RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:XXXXXXXXXX CASE: PD-2022-00114
BRANCH OF SERVICE: ARMY SEPARATION DATE: 20060215

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E4, Health Care Specialist, medically separated for "low back pain" and "left leg pain," rated 10% each, with a combined disability rating of 20%.

CI CONTENTION: "Please review all conditions. Conditions that have been caused or resulted in from post spinal fusion and laminectomy and spondylosis may not have been taken into account. The use of a cane for walking has been needed and required due to pain/weakness/loss of sensation in my leg. Difficulty standing and/or sitting for extended periods of time, as well as difficulties standing from a sitting position. Erectile dysfunction, radiculopathy, incontinence, chronic low back pain. Condition, prognosis, and diagnosis stated being unable to perform any duties of his MOS and medically unacceptable per AR40-501, paragraph 3-30, subparagraph J." The complete submission is at Exhibit A.

SCOPE OF REVIEW: The panel's scope of review is defined in DoDI 6040.44. It is limited to review of disability ratings assigned to those conditions determined by the Physical Evaluation Board (PEB) to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the Medical Evaluation Board (MEB) but determined by the PEB to be not unfitting or non-compensable. Any conditions outside the panel's defined scope of review, and any contention not requested in this application, may remain eligible for future consideration by the Board for Correction of Military Records. The panel's authority is limited to assessing the fairness and accuracy of PEB rating determinations and recommending corrections when appropriate. The panel gives consideration to VA evidence, particularly within 12 months of separation, but only to the extent that it reasonably reflects the severity of disability at the time of separation.

RATING COMPARISON:

SERVICE PEB - 20050915			VARD - 20060620			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Low Back and Spondylosis with Grade III Spondylolisthesis L5/S1	5241-8720	10%	Residuals, Status Post (S/P) Spine Laminectomy and Fusion S1-L4-5	5241	20%	20060501
Left Leg Pain Post L4-S1 Fusion for L5	5241	10%	Chronic Left Radiculopathy S/P Spine Laminectomy and Fusion S1-L4-5	8720	20%	20060501
COMBINED RATING: 20%			**COMBINED RATING OF ALL VA CONDITIONS: 40%**			

ANALYSIS SUMMARY:

Low Back. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI underwent laminectomy of L4-S1 in September 2004 after a fall.

During the 26 April 2005 MEB examination (recorded on DD Forms 2807-1 and 2808), 10 months prior to separation, the CI reported recurrent back pain, numbness, and tingling.

Physical examination showed decreased range of motion (ROM) and weakness in the left leg, and decreased ROM in the back, with tenderness. An antalgic gait was present, but guarding or spasms were not mentioned.

The 17 August 2005 MEB NARSUM examination, 6 months prior to separation, noted complaints of low back pain for most of the day. His pain increased with prolonged sitting, standing, or walking. The pain extended down the left leg to the dorsum of all toes in the foot. Physical examination revealed a grossly asymmetric gait and use of a cane for ambulation, but guarding or spasms were not mentioned. Motor examination was intact except for pain and difficulty in flexing his left great and lesser toes. The thoracolumbar spine was "moderately restricted," and the examiner stated forward flexion "reaches below both knees with his fingertips."

At the 1 May 2006 VA Compensation and Pension (C&P) examination, 3 months after separation, the CI reported not much improvement with medication. He had difficulty getting out of bed, problems walking, climbing, bending, carrying, and lifting things. The ROM study showed 70 degrees of flexion (normal 90) with pain, and 170 degrees of combined ROM. The CI had a limping left gait with poor propulsion, and the examiner documented lower back spasms and guarding, but no abnormal spinal contour. The examiner responded, "yes" to the question of, "muscle spasm, localized tenderness or guarding severe enough to be responsible for abnormal gait or abnormal spinal contour."

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the low back condition 10%, dual-coded 5241-8720 (spinal fusion-neuralgia), citing painful motion. The VA rated the low back condition 20%, coded 5241 (spinal fusion), based on the C&P examination, citing the condition met the criteria for a 10% rating based on a combined thoracolumbar ROM greater than 120 degrees but not greater than 235 degrees, with an additional 10% rating added for pain on motion.

Panel members agreed that a 10% rating, but no higher, was justified for limitation of flexion (greater than 60 degrees but not greater than 85 degrees) and combined ROM (greater than 120 degrees but not greater than 235 degrees), as reported on the VA examination. The panel considered if a higher rating was justified for the presence of spasms, guarding and abnormal gait that was noted on the C&P examination. A 20% rating is granted for evidence of muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour. The NARSUM and MEB examiners documented the abnormal gait described at the C&P, but neither recorded the presence of back spasms nor guarding. The panel noted that the CI had significant sensory changes in his left lower extremity that caused him to use a cane for ambulation, which was likely responsible for his chronic abnormal gait. Panel members concluded, there was insufficient evidence that the CI's spasms were causing the abnormal gait and the abnormal gait could not be explained by the presence of back spasms or guarding, given the CI demonstrated abnormal gaits in the absence of guarding or spasms. There was no documentation of intervertebral disc syndrome with incapacitating episodes which would provide for a higher rating under that formula.

After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel concluded there was insufficient cause to recommend a change in the PEB adjudication for the low back condition.

Left Leg Condition. According to the STR and MEB NARSUM, the CI's left leg condition began in September 2004 following his back surgery. He was unable to ambulate until December 2004, but slowly improved until he was able to ambulate with a cane.

During the 26 April 2005 MEB examination, the CI reported left leg pain radiating to the foot, accompanied by tingling that required the use of a cane to walk. Physical examination showed decreased ROM and weakness in the left leg.

The 17 August 2005 MEB NARSUM noted complaints of left leg pain that began in the low back and extended down the leg to the dorsum of all toes in the foot. He was prescribed medication with not much improvement. The CI noted that sixty percent of his pain was in the left lower extremity from the knee to the foot. He required the use of a cane since February 2005. Physical examination showed a grossly asymmetric gait, and he held a cane in his right hand. Motor examination was intact except for some pain and difficulty in flexing his left great and lesser toes. Pinprick sensation was intact, with report of decreased sensation over the dorsum of the left foot and toes. Reflexes were normal. The CI had difficulty with left single leg stance.

The 1 September 2005 examination, noted the reported leg pain characterized as a constant burning pain in the left distal lateral lower extremity across the dorsum of the foot, varying in intensity. He took medication that offered limited benefit. Physical examination showed decreased circumference of the left calf, 1cm smaller than the right. The distal lateral leg and dorsum of the foot showed temperature change and had a slightly dusky color compared to the right side. Light touch sensation was perceived as heat sensation. He had normal pulses in the foot and ankle bilaterally.

At the 1 May 2006 VA C&P examination, the CI reported constant leg weakness, numbness, paresthesias, daily unsteadiness, weekly falls, dizziness, stiffness, and spasm. Physical examination revealed the CI walked with a limp and straight cane. Ankle and knee-jerk deep tendon reflexes were normal. There was decreased sensation on the dorsum, anterior and great toe.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the left leg condition 10%, coded 5241 (spinal fusion), citing moderate incomplete paralysis of the sciatic. The panel noted the sciatic nerve code is 8520 and moderate incomplete paralysis of the sciatic is a 20% rating. The VA rated the left leg condition 20%, coded 8720 (neuralgia), based on the C&P examination, citing moderate neuralgia of the left leg characterized by stiffness, spasm, pain, and weakness.

The 2 September 2005 memorandum to the PEB referenced a 1 September 2005 examination that noted evidence of muscle atrophy, antalgic gait and constant burning leg pain located at the left distal lateral lower extremity across the dorsum of the foot. The C&P examiner noted constant leg weakness, numbness, and paresthesias, as well as daily unsteadiness, weekly falls, and dizziness. Objective findings showed decreased sensation on dorsum, anterior and great toe. The C&P also noted the CI ambulated with a left limp and straight cane. The CI reported stiffness, spasm, and weakness. Panel members agreed, the evidence supports a moderate level of impairment, consistent with the PEB's written statement of "rated as moderate incomplete paralysis of the sciatic." The panel noted the analogous coding of sciatic used by the PEB for the back condition (spinal fusion-neuralgia), and the spinal fusion code for the left leg condition was in error. Panel members concluded; the analogous coding used for the back was intended for the leg.

After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 20% for the left leg condition, coded 8720.

BOARD FINDINGS: In the matter of the low back condition, the panel recommends a disability rating of 10%, coded 5241 IAW VASRD §4.71a. In the matter of the left leg condition, the panel

recommends a disability rating of 20%, coded 5241-8720 IAW VASRD §4.124a. There are no other conditions within the panel's scope of review for consideration.

The panel recommends the CI's prior determination be modified as follows; and, that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective the date of medical separation:

CONDITION	VASRD CODE	PERMANENT RATING
Low Back and Spondylosis with Grade III Spondylolisthesis L5/S1	5241	10%
Left Leg Pain Post L4-S1 Fusion for L5	5241-8720	20%
	COMBINED	**30%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20221108, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans Affairs Record

AR20230008069, XXXXXXXXX

XXXXXXXXX

Dear XXXXXXXXXX:

I accept the recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) to re-characterize your separation as a permanent disability retirement with the combined disability rating of 30% effective the date of your medical separation for disability with severance pay. Enclosed is a copy of the Board's recommendation and record of proceedings for your information.

The re-characterization of your separation as a disability retirement will result in an adjustment to your pay providing retirement pay from the date of your original medical separation minus the amount of severance pay you were previously paid at separation.

The accepted DoD PDBR recommendation has been forwarded to the Army Physical Disability Agency for required correction of records and then to the U.S. Defense Finance and Accounting Service to make the necessary adjustment to your pay and allowances. These agencies will provide you with official notification by mail as soon as the directed corrections have been made and will provide information on your retirement benefits. Due to the large number of cases in process, please be advised that it may be several months before you receive notification that the corrections are completed and pay adjusted. Inquiry concerning your correction of records should be addressed to the U.S. Army Physical Disability Agency, 1835 Army Boulevard, Building 2000, JBSA, Fort Sam Houston, TX 78234.

A copy of this decision has also been provided to the Department of Veterans Affairs.