RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100814 SEPARATION DATE: 20050216

BOARD DATE: 20120807

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SGT/E-5, 42A, Human Resources Specialist, medically separated for chronic low back pain (LBP)*.* The CI developed back pain while lifting during OCONUS deployment for OIF in 2003. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS). The CI was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). L4-L5 disc herniation with LBP was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the low back condition as unfitting, rated 10%, with presumed application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I feel the rating from DOD should coincide with the rating I received from VA. Since leaving the military, my back condition has worsened and also has created secondary conditions to develop, such as knee and neck problems.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records (BCMR).

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RATING COMPARISON:

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| **Service PEB – Dated 20050114** | **VA (1 Mo. Pre Separation) – All Effective Date 20050217** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain  | 5237 | 10% | L Spine L4-L5 Disc Herniation | 5243 | 40% | 20050120 |
| ↓No Additional MEB/PEB Entries↓ | Tinnitus Right Ear | 6260 | 10% | 20050120 |
| 0% x 2/Not Service-Connected x 5 | 20050120 |
| **Combined: 10%** | **Combined: 50%** |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. 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. The Board acknowledges that many service treatment records (STR) are not available in the evidence before it and could not be located after the appropriate inquiries. Further attempts at obtaining the relevant documentation would likely be futile and introduce additional delay in processing the case. The missing evidence will be referenced below in relevant context .

Chronic Low Back Pain. The CI developed LBP while lifting during a deployment to Iraq.  Physical therapy and chiropractic treatment were not effective and magnetic resonance imaging (MRI) of the lumbosacral spine was obtained in July 2004. This study revealed a broad based disc at L4-L5 with a tiny midline disc protrusion touching the nerve sack but not compressing it. By report the CI was examined by an orthopedic surgeon, and referred to a pain management clinic without recommendation for surgical indication. CI underwent spinal steroid injections without relief, and was referred to a MEB. There were five examinations in evidence, with documentation of range-of-motion (ROM) and additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below. Only two goniometric examinations results were available.

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| Goniometric ROM Thoracolumbar SpineDegrees | Orthopedics~6 Mo. Pre-Sep (20040809) | Medical Exam~4 Mo. Pre-Sep (20041006) | MEB NARSUM ~3Mo. Pre-Sep (20041116)  | PEB DA199~1 Mo. Pre-Sep (20050114) | VA C&P ~1 Mo. Pre-Sep (20050120)  |
| Flexion (90 Normal) | Full | Decreased | None recorded  | 55 | 20 |
| Combined (240) | Full |  Decreased | None Recorded | Not recorded | 80 |
| Comment | + tenderness.Pain w/ straight leg raise at 85⁰ | +tenderness at L4- L5..Nno spasm. | +tenderness at L2-L5No paraspinous tenderness.No muscle spasm. | ROM limited by pain.Primary source document not in file. | ROM limited by pain. Pain w/ straight leg raise at 60⁰.Normal gait and station. |
| §4.71a Rating | 10% | Minimum 10% | 10% | 20% | 40% |

At the MEB narrative summary (NARSUM) examination on 16 November 2004, the CI reported severe LBP with minimal activity including walking. The physical examination recorded tenderness in the L4-L5 area of the spine without paraspinous muscle tenderness or spasm. Lower extremity strength and sensation were normal. ROM assessment was not recorded. On the report of medical examination DD Form 2808, performed 2 weeks before the NARSUM, physical examination revealed decreased lumbar ROM in all directions. At the VA Compensation and Pension (C&P) exam, performed a month prior to separation, CI reported constant back pain at a level of 5/10 (0 = none; 10=worst) increasing with exertion. On physical examination, decreased ROM of the spine was recorded as noted above. Only one iteration of ROM testing was performed because of pain in the back area. Gait and station (posture) were normal. No aids to ambulation were required. Deep tendon reflexes were normal and no muscle atrophy was noted. The examiner’s impression was paralumbar muscle spasm although none is not documented in the physical examination. The PEB cited lumbar spine ROM of 54⁰ of flexion limited by pain but rated the back condition 10% coded 5237 (lumbosacral strain) with likely application of the USAPDA pain policy. The VA rated the back condition under code 5243 (invertebral disc syndrome) at 40% citing forward flexion of the thoracolumbar spine of 30 degrees or less. A rating of 50% was not assigned in the absence of ankylosis of the entire thoracolumbar spine.

The Board directs attention to its rating recommendation based on the above evidence. The Board carefully examined all evidentiary information available. The Board then turned its attention to the question of ROM evaluation of the condition under §4.71a, general rating formula for diseases of the spine. The Board noted the PEB, quoted flexion of the spine of 54⁰. This would achieve a disability of 20% under the code utilized but the PEB rated at 10%. The primary documentation of the examination producing this ROM is not in evidence in the file, and the Board was unable to locate these STRs after appropriate efforts. After discussion, the Board unamiously accepted this datum as it was consistent with the expected severity based on the known pathology and prior examinations including the civilian orthopedic clinic evaluation on 9 August 2004, reporting that range of motion was full. The Board further concluded that the examination producing this datum likely occurred following the MEB NARSUM examination. No other quantitative ROM evaluations are present in the record prior to the C&P evaluation. The ROM values reported by the VA examiner, a month before separation, are significantly worse than those referenced by the PEB as discussed above. There is no record of recurrent injury or other development in explanation of the more marked impairment reflected by the VA measurements. Upon deliberation the Board agreed in this case the clinical findings on the C&P examination of normal gait and station, and absence of paraspinous muscle spasm, all occurring with back pain reported so severe that only one iteration of ROM evaluation could be performed, were inconsistent with the degree of disability suggested by the ROM measurement. The Board agreed that a lower degree of disability, more reflective of the anticipated severity suggested by the clinical pathology, was present. After review of the total clinical picture, the Board unanimously recommended that a rating of 20%, under code 5237, consistent with the PEB findings of 54⁰ of flexion, most accurately reflected the degree of disability for the back condition at the time of separation. The Board considered a rating based under incapacitating episodes/intervertebral disc syndrome, but this was not applicable in the absence of documentation of any incapacation in the record. There was no evidence of an unfitting peripheral nerve impairment due to radiculopathy in this case. After due deliberation, considering all of the available evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the chronic LBP condition, IAW VASRD §4.71a.

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 reliance on the USAPDA pain policy for rating back condition was potentially operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic LBP condition, the Board unanimously recommends a disability rating of 20%, coded 5243 IAW VASRD §4.71a. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Chronic Low Back Pain | 5237 |  20% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110926, 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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120015500 (PD201100814)

1. 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 to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA