RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX
CASE NUMBER: PD1200630
BOARD DATE: 20121108

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030901

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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 MAJ/O-4 (66H/Medical-Surgical Nurse) medically separated for lumbar and cervical spine conditions. Prior to service was a history of lumbar disc disease with prior surgery, which worsened after entry and was more severe the last year preceding separation. She additionally developed cervical radicular symptoms that were increasingly symptomatic after 2002. She was diagnosed with multi-level degenerative disc disease (DDD) at the cervical and lumbar levels; and, surgical options were not pursued. Neither condition could be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was consequently issued a permanent U3/L3 profile and referred for a Medical Evaluation Board (MEB). The cervical and lumbar spine conditions were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB (administratively corrected) adjudicated each spine condition as unfitting; rating the lumbar spine 10%, referencing Department of Defense Instruction (DoDI) 1332.39 and Army Regulation (AR) 635-40; and, rating the cervical spine 0%, referencing the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

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CI CONTENTION: The application does not elaborate any specific comments or requests.

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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 the unfitting lumbar and cervical spine conditions are addressed below. 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.

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RATING COMPARISON:

| Service PEB – Dated 20030709 | | |
|---|---|---|
| **Condition** | **Code** | **Rating** |
| Chronic Low Back Pain, s/p Laminectomy | 5293-5299 5295 | 10% |
| Cervical DDD | 5099-5003 | 0% |
| No Additional MEB/PEB Entries | | |

| VA (1 Mo. Post-Separation) – Effective 20030902 | | | |
|---|---|---|---|
| **Condition** | **Code** | **Rating** | **Exam** |
| DDD, Lumbar Spine | 5299-5242 | 10% | 20031006 |
| DDD, Cervical Spine | 5299-5237 | 10% | 20031006 |
| Cervical Radiculopathy, LUE | 8510 | 20% | 20040401 |
| Dermatitis... | 7806 | 10% | 20031006 |
| 0% X 6 / Not Service Connected x 1 | | | 20031006 |

| Combined: 10% | Combined: 40% |
| --- | --- |

ANALYSIS SUMMARY: The Board notes that the CI was separated just prior to a significant change in Veterans Administration Schedule for Rating Disabilities (VASRD) codes and criteria for the spine. The older codes were applied for rating by the PEB, and the new codes and criteria were in effect at the time of VA rating (still quite proximate to separation). IAW DoDI 6040.44, the Board's recommendation must be premised on the VASRD in effect (criteria elaborated below); although, the VA exam evidence remains probative.

Lumbar Spine Condition. The CI had undergone a lumbar laminectomy in 1984 and was waived for enlistment. She further underwent a MEB for the condition in 1996 and was cleared for duty under a permanent P3 profile. According to the narrative summary (NARSUM), "She did well until approximately one year ago when she developed [cervical symptoms]." Magnetic resonance imaging (MRI) from 2002 showed post-surgical changes and multilevel (L2-S1) disc disease with degenerative changes, spinal stenosis, and facet hypertrophy. The follow-up orthopedic consultant (February 2002) documented the absence of significant radicular symptoms, minimal pain, normal gait, near normal range-of-motion (ROM), and normal neurological testing; and, recommended continued conservative management. Subsequent service treatment record (STR) entries document no change from this picture up to the time of separation. The NARSUM noted continued low back pain "exacerbated over the past year due to the increasing pain in the neck." Documented functional restrictions (encompassing cervical and lumbar impairment) were inability to lift > 15 pounds, need for "frequent breaks at work," inability to stand for long periods of time, and inability to march or participate in physical training. The physical exam noted normal gait, spinal tenderness, and normal neurological findings. The NARSUM referenced ROMs from physical therapy (PT) with flexion to 3 inches from floor height (normal) and minimal limitations in the other planes of motion. At the VA Compensation and Pension (C&P) exam, the back pain was rated 4/10; exacerbated by "standing or walking for more than 15 minutes." The VA physical exam recorded normal gait and normal neurological testing (no comment on specific physical findings for the spine). The VA ROM measurements were flexion 90 degrees (normal) "with pain", extension 15 degrees (normal 30 degrees), and bilateral excursions of 30 degrees (normal).

The Board directs attention to its rating recommendation based on the above evidence. The applicable codes for rating consideration IAW the 2003 VASRD in effect are excerpted below.

**5292** Spine, limitation of motion of, lumbar:

Severe ..... 40
Moderate ..... 20
Slight ..... 10

**5293** Intervertebral disc syndrome:

**...**

Severe; recurring attacks, with intermittent relief ..... 40
Moderate; recurring attacks ..... 20
Mild ..... 10
Postoperative, cured ..... 0

**5295** Lumbosacral strain:

**...**

With muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing' position ..... 20
With characteristic pain on motion ..... 10
With slight subjective symptoms only ..... 0

The PEB's rating defaulted to 5295 criteria; and, although DoDI 1332.39 and AR 635-40 were referenced on the DA Form 199, the 10% assignment was consistent with painful motion as documented by the VA examiner. The next higher 20% criteria under 5295 were clearly not supported. The Board considered rating under 5293; but, there was not a clinically active acute disc syndrome in evidence at separation; and, certainly, there were no 'recurring attacks' to support a rating higher than 10% under 5293. Likewise, the modest ROM limitation evidenced by all examiners would not support a rating higher than 10% under 5292. There was no evidence of ratable peripheral nerve impairment to support additional rating on that basis. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB rating of the lumbar spine condition. Members agreed that the three-tiered code applied by the PEB was not compliant with VASRD §4.27 (use of diagnostic code numbers), and the Board recommends a rating solely under 5295.

Cervical Spine Condition. The CI experienced an onset of radiating neck pain in 1996 while doing push-ups. She experienced intermittent pain after that with bilateral arm radiation, but in 2002 the pain worsened with predominantly left radicular radiation. An MRI performed in October 2002 was interpreted as "multilevel cervical spondylosis, with associated neural foraminal narrowing at multiple levels." A neurological exam of October 2002 demonstrated some diminished left upper extremity (LUE) strength that was attributed to neck pain, and slightly diminished LUE tendon reflexes. An orthopedic consultant in May 2003 recorded 4+/5 forearm flexors and extensors on the left compared to 5/5 on the right. All other neurological examinations evidenced in the STR were normal. No contemporary electrodiagnostic studies are in evidence. Outpatient cervical ROM evidence was variable, but ranged from normal (with painful motion) to occasional moderate limitations of extension and right lateral flexion (consistent with flares of LUE radiculopathy). Surgical options were entertained, but the final neurosurgical opinion was that surgery was of dubious benefit since an exact level for intervention could not be identified. The NARSUM noted that an epidural steroid injection in May 2003 (4 months pre-separation) had rendered the CI free of current cervical radicular pain. Persistent neck pain (unquantified) was noted, and limitations were co-mingled with those for the lumbar spine as documented above. The physical exam did not comment on cervical spasm or tenderness, but noted normal neurological findings. The contemporary (3 months pre-separation) PT ROM measurements for the cervical spine were flexion ≥45 degree (normal 45 degrees), but a combined ROM of 184 degrees (normal 340 degrees). The post-separation (1 month) VA C&P examination noted "occasional cervical pain [rated 2-3/10], which has been partially relieved by the use of injection." The VA ROM measurements were flexion 30 degrees and combined 300 degrees. The VA rating decision also referenced another ROM evaluation (August 15, 2003) citing cervical extension of 20 degrees (normal 45 degrees), but added "Forward flexion, lateral bending and rotation were within normal limits." The source examination was not in evidence, but the VARD entry was considered probative. The deferred VA evaluation for the LUE radiculopathy (6 months post-separation) noted a sensory deficit in the C6 dermatome, but normal strength and reflexes.

The Board directs attention to its rating recommendation based on the above evidence. The PEB's 0% rating analogously to 5003 (degenerative arthritis) was supported by the USAPDA pain policy; but, did not account for VASRD §4.59 (painful motion) which was supported by the evidence; and, which would yield the minimal compensable rating of 10%. The VA's 10% rating was compliant with the contemporary VASRD general rating formula for the spine, and consistent with the evidence. Under the VASRD in effect, coding and rating options for the cervical spine were 5290 (spine, limitation of motion, cervical) and the same 5293

intervertebral disc code excerpted in the lumbar spine discussion. Even considering that abatement of the cervical radicular pain may have been a temporary effect of the epidural injection, there were no 'recurring attacks' in evidence that would achieve a rating higher than 10% under 5293. The 5290 ROM code offered a 10% rating for 'slight', 20% for 'moderate', and 30% for 'severe' limitation. Given the ROM limitation in evidence, potentially higher ratings could be entertained under 5290; and, IAW VASRD §4.7 (higher of two evaluations), members agreed that it was the preferential code for the Board's rating recommendation. All members agreed that the 'severe' rating was not supported by the evidence; but, deliberated between the 'slight' and 'moderate' rating levels. Although the combined ROM recorded in the MEB PT measurements could be fairly characterized as 'moderate' limitation overall, flexion was normal and the prevailing ROM evidence from the STR would not corroborate that conclusion. The post-separation VA ROM's could not be reasonably characterized as 'moderate' limitation; and, were more proximate to separation and performed by a physician examiner. Weighing probative value and considering the preponderance of the evidence, members agreed that the ROM limitation was more reasonably characterized as 'slight' than as 'moderate'. Considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), members agreed that a disability rating of 10% for the cervical spine condition under code 5290 was appropriately recommended in this case.

The Board additionally considered whether additional ratings could be recommended under a peripheral nerve code, as later conferred by the VA, for the cervical radiculopathy in this case. In this regard, it was also considered that the acuity was perhaps temporarily abated at separation. Firm Board precedence 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 spine rating. The sensory component in this case (documented only on the 6 month VA examination) has no functional implications; and, the motor impairment (non-dominant extremity) was either intermittent or relatively minor and cannot be linked to significant functional consequence. There is thus no evidence of separately ratable functional impairment (relevant to fitness) from the residual radiculopathy; and, the Board cannot support a recommendation for an additional disability rating on this basis.

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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. As discussed above, PEB reliance on DoDI 1332.39 and AR 635-40 for rating the lumbar spine condition, and on the USAPDA pain policy for rating the cervical spine condition was operant in this case; and, those conditions were adjudicated independently of those directives by the Board. In the matter of the lumbar spine condition and IAW VASRD §4.71a in effect at separation; the Board unanimously recommends no change in the PEB rating of 10%, but a change in code to 5295. In the matter of the cervical spine condition, the Board unanimously recommends a disability rating of 10%, coded 5290, IAW VASRD §4.71a in effect. The Board members unanimously agreed that no additional disability rating for the cervical radiculopathy could be recommended. There were no other conditions within the Board's scope of review for consideration.

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RECOMMENDATION: The Board recommends that the CI's prior determination be modified as follows, effective as of the date of his prior medical separation:

| UNFITTING CONDITION | VASRD CODE | RATING |
|---|---|---|
| Degenerative Disc Disease, Lumbar Spine | 5295 | 10% |
| Degenerative Disc Disease, Cervical Spine | 5290 | 10% |
| | **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120607, w/atchs.
Exhibit B. Service Treatment Record.
Exhibit C. Department of Veterans Affairs Treatment Record.

XXXXXXXXXXXXXXX
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 XXXXXXXXXXXXXXXX, AR20120021436 (PD201200630)

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

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
(  ) DoD PDBR
(  ) DVA