RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900198 COMPONENT: ARNG

BOARD DATE: 20090625 SEPARATION DATE: 20041115

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

SUMMARY OF CASE: This covered individual (CI) was an NCO medically separated from the Army in 2004 after 27 years of combined service (elected medical separation vs. retirement). The medical basis for the separation was cervical disc disease. Shortly after mobilization, he developed radiating neck pain associated with the requirement for Kevlar and load-bearing equipment in training. He was transferred to medical hold and did not deploy. He did not respond adequately to conservative treatment and was deemed not to be a surgical candidate on neurosurgical consultation. He was referred to the PEB, found unfit for the neck condition and separated at 10% disability. The PEB adjudication stated ‘This disability existed prior to service and was not permanently aggravated by service, but is compensable in accordance with 10 USC 1207a’. There is no suggestion that there was any EPTS deduction from the rating, however. The VA (less than one month after separation) initially denied service connection, based on the PEB language, but promptly conceded it on appeal and rated the condition at 10%. The CI contends that he should have been medically retired, stressing the service-connection issue and citing back pain as well.

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

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 did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. The PEB coding was appropriate, and rating was derived from the general rating formula for the spine IAW VASRD §4.71a. There were two range of motion exams in the service treatment record, either one of which would have yielded a 10% rating. As noted above, this was also congruent with the near-concurrent VA examination. The Board unanimously concluded that the PEB adjudication was fair. Consideration was given to application of an additional peripheral nerve code rating for the radicular symptoms. Consistent with the VA, it was unanimously concluded that there was no foundation for doing so. The CI’s contended back pain was not in evidence as a significant issue at the time of the MEB, nor was there any indication that it might have been unfitting if so. Back pain was noted as a service-connected condition by the VA, but rated 0%. The Board unanimously concluded that there was no justification for adding this condition to the separation rating.

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

RECOMMENDATION:

The Board therefore recommends that there be no re-characterization of the CI’s Physical Evaluation Board adjudication of 21 OCT 2004.

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090222, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

