RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1100794 SEPARATION DATE: 20050501

BOARD DATE: 20120416

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (63B10/Light Wheel Vehicle Mechanic), medically separated for chronic low back pain (LBP). The CI sustained a back injury when he fell off the “weaver” during an obstacle course in AIT. The CI continued with intermittent episodes of LBP and was treated conservatively with non-steroidal anti-inflammatory drugs (NSAIDS), physical therapy (PT) and was placed on several temporary profiles over a period of 15 months. In November 2001, the CI developed left leg paresthesias while running and was referred to orthopedics and placed on a permanent L2 profile. The CI deployed to Iraq from March 2003 to March 2004 where he continued to seek care for his LBP condition. After the CI returned from Iraq, he was re-evaluated by orthopedic services. June 2004 x-rays revealed bilateral spondylosis of the L5 spine; however, a November 2004 bone scan did not detect any anomalies of the lumbar spine; orthopedic services opined that surgery was not indicated. Despite aggressive PT and NSAIDS, the CI did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. The CI was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded “LBP without radiculopathy (spondylolysis)” on DA Form 3947 to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated “chronic low Back pain” condition as unfitting, rated at 10% with application of Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Problem with back was worse than told on active duty according to VA doctors. On appointments with VA doctors they tell me that it was unfair that I only received 10 percent for what my back is showing on MRI and X-ray's.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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RATING COMPARISON:

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| **Service PEB – Dated 20050318** | **VA (~1 Mo. After Separation) – All Effective Date 20050502** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain | 5237 | 10% | Residuals Of Low Back Injury | 5237 | 10%\* | STR |
| ↓No Additional MEB/PEB Entries↓ | 0% x 0/Not Service-Connected x 3 | STR |
| **Combined: 10%** | **Combined: 10%** |

\*10% rating continued in 2006.

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that it is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted service improprieties in the disposition of a case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

Chronic Low Back Pain Condition: There were two goniometric range-of-motion (ROM) evaluations in evidence, and an MEB narrative summary (NARSUM) examination with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Goniometric ROM - Thoracolumbar | PT ~ 3 Mo. Pre-Sep(20050303) | NARSUM~ 2Mo. Pre-Sep(20050218) | VA C&P ~ 6Mo. After-Sep(20051115) |
| Flex (0-90) | 90⁰ (118,120,119) |  | 90⁰ |
| Ext (0-30) | 25⁰ (25, 25, 25) |  | 30⁰ |
| R Lat Flex (0-30) | 30⁰ (36, 36, 38) |  | 30⁰ |
| L Lat Flex 0-30) | 30⁰ (30, 32, 32) |  | 30⁰ |
| R Rotation (0-30) | 30⁰ (44,44,46) |  | 30⁰ |
| L Rotation (0-30) | 30⁰ (46,48,48) |  | 30⁰ |
| COMBINED (240) | 235⁰ |  | 240⁰ |
| Comment |  | Able to hyperextend, but less than previously; lateral bend reduced to left side, normal on right; rotation limited towards left secondary to discomfort and paravertebral muscle spasm, normal on right; straight leg raise (SLR) minimally limited; slight antalgic gait secondary to intermittent pain radiating to leg; sensory intact; Obvious paravertebral muscle spasm, especially on Right side. X-rays: spondylolysis at L-5, S-1 w/o spondylolisthesis on stress films. | There is no ankylosis of the spine. Muscle spasm is absent. No tenderness is noted. Neg straight leg raising; motor/sensory intactVA rated 10% based on MEB NARSUM and STR. The continued the 10% rating after this C&P examination  |
| §4.71a Rating | 10% | 10% |  10% |

The CI had a history of chronic low back pain (LBP) that was well documented in the service treatment record (STR). In January 2001 the CI sustained a low back injury from trauma sustained while in AIT and underwent 10 months of PT and NSAIDS. The CI continued with the LBP and developed left leg paresthesias during running. The LS spine X-ray done in February 2001 showed L5 spondylolysis. The CI was seen by orthopedics in November 2001 and was diagnosed with chronic LBP with radiculopathy although motor and sensory exams were normal. A lumbosacral spine x-ray in June 2004 demonstrated bilateral L5 spondylolysis. In November 2004, Orthopedics suspected traumatic spondylolysis and ordered a SPECT scan which was negative. The CI was issued an L3 permanent profile with restrictions of no two mile run, no sit ups, no unlimited running, no moving with a fighting load, no constructing an individual fighting position , no performing 3 to 5 second rushes under direct and indirect fire and limited use and wear of LBE and flak vest. The MEB examination 3 months prior to separation noted continued difficulty with prolonged standing, prolonged sitting, working as an all wheel mechanic with heavy lifting, frequent bending, working in a forward bent position on engines of vehicles, as well as difficulty with overhead work, running, and physical activities. The examiner attributed the difficulty with running as secondary to exacerbation of the LBP and radiation of pain to the legs and feet (intermittent numbness). The examiner indicated a slight antalgic gait secondary to intermittent pain that radiated to the legs. The CI also had obvious paraspinal muscle spasm. However there were no sensory deficits. The CI was managing his pain and muscle spasms with regular use of NSAIDS and intermittent use of muscle relaxants. In November 2005 a repeat L/S spine x-ray found moderate degenerative disc space narrowing L5-S1. The Department of Veterans’ Affairs (DVA) Compensation & Pension (C&P) examination 6 months after separation noted normal ROM as well as normal motor and sensory examinations.

The PEB and the VA chose the same disability code 5237 Degenerative arthritis of the spine and both rated the back condition at 10%. The VA noted in the initial 11 July 2005 VARD that their rating decision was based on the STR, including the MEB NARSUM examination, which indicated slight antalgic gait secondary to intermittent pain which radiated to the legs and a decreased range of motion with pain on motion. The VA apparently did not consider that the “obvious paraspinal muscle spasms” to be the cause of the slight antalgic gait as indicated in the MEB NARSUM, as this would warrant a 20% rating.

Although the CI had a sensory radiculopathy with pain, there was no significant motor component to the radiculopathy. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. The sensory component in this case has no functional implications. There was no motor impairment that can be linked to significant functional impairment. As no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment.

The general rating formula for diseases and injuries of the spine in §4.71a considers the CI’s pain symptoms “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.” While the pain-limited ROM did not reach the minimal compensable level, a 10% rating is warranted IAW with §4.59 Painful motion. The presence of “muscle spasm or guarding severe enough to result in an abnormal gait” justifies a 20% rating. The CI had paravertebral muscle spasm requiring muscle relaxants and the examiner noted “slight antalgic gait secondary to intermittent pain that radiated to the legs” and “obvious paraspinal muscle spasm.” However, the examiner made no statements regarding a clear cause and effect relationship between the muscle spasm and the abnormal gait. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the chronic LBP condition coded 5237 without the addition of radiculopathy.

Remaining Conditions. Other conditions identified in the DES file were onychomycosis, bilateral feet and left thumb and high blood pressure. None of these conditions were significantly clinical 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 12 months of separation or contended by the CI. 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 chronic LBP condition, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the peripheral radiculopathy; onychomycosis, bilateral feet and left thumb and high blood pressure conditions, 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110828, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

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 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXX, AR20120007705 (PD201100794 )

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 XXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA