RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD0900269 COMPONENT: reserve

BOARD DATE: 20090730 SEPARATION DATE: 20080228

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

SUMMARY OF CASE: This covered individual (CI) was a Vehicle Operations SSgt medically separated from the Air Force in 2008 after more than seventeen years of combined active and inactive service.

This CI worked in a physically demanding job in a lumber mill and had surgery to fuse cervical vertebrae C5-7 in 1997 outside of his reserve duties. He also had a fusion of C4-5 and left carpal tunnel release surgery in 2004. He was able to perform all functions of his civilian job. He was activated August of 2005 and deployed for Operation Enduring Freedom. No specific injury occurred but while deployed he began to have right shoulder pain and numbness and tingling that radiated down his right arm into his right hand. He received conservative therapy while deployed and followed up after he re-deployed in March of 2006. A line of duty investigation determined his problem was EPTS-Service Aggravated. He subsequently had a right carpal tunnel release and a right ulnar nerve decompression surgery in September 2006. However even after these surgeries he continued to have an abnormal EMG and a neurosurgeon wrote in October of 2007 that he had C5-6 and right C8 radiculopathy, a right ulnar nerve compression, and bilateral median nerve compression. His neck and shoulder pain and numbness and weakness in both upper extremities, right greater than left, continued and he was unable to work in his civilian job in the lumber mill after he was released from active duty in late November 2006. The company he worked for was unable to accommodate his physical limitations and he lost his job. He was granted Incapacitation Pay.

Appropriate therapy failed to alleviate his symptoms and he was referred to the Air Force Physical Evaluation Board (PEB). The Informal PEB determined in January 2008 that he was unfit for continued military service and he was then separated with a combined total of 20% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations. The PEB rated Right arm numbness and weakness. Radiculopathy with mild weakness of deltoid, wrist extension, grip, and interosseous muscles 8513 at 20% and Chronic neck pain, status post noninstrumented fusion of C4-7 and plated anterior cervical diskectomy fusion of C4-5 5241 at 10%. The PEB stated these ratings combined to 29% and the PEB then deducted one half for EPTS (existed prior to service) factor (29-14=15) and rounded to 20%. No rationale for determining 50% as the portion of his disability that was aggravated by service was given. An error was made in combining the ratings: when 20% and 10% are combined, the resulting percentage is 28%, not 29%.

Using evaluations completed at both eleven months and one month prior to the time of separation from the Air Force, the Veterans Administration (VA) rated this disability at a combined rating of 20% with Cervical radiculopathy, right upper extremity (Incurred) 8599-8515 at 10% and Cervical Spine status post fusion surgery with multiple level degenerative disease (Aggravated) at 10%. The VA also rated Cervical radiculopathy, left upper extremity (Incurred) 8599-8515 at 10%, right elbow status post ulnar nerve surgery with degenerative olecranon spur (Incurred) 5099-5015 at 10%, right scapular pain with evidence of right rhombosis trigger point and myofascial pain syndrome (Aggravated) at 10%, Right wrist status post carpal tunnel release surgery with residual scar and with large calcification and degenerative change (Incurred) at 10%, Thoracic spine degenerative changes 5243 at 10%, and both Hypertension (Incurred) 7101 and Syringomyelia (Incurred) at 0% for an initial combined total of 60% which includes a bilateral factor of 4.1 for 5024, 5015, 5215, 8515, and 8515. This was later increased to 70% when Major depression and pain disorder 9434 was added at 30% effective 20071130. The CI also was granted individual unemployability effective 20070113. The VA noted that his cervical spine and right shoulder disabilities existed prior to service and were aggravated by service, but determined that the preservice percentage for each was zero and no deduction was necessary.

The CI contends that he was able to work in both his civilian and military jobs until he was deployed and he feels a higher rating would allow more benefits to help him and his family. He did appeal the decision for disability separation to the AF Board of Correction of Military Records (BCMR), asking for reduced retirement at age sixty in lieu of disability separation with severance pay. However, the BCMR determined he was not eligible for this as his injury was considered to be in the line of duty.

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

BOARD FINDINGS: IAW DoDI 6040.44, the Board used the Veteran’s Affairs Schedule of Rating Disabilities (VASRD) as the most favorable basis for rating. After careful consideration of all available information, the Board concluded by simple majority that the CI’s condition is appropriately rated as Radiculopathy with mild weakness of deltoid, wrist extension, grip, and interosseous muscles 8513 at 20% and Chronic neck pain, status post noninstrumented fusion of C4-7 and plated anterior cervical diskectomy fusion of C4-5 5241 at 20% using the VASRD including the general rating formula for diseases and injuries of the spine. This yields a combined total rating of 40%.

While the CI did have a preexisting condition there is no evidence that he had any disability prior to his deployment. He was able to work in his physically demanding civilian job prior to his deployment. At his Pre-Deployment Health Assessment on 20050825, he was considered fully deployable; no problems were identified, no consults were requested, and he had no profile limiting physical activity. On a previous history and physical done 20030112, a history of cervical surgery and symptoms of a painful shoulder, numbness or tingling, recurrent back pain, and arthritis were noted but the physical examination was marked as normal in all areas and he had no duty restrictions. The Board determined that his level of disability was zero prior to his deployment. The Board was unable to determine what portion of his disability after deployment was due to natural progression of disease and what portion was due to service aggravation. Therefore while acknowledging that the CI’s condition was EPTS-Service Aggravated, the Board unanimously agreed that no deduction can be taken from the disability rating.

The Board determined the PEB accurately rated the CI’s radiculopathy using VASRD 8513 at 20%. The VA examinations of March 2007 and January 2008 are consistent with the AF examination of July 2007. The radiculopathy is documented by both abnormal EMG and muscle weakness on examination. Both VA and AF exams show weakness in right hand interosseous muscles, right wrist extension, and right deltoid muscles. These disabilities encompass upper, middle, and lower radicular groups of the upper extremity and 8513 is the appropriate code.

The AF examination of the CI’s cervical spine in July 2007 is consistent with the VA examination of March 2007 and both exams justify a rating of 10% for cervical fusion and multilevel degenerative disease based on limitation of range of motion (ROM) of the cervical spine; flexion was limited to forty degrees. However, the VA examination of January 2008, which was done one month prior to separation, documents a more limited ROM. Cervical flexion was limited to thirty degrees and the total combined ROM was 170 degrees; this justifies a 20% rating for the cervical spine.

The Board also examined each of the other conditions rated by the VA and did not find any to be unfitting.

The single voter for dissent (recommended maintaining the original rating of 8513 Right arm numbness and weakness at 20% and 5241 Chronic neck pain status post cervical fusion at 10% without deduction for EPTS) 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 disability retirement, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| Right arm numbness and weakness. Radiculopathy with mild weakness of deltoid, wrist extension, grip, and interosseous muscles | 8513 | 20% |
| Chronic neck pain, status post noninstrumented fusion of C4-7 and plated anterior cervical diskectomy fusion of C4-5 | 5241 | 20% |
| Combined | 40% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090330, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

PDBR PD-2009-00269

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) and Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating to xxxxxxxxxx be corrected to show that:

a.  The portion of the diagnoses in his finding of unfitness for chronic neck pain, status post noninstrumented fusion of C4-7 and diskectomy fusion of C4-5, VASRD code 5241 was rated at 20%, rather than 105; with a combined rating of 40%, rather than 20%.

b.  On 27 February 2008, he elected spouse-only coverage under the Survivor Benefit Plan (SBP) based on full retired pay, naming MaryJo Nichols as the eligible spouse beneficiary.

c.  He was not discharged on 28 February 2008 with entitlement to disability severance pay; rather, on that date he was released from active duty and on 29 February 2008 his name was placed on the Permanent Disability Retired List.

JOE G. LINEBERGER

Director

Air Force Review Boards Agency