RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900116 BOARD DATE: 2009090929

SEPARATION DATE: 20050310

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was a WO1 Network Management Technician medically separated from the Army in 2005 after over 10 years of service. The medical basis for the separation was chronic neck pain and chronic low back pain. The CI had chronic neck pain since 1998 and chronic low back pain and since 2000. There was a history of a fall onto steps with an acute back injury, and no specific neck trauma. The CI underwent chiropractic care, Physical Therapy, TENS, used oral medications, and had progressive worsening of his pain that interfered with his ability to wear Kevlar and perform the deployment duties of his MOS. CI was referred to the PEB, found unfit and separated at 20% disability.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: "My neck and back are significantly worse than was previous indicated by the 20% rating. I endure constant headaches (VA Rating 0%) due to the condition of my neck (VA rating 20%). Further, my neck's condition is pushing my head forward. Additionally, I experience sleep loss (VA rating 0%) due to discomfort caused by my back condition. My back condition often causes severe pain to the point of significant loss of mobility."

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA Exam** 4 months post discharge | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Chronic Low Back Pain, w/ spondylolisthesis, without neurologic abnormality combined thoracolumbar ROM 195 degrees. | 5239 | 10% | 20050120 | Lumbar Spine DDD w/ insomnia | 5242  5243 | 20%  20% | Service records,  20050706 | 20050311  Then  20070716 |
| Chronic Neck Pain, with spinal stenosis without neurologic abnormality combined cervical ROM 320 degrees. | 5238 | 10% | 20050120 | Cervical Spine DDD and insomnia | 5238 | 10%  20% | Service records,  20050706 | 20050311  Then  20070716 |
|  |  |  |  | Right knee s/p ACL | 5261 | 10% |  | 20050311 |
|  |  |  |  | Chondromalacia Patella | 5099-5024 | 0% |  | 20070716 |
|  |  |  |  | Headaches | 8100 | 0% |  | 20070716 |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*incl non-PEB Dxs)*: 40**% from 20050311 | | | | |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY:

Chronic Low Back Pain. The CI had a history of chronic neck pain dating back to August 1998 and chronic low back pain dating back to October 2000. He has had X-­rays and MRI's of the neck and lumbar spine showing degeneration, but no frank herniated disc. He has been evaluated by Orthopaedic Surgery and received chiropractic care to include manipulation and electrical stimulation. He has received physical therapy care to include exercise therapy, ultrasound, and traction. He has been treated with non-steroidal anti-inflammatory drugs and oral steroids as well as Toradol injections for his pain. The CI was referred to a neurosurgeon to discuss surgical options. The neurosurgeon recommended that he needed to modify his activities to include restriction of heavy lifting, wearing of heavy jackets and high impact activities and recommended that the CI would likely require surgery in the future. He was referred to the Pain Clinic. The pain clinic physician offered epidural steroids. The CI made an informed decision to forego such treatment and it was not considered to be unreasonable.

The NARSUM lumbosacral exam noted active and passive range of motions (ROM) the same, and "caused discomfort on motion" (*no degree of onset noted*), positive right straight leg raise (SLR), gait was slow and stiff, tender to palpation and palpable muscle spasms. Flexion was 90˚ with discomfort and combined ROM was 195˚. Neurologic exam noted the absence of right patellar reflex (noted as due to past surgery), and slight decrease sensory exam of the right lateral calf. There is no other complete ROM noted in the records. EMG of the lower extremities was normal and there was no weakness or radiculopathy other than pain.

VA initial rating used the Service treatment records with flexion 75/90 extension 20/30, rotation 30/30 and lateral movement 30/30˚ with pain and L4-5 spondylolisthesis and disc bulge. Exam of 20050706 demonstrated abnormal gait and ROM of 40˚ flexion and painful motion.

The VA and Service exams were similar. However, the NARSUM did not note the degree of flexion where pain began, while the VA noted a pain limited flexion of 75˚. Absent the pain rule, either exam would meet the 20% thoracolumbar spine rating criteria. Slow and stiff gait would equate to an "abnormal" gait within VA general spine rating criteria "…muscle spasm or guarding severe enough to result in an abnormal gait…" which meets the 20% criteria using either Service or VA examination.

**Chronic Neck Pain.** The NARSUM ROM was noted as active and passive ROM the same, and caused discomfort on motion (*no degree of onset noted*). Flexion was 40˚ and caused discomfort and combined ROM was 320˚. There is no other complete ROM noted in the records. The CI had complaints of right shoulder and arm pain, tingling and numbness. The EMG of 20041117 documented "chronic C5-C7 cervical radiculopathies on the right mild to moderately severe." However, there were no sensory, reflex, or motor findings on physical exam. The Commander did not mention any loss of function limits attributable to the right arm/hand, and radicular pain is considered under the general spine rating.

VA initial rating used the Service treatment records with limited range of motion, with limited ROM, with flexion 45/45, extension 20/45, rotation 40/80 on the right and 30/80 on the left with painful motion shown. Exam of 20050706 demonstrated ROM with pain as 30-45/45, extension 10-20/45, rotation 40/80, and 30/80 on the left side. Lateral movement is 40/45 on the left and 30/45 on the right. The VA exam in 2007 indicated more limited cervical flexion and the CI's Cervical spine rating was increased to 20% effective 20070716

Cervical ROM was greater than 30˚ on the Service exam with combined ROM greater than 170˚ but not greater than 235˚ equating to a 10% rating. Pain did not further limit the ROM, nor was there abnormal cervical spine contour. The detailed VA cervical exam 4 months post-discharge was also rated at 10% and 10% is the correct rating level for the CI's cervical spine.

Right Knee Arthritis and ACL.Not contended. The MEB did not address the right knee and the Commander did not mention the knee as interfering with duty performance. The MEB physical did note the history and scar of the right knee ACL repair, but did not note disability. The VA rated the knee at 10% based on Service treatment records showing limited range of motion, with flexion to 130/140˚. Commander's memo specifically noted neck and back pain as unfitting and did not include any duty limitations due to CI's right knee.

Although there is no indication that the right knee rose to the level of being unfitting, it was not addressed by the disability records and appears to be outside of the scope of the Board.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 Board unanimously opined that no new unfitting condition should be added. The Board also unanimously agreed that the cervical spine rating of 5238 at 10% was correct and IAW the VASRD. Worsening of cervical pain and limitations as noted on the VA exam in 2007 was not an indicator for increasing the cervical spine rating level at the time of discharge. The Board voted by simple majority that the lumbar spine rating (LBP) should be rated at 20% due to muscle spasm or guarding severe enough to result in an abnormal gait. The single voter for dissent (who recommended no recharacterization; rating of 20% combined) elected not to submit a minority opinion.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of the CI’s prior medical separation.

|  |  |  |
| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| Chronic Low Back Pain | 5239 | 20% |
| Chronic Neck Pain | 5238 | 10% |
| Combined | 30% |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090204, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

