 | 0% | 20071205 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 8/Not Service Connected x 2 | 20071205 |
| **Combined: 20%** | **Combined: 20%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Lumbosacral Strain Condition. There were two thoracolumbar spine examinations proximate to separation, including two goniometric range-of-motion (ROM) evaluations with documentation of additional ratable criteria, in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

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| Goniometric ROM - Thoracolumbar | MEB (PT) ~ 5 Mos. Pre-Sep(*20070911*) | VA C&P ~ 2 Mos. Pre-Sep(*20071205*) |
| Flex (0-90) | (49, 50, 51) 50⁰ | 80⁰ |
| Ext (0-30) | (29, 31, 30) 30⁰ | 25⁰ |
| R Lat Flex (0-30) | (30, 28, 32) 30⁰ | 25⁰ |
| L Lat Flex 0-30) | (30, 31, 29) 30⁰ | 25⁰ |
| R Rotation (0-30) | (25, 25, 25) 25⁰ | 30⁰ |
| L Rotation (0-30) | (30, 30, 30) 30⁰ | 30⁰ |
| COMBINED (240) | 195⁰ | 215⁰ |
| Comment | Limitation due to pain, normal gait, no TTP, no abnormal curvature, no spasm, SLR neg (limited to 80 degrees bilat by LBP), neuro normal, can walk on heels and forefeet, neg Waddell | TTP [to percussion], slow movement with some guarding at the end of flexion & R rotation due to pain, gait normal [“well coordinated”], no assistive devices, no spasm, neuro normal |
| §4.71a Rating | 20% | 10% |

The narrative summary (NARSUM), five months prior to separation, reported pain-limited ROM meeting the 20% criteria under the general rating formula for diseases and injuries of the spine, VASRD §4.71a. Straight leg raises were negative, but limited to 80 degrees by back pain. Negative findings included normal gait, absence of tenderness or scoliosis, normal neurological evaluation with ability to walk on her heels and forefeet, and negative Waddell signs. MRI (17 December 2006) showed two-level disc desiccation and herniation (L4-5 and L5-S1) with mild neural foraminal narrowing and two-level (same two levels) moderate facet joint degenerative changes with mild central canal stenosis.

The VA Compensation and Pension (C&P) exam, two months prior to separation, reported less severe ROM deficits (meeting the 10% criteria), with tenderness and slow movement “with some guarding at the end of forward flexion and left and right rotation due to pain.” Pertinent negative findings included normal gait, normal posture, absence of spasm, and normal neurological evaluation. There was no evidence of weakened movement against resistance, and DeLuca criteria could not be addressed “without mere speculation.” Lumbar spine radiographs were normal. The examiner diagnosed lumbosacral strain, and the VA assigned a 10% evaluation.

There was one report, in the C&P exam, of an incapacitating episode, causing the CI to be “bedridden” for a total of two days in the past 12 months. Although the record did not provide evidence that this met the strict §4.71a definition of an incapacitating episode, requiring bed rest prescribed by a physician and treatment by a physician, as required for rating under intervertebral disc syndrome, the issue is moot, since the frequency would only rate 10% under that formula, if one concedes the incapacitating episode. Thus, the CI’s condition is most appropriately rated using the general rating formula for diseases and injuries of the spine. Given the radicular symptoms and MRI-proven disc and joint pathology, coding in this case would optimally be 5242 (degenerative arthritis of the spine), or 5243 (intervertebral disc syndrome), however 5237 (lumbosacral strain) as used by the PEB, is acceptable. The exam most proximate to separation (VA exam) would rate 10% IAW the General Rating Formula. The record did not provide evidence that the CI’s condition ever met the 40% criteria of that formula, requiring forward flexion of 30 degrees or less, or favorable ankylosis of the entire thoracolumbar spine. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the low back pain condition.

LBP Condition (Radiculopathy/Left-Sided Sciatica). Left sided sciatica was forwarded by the MEB and adjudicated as not unfitting by the PEB. The CI endorsed episodic radiation of her pain into her left leg and occasional numbness of the left leg and “severe lumbar radiculopathy” was indicated in the commander’s statement. Any pain-radiculopathy is considered above under the CI’s primary unfitting lumbosacral condition IAW the general rating formula for diseases and injuries of the spine, “with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease.” Neurological evaluation proximate to separation was normal, including motor, sensory, and reflexes. Lower extremity motor function was normal throughout the record, without atrophy or foot drop, except for one outpatient note remote from separation (14 months prior to separation) that noted weakness of the left great toe extensor (and left hip), with no other neurological exam documented. This leaves no grounds for Board recommendation of an additionally unfitting peripheral neuropathy. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of any lower extremity radiculopathy as an unfitting condition for separation rating.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were: left sided sciatica left hip greater trochanteric bursitis; left cuboid bone, small avulsion fracture, healed; Alport’s syndrome; hyperlipidemia and hypertension. The sciatica condition was included in the above discussion. None of the remaining conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. The left hip ROMs were mildly reduced, without evidence of pain, and thus non-compensable during the VA exam. Although it is possible that impairment from the left hip and/or foot condition was overshadowed by the lumbar spine condition, that possibility is unduly speculative as the basis for a Board fitness recommendation. Alport syndrome, an inherited form of kidney inflammation, was associated with blood in the urine and possibly hypertension in this case, but was not associated with any documented functional impairment. Hyperlipidemia is a laboratory finding, not a disability IAW DoDI 1332.38. The CI’s hypertension was well-controlled with medications. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for “12 elements” that were not identified. Because the CI’s original VA rating decision (VARD) contained 12 diagnoses, including those that were not service-connected (NSC) or deferred, the Board assumed that those were the 12 “elements” to which the CI referred. Those conditions were addressed above, except for degenerative joint disease of both knees (VA 0% each), fracture of the tip of the distal tibia (VA 0%), recurrent sinusitis (VA 0%), allergic rhinitis (VA 0%), and right middle finger laceration (VA NSC). All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were cyst of right side of neck, frequent urination, frequent trouble sleeping (attributed to back pain), changes in menstrual pattern (with heavy flow), and a history of renal biopsy. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant during the MEB period, none carried attached profiles, and none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. No other conditions were service-connected with a compensable rating by the VA within twelve months of separation or contended by the CI. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the lumbosacral strain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB 20% adjudication. In the matter of the left-sided sciatica, left hip greater trochanteric bursitis, left cuboid bone fracture, Alport’s syndrome, hyperlipidemia, and hypertension conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of 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.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lumbosacral Strain | 5237 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110826, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

 Deputy Assistant Secretary

 (Army Review Boards)