RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900093 COMPONENT: ACTIVE

BOARD DATE: 20090709 SEPARATION DATE: 20070418

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SUMMARY OF CASE:

This covered individual (CI) was an NCO medically separated from the Army in 2007 after 5 years of service. The medical basis for the separation was a cervical condition. He developed neck pain in 2004 without any specific injury. He was treated conservatively and managed to complete an OIF deployment in 2005. His condition worsened with the rigors of deployment and resulted in medical profile. An MRI revealed two-level disc disease. The condition was not amendable to surgery and did not respond well enough to conservative management for continued service, resulting in a medical board. There were no other injuries or medical conditions associated with this case. He was referred to the PEB, found unfit and separated at 0% disability for the cervical condition.

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CI CONTENTION: ‘I believe that for the exceptionally meritorious service while serving in the U.S. Army, defending our country, I should get more than 0%.’

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective Date** |
| CHRONIC NECK PAIN SECONDARY TO DEGENERATIVE DISC DISEASE WITHOUT SIGNIFICANT  MOTOR NEUROLOGIC DEFICIT; RANGE OF MOTION LIMITED BY PAIN. | 5242 | 0 | 20070103 | CERVICAL SPINE DEGENERATIVE DISC DISEASE (CLAIMED AS NECK CONDITION) | 5237 | 10 | 20071113 | 20070419 |
|  |  |  |  | Non-PEB X 2 |  |  | 20071113 | 20070419 |
| **TOTAL Combined: 0 %** | | | | **TOTAL Combined (*incl non-PEB Dxs*): 20%** | | | | |

ANALYSIS SUMMARY:

The only issue before the board is rating of the cervical condition. Relevant goniometric exams are displayed below.

|  |  |  |  |
| --- | --- | --- | --- |
| Cervical ROM | Chiropractor (Passive)  6/8/06 | MEB (Active=Passive)  12/1/06 | VA C&P (Pain Thresholds)  11/13/07 |
| Flexion | > 45⁰ | 40⁰ | 45⁰ |
| Total | > 340⁰ | 290⁰ | 300⁰ |

The PEB rating invoked the pain rule. There is no radiculopathy or other residual relevant. There was no spasm, tenderness or abnormal contour.

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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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The PEB adjudication in this case reflected application of the service-specific ‘pain rule’ to the cervical rating, which was eliminated as a factor in this board’s rating. The range-of-motion exam performed by the MEB would have yielded a VASRD rating of 10% excluding the pain rule. The board was in unanimous agreement that a 10% rating under the same VASRD code applied by the PEB is the only reasonable recommendation.

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RECOMMENDATION: The BOARD recommends that the CI’s prior determination be modified as follows, effective as of the date of the CI’s prior medical separation.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| CHRONIC NECK PAIN SECONDARY TO DEGENERATIVE DISC DISEASE | 5242 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090128, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

