RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1200130 SEPARATION DATE: 20080207

BOARD DATE: 20120928

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (88M, Motor Transport Operator), medically separated for lumbosacral strain. The CI’s low back pain began in August 2006 after a hard landing in a C-130 aircraft during a deployment to Iraq. Conservative treatment did not alleviate his pain and he did not improve adequately to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. An MOS Medical Retention Board (MMRB) hearing was initiated and resulted in the CI being directed into the Army’s Disability Evaluation System. The Medical Evaluation Board (MEB) forwarded low back pain as the one and only unfitting condition along with the medically acceptable conditions of sensory neuropathy, umbilical hernia and post concussion syndrome with headaches for Physical Evaluation Board (PEB) adjudication. After the initial PEB proceedings, the CI contacted his Congressional Representative resulting in a review of those proceedings and a written response from the US Army Physical Disability Agency (USAPDA). The administratively corrected PEB proceedings document listed the lumbosacral strain condition as unfitting and rated at 10% with specified application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD) and National Defense Authorization Act (NDAA) 2008 guidance. The remaining conditions were determined to be not unfitting. The CI was medically separated with a 10% disability rating.

CI CONTENTION: “I received 40% for my back (degenerative disc disease) and 10% for Radiculopathy with L4-L5, combined of 50%. These injuries happened in a war zone Iraq 2006”.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 conditions “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The radiculopathy with L4-L5 condition as requested for consideration (PEB detailed lack of lower extremity symptoms) and the unfitting lumbosacral strain condition meet the criteria prescribed in DoDI 6040.44 for Board purview; and are addressed below. The CI contention for radiculopathy with L4-L5 will be addressed in the review of the rating of the unfitting low back pain condition (as referenced on PEB proceedings document). 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 Correction of Military Records.

RATING COMPARISON:

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| --- | --- |
| **Service Admin PEB – Dated 20080312** | **VA (< 1 Mos. Pre-Separation) – All Effective Date 20080208** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbosacral Strain | 5237 | 10% | Degenerative Disc Disease (DDD), Lumbar Spine | 5242 | 40% | 20080123 |
| Radiculopathy with L4-L5 Sensory Deficits | 8599-8520 | 10% | 20080123 |
| Sensory Neuropathy, Right Forearm | Not Unfitting | Residuals of Cellulitis, Right Upper Extremity, S/P Reaction to a Bee Sting | 8599-8516 | 0% | 20080123 |
| Umbilical Hernia | Not Unfitting | Residuals of Umbilical Hernia Repair | 7399-7338 | 0% | 20080123 |
| Post Concussion Syndrome w/Headaches | Not Unfitting | Post-Concussive Syndrome | 8199-8100 | 0%\* | 20080123 |
| ↓No Additional MEB/PEB Entries↓ | Post Traumatic Stress Disorder (PTSD) and Mood Disorder with Depressive Features | 9411 | 50%\* | 20080124 |
| Residuals of Right Ankle Sprain | 5271 | 10% | 20080123 |
| 0% X 5 (in addition to above) / Not Service-Connected x 6 | 20080123 |
| **Combined: 10%** | **Combined: 80%\*** |

\*PTSD increased to 70% and “Post-concussive Syndrome, claimed as TBI” increased to 10% effective 20091015 (combined 90%)

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that his injury was in a war zone. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in the combat relatedness of conditions, however, it is noted that the Army awarded 10 A/C.

Lumbosacral Strain Condition. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

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| Thoracolumbar ROM | NARSUM ~4 Mo. Pre-Sep\* | VA C&P ~1 Mo. Pre-Sep |
| Flexion (90⁰ Normal) | 70⁰ | 40⁰\* |
| Ext (0-30) | 250 | 20⁰ |
| R Lat Flex (0-30) | 30⁰ | 20⁰ |
| L Lat Flex 0-30) | 30⁰ | 10⁰ |
| R Rotation (0-30) | 30⁰ | 10⁰ |
| L Rotation (0-30) | 30⁰ | 10⁰ |
| Combined (240⁰) | 2150 | 110⁰ |
| Comment | + painful motion; + spasm;no limp detected; neg. SLR bilat; sensory normal; (see text) | Tired appearing normal posture; antalgic gait; + painful motion; + spasm; strength & DTRs normal throughout (see text\*) |
| §4.71a Rating | 10% | 20% |

 \*Goniometer & inclinometer used for ROM measurements

The narrative summary (NARSUM) prepared 4 months prior to separation notes onset of low back pain in August 2006 after the CI was a passenger in a military aircraft that experienced a hard landing in Iraq. The CI complained of sharp/lancing, fluctuating, mid-line lower back pain in the range of 2-10/10 and “feeling like my body is going through the pelvic.” It interferes with sleep and can radiate into the neck and states that both legs hurt with activity, “but there is no specific relationship between the leg pain and back pain.” “He also notes that he tends to drag his foot and trip a lot.” He went to physical therapy for 7 to 8 months. Plain film X-rays revealed mild thoracic degenerative disc disease (DDD) and magnetic resonance imaging (MRI) impression was “mild to moderate DDD most pronounced at L4/L5…no definite nerve root impingement.” A Physical Medicine Doctor did not believe that injections were indicated nor did he feel surgery was an option. The patient reports his pain is now averaging about 5/10 on a daily basis. He denies any difficulty with urine or bowel.

At the MEB exam 4 months prior to separation, the CI reported, “back pain from C 130 hard landing.” The MEB physical exam noted mild tenderness at LS junction to moderate pressure and no overt spasm. “ROM was good with a moderate amount of pain in all planes,” and referenced ROMs are charted above. There was back spasm during hip rotation. Negative straight leg raise bilaterally and “no weakness noted” except for “mild decreased strength with toe standing and heel standing on the right side.” Sensory exam was normal.

At the VA Compensation and Pension (C&P) exam a month prior to separation, the CI reported essentially the same history as noted above. He additionally reported that his right leg goes numb. Physical exam noted slightly antalgic gait and extreme pain with “appreciable spasms of the paraspinous muscles bilaterally.” ROM values are summarized in the chart above. “Repetitive motion is unable to be obtained due to the veteran's extreme pain.” There was decreased sensation in the L4-L5 distribution of the lateral right leg and dorsum of the right foot. The examiner opined that the lumbar spine with radiculopathy condition had a severe effect on activities of daily living; he would anticipate an additional loss of 2-5 degrees in all planes during a flare due to cold. The Board directs attention to its rating recommendation based on the above evidence.

The PEB coded the CI’s low back pain as VASRD code 5237 and rated it at 10% while the VA coded it 5242 and rated it at 40%. There was no evidence of incapacitating episodes due to intervertebral disc disease that would meet the criteria for a minimum rating under the alternative formula for incapacitating episodes due to intervertebral disease. The Army and VA codes applied in this case both utilize the General Rating Formula for Diseases and Injuries of the Spine for rating purposes. The ROM values reported by the VA examiner are significantly worse than those reported by the MEB. There is no record of recurrent injury, however, the presence of “extreme pain” and “appreciable spasm” on the day of the exam as noted by the VA C&P examiner is a reasonable explanation for more marked impairment reflected by the VA measurements. The values reported were derived from the subjective pain threshold with motion and the rating decision stated, “an evaluation of 40 percent is granted for forward flexion of the thoracolumbar spine of 30 degrees or less in your case, you experienced pain beginning at 30 degrees of flexion.” Using the onset of pain as the end point for ROM measurements is not consistent with VASRD standards in determining the active ROM. Repetitive ROM testing was not accomplished due to “extreme pain” on the day the physical was performed. Although not explicitly stated, the VA rating specialist may have applied a 10 degree“DeLuca” deduction to arrive at the stated 30 degree flexion measurement used to award a 40 percent rating. Because the disparity between both exams proximal to separation presents a significant difference in rating, the Board considered VASRD §4.2 (interpretation of examination) and §4.40 (functional loss) information in evidence to get a better picture of the CI’s impairment at separation. The totality of the evidence is more consistent with the NARSUM exam accomplished 4 months prior to separation and therefore, the Board majority assigns a higher probative value to the NARSUM examination data as the basis for its recommendations. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority concluded that there was insufficient cause to recommend a change in the PEB adjudication for the lumbosacral strain condition.

Radiculopathy (lower extremity secondary to back condition): The PEB disability description implied no unfitting radiculopathy stating “Soldier with normal strength, sensation and reflexes.” The Board considered whether additional ratings could be recommended under a lower extremity peripheral nerve code, as conferred by the VA, for the residual sciatic radiculopathy at separation. Firm Board precedent requires a functional impairment tied to fitness to support a recommendation for addition of a peripheral nerve rating to disability in spine cases. 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, and the motor impairment was either intermittent or relatively minor and cannot be linked to significant physical impairment. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend an unfit determination for the right lower extremity radiculopathy condition.

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, the Board, by a vote of 2:1, recommends no change in the PEB adjudication. The single voter for dissent (who recommended a disability rating of 20%, coded 5242 IAW VASRD §4.71a.) did not elect to submit a minority opinion. The Board unanimously recommends no additional finding of unfit for the contended lower extremity radiculopathy condition. There were no other conditions within the Board’s scope of review for consideration.

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 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120202, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXX, AR20120019352 (PD201200130)

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 XXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA