RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900596 SEPARATION DATE: 20050930

BOARD DATE: 20110316

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an HM2 (8404, Corpsman) medically separated from the Navy in September 2005. The medical basis for separation was chronic neck pain (failed cervical spine surgery). The CI underwent three cervical spine procedures: two at C6-C7 and one at C5-C6. Post-operatively, he continued to have pain, and he was referred to the Physical Evaluation Board (PEB). He was found unfit for continued military service due to chronic neck pain (failed cervical spine surgery). The PEB also considered obesity, which was determined to be Category IV (not a physical disability). The CI accepted the PEB findings and was separated at 10% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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CI’s CONTENTION: The CI states, “Cervical Fusion. I believe my rating is inaccurate due to constant pain, frequent headaches, often turning to migraines and lost sensation in my right index finger and thumb that never returned from surgery #1 (I’ve had 3). The pain and discomfort in my neck will often radiate to my trapezius muscle. The headaches, neck pain, and finger numbness have persisted from the first surgery. The finger numbness was an issue that improved after the 1st surgery but has never fully returned. I estimate that I have about 60-70% of the feeling in the affected fingers.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB Dated 20050804** | | | **VA (6 mo. after Separation) – All Effective 20051001** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Cervical Spine Condition  (Failed C-spine Surgery) | 5241 | 10% | DDD of Cervical Spine, w/Headaches | 5241 | 10% | 20060509 |
| Obesity | Cat. IV | | No VA Entry | | | |
| No Additional PEB Entries | | | Radiculopathy, assoc. w/DDD of C-Spine | 8516 | 10% | 20060615 |
| Back Low Pain | 5237 | 10% | 20060509 |
| Tinnitus | 6260 | 10% | 20060609 |
| Sleep Apnea | 6847 | 50% | 20060509 |
| Other conditions x 5, all rated at 0% | | | |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 70%** | | | |

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ANALYSIS SUMMARY:

Cervical Spine Condition. In June 2003, the CI developed pain in the right arm, with tingling in the 2nd and 3rd digits of the right hand. Magnetic Resonance Imaging (MRI) of the C-Spine revealed degenerative changes at C5-C6, and a right disk protrusion at C6-C7 which narrowed the right neural foramen. He was initially treated conservatively with medication and physical therapy. Failing conservative therapy, he underwent an anterior C6-C7 diskectomy and fusion (with allograft). His symptoms improved; however, with gradual loss of the allograft he required a re-operation in May 2004. This second procedure was an anterior diskectomy and osteophytectomy (with allograft), and placement of Atlantis Plating System. This provided a good surgical result at C6-C7, but he again developed increased neck and arm pain. A herniated disk was diagnosed, and he had a diskectomy and fusion performed at C5-C6 on 12 April 2005.

At his Medical Evaluation Board (MEB) examination (three months prior to separation), range of motion (ROM) was not measured. The PEB remarks, four months after his third cervical spine surgery and one a half months before separation, noted “good” range of motion for the C-spine with normal motor function. The graft was incorporating well with excellent placement shown on the X-ray. Other notes included, “neck mobility improving,” “moves without problem,” and “now doing well with occasional pain.” The commander’s statement made no significant comments related to a specific medical condition. The Navy PEB coded the cervical spine condition as 5241 (spinal fusion), with a 10% disability rating.

At the VA Compensation and Pension (C&P) spine evaluation on 9 May 2006 (eight months after separation) the CI complained of chronic stiffness, with reduced ROM. He denied weakness or radiation of pain. On examination, he had some tenderness to palpation and pain with motion of the neck against resistance, but no spasms were noted. He also reported some tenderness in the paravertebral areas of the cervical spine, and neck pain when elevating the arms more than 90 degrees from the shoulders. Cervical forward flexion was 15 degrees (normal is 45⁰), and his combined cervical spine ROM was 115 degrees (normal is 340⁰). Repetition times five was performed, with ROM unchanged. The goniometric ROM data is summarized in this table:

|  |  |  |
| --- | --- | --- |
| **Cervical** | **Separation Date: 20050930** | |
| **Goniometric ROM** | **MEB – (ROM not measured)** | **VA C&P – 20060509** |
| Flexion (45⁰ normal) | --- | 15⁰ |
| Combined (340⁰ normal) | --- | 115⁰ |

The VA granted service connection for cervical degenerative disc disease (DDD), with headaches. They assigned a 10% disability rating based on reduced ROM, and painful motion.

The Board examined all evidentiary information available. Both the VA and the Navy PEB coded the neck condition as 5241 (spinal fusion), and rated it 10%. The Board considered the language that was used on the PEB remarks, dated 11 August 2005 (just six weeks prior to separation from service). Cervical motion was described as good and improving, but was not described as normal or full. The Board also reviewed the VA C&P spine exam. Being eight months after separation, the Board discussed how much probative value the May 2006 exam should carry. Without any goniometric measurements performed at the point of separation (September 2005), the Board must interpolate between the two examinations just described. The Board felt that it was more likely than not, that the CI’s cervical forward flexion at separation was greater than 15 degrees but not greater than 30 degrees, and combined cervical ROM at separation was not greater than 170 degrees. After due deliberation and careful consideration of all the evidence, the Board unanimously recommends a permanent separation rating of 20% for the cervical spine condition, coded 5241 IAW VASRD §4.71a.

Radiculopathy. The CI made specific contention related to his loss of sensation in the right thumb and index finger. In 2003, his radicular symptoms included pain radiating down the right arm to the forearm in a C6 dermatomal pattern, with numbness and tingling in the right hand. These symptoms did improve following his neck surgery, with only the paresthesias in the right hand remaining. There was no history of right upper extremity weakness or motor dysfunction documented in the military records or any of the VA evaluations. There is no evidence in the Disability Evaluation System (DES) file that supports this sensory-only radiculopathy (right thumb and index finger) as unfitting at separation. The Board therefore cannot recommend this condition as an additional unfitting condition at separation.

Headaches. The CI also made specific contention related to his headaches. The DES file is silent with regard to headaches, with no mention of headaches in the MEB examination history and no diagnosis was made related to headaches. Therefore, the headache condition is outside the scope of this Board.

Other PEB Conditions. Another condition adjudicated by the PEB was obesity. The Board unanimously agrees that the CI’s obesity did not constitute a physical disability. All evidence considered there is not reasonable doubt in the CI’s favor supporting re-characterization of the PEB adjudication for this condition.

Remaining Conditions. Additional conditions were documented in the DES file. None of these conditions were clinically significant during the MEB/PEB period, none carried attached profiles, and none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally, lumbar strain was noted in the VA rating decision proximal to separation, but was not documented in the DES file. The Board does not have the authority to render fitness or rating recommendations for any conditions not considered by the DES. The Board therefore has no reasonable basis for recommending any additional conditions for separation rating.

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 Board 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. In the matter of the cervical spine condition, the Board unanimously recommends a rating of 20%, coded 5241 IAW VASRD §4.71a. In the matter of the radiculopathy and any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Cervical Spine Condition | 5241 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090928 w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXX, FORMER USN, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 25 Mar 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (reference (b)).

2. The subject member’s official records are to be corrected to reflect the following disposition:

a. Separation from the naval service due to physical disability rated at 20 percent (increased from 10 percent) effective 30 September 2005.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)