RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1000015 SEPARATION DATE: 20091009

BOARD DATE: 20110608

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CW3 (131A, Field Artillery Technician) medically separated for back and neck pain. Initially injured in a training exercise, he ultimately required lumbar and cervical spinal fusions at the L4-5 and C5-7 levels. He did not respond adequately to treatment to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Back pain, neck pain, migraine headaches and bilateral carpal tunnel syndrome were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Ten other conditions were forwarded on the MEB submission as medically acceptable conditions. The Informal PEB (IPEB) found the back pain and neck pain conditions unfitting and rated them 10% each, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI did not accept the IPEB findings and requested a formal hearing. The Formal PEB (FPEB) found the back pain and neck pain conditions unfitting, and rated them 10% each. The CI did not accept the FPEB findings and appealed to the US Army Physical Disability Agency (USAPDA). The USAPDA upheld the FPEB adjudication. The CI was thus medically separated with a 20% combined disability rating.

CI CONTENTION: “The Physical Evaluation Board did not consider the new range of motion for my cervical and lumbar spine dated 10 November 2008. The PEB did not consider the new evidence shown on MRIs taken 30 December 2008. The Thoracic Spine had new herniated discs. The Cervical and lumbar spine IAW VASRD 4.10, 4.40, and 4.59 should have been rated at 20% each and combined at 40%. VA combined rating is 40%.”

Rating comparison chart found on next page.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army FPEB – 20090130** | **VA (3 Mo. Before Separation) – All Effective 20091010** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Lumbar Spine Condition | 5241 | 10% | Thoracolumbar Spine Condition | 5242 | 20% | 20090715 |
| Cervical Spine Condition | 5241 | 10% | Cervical Spine Condition | 5242 | 20% | 20090715 |
| Migraine Headaches | ↓Not Unfitting↓ | Migraine Headaches | 8100 | 0% | 20090715 |
| Traumatic Brain Injury  | 8045 | 40% | 20090805 |
| Post-Concussive Syndrome  |
| Post-Concussion Vertigo | 8045-6204 | 10% | 20090805 |
| Bilateral Carpal Tunnel Syn | Left Carpal Tunnel Syn | 8515 | 10% | 20090715 |
| Right Carpal/Cubital Tunnel Syn | 8515 | 10% | 20090715 |
| Right Epicondylitis/Cubital Tunnel  | Rt. Elbow Medial Epicondylitis | 5299-5024 | 10% | 20090715 |
| Allergic Rhinitis | Sinusitis w/Allergic Rhinitis | 6522-6512 | 10% | 20090715 |
| Mild Intermittent Asthma | Asthma with Bronchitis | 6600-6602 | 10% | 20090715 |
| Sleep Apnea Requiring CPAP  | Sleep Apnea | 6847 | 50% | 20090715 |
| Restless Leg Syndrome  | Bilateral Restless Leg Syndrome | 8699-8620 | 0% | 20090715 |
| Left Knee Pain | Chondromalacia, Left Knee | 5014 | 10% | 20090715 |
| Benign Prostrate Hypertrophy | Benign Prostatic Hypertrophy | 7527 | 40% | 20090715 |
| Tinnitus and Hearing Loss  | Tinnitus | 6260 | 10% | 20090722 |
| Depression (MEB Dx 13) | Posttraumatic Stress Disorder | 9411 | 30% | 20090714 |
| ↓No Additional MEB Entries↓ | Left Shoulder Osteoarthritis | 5003 | 10% | 20090715 |
| Right Shoulder Osteoarthritis | 5003 | 10% | 20090715 |
| Dequervain’s Tenosynovitis (L)  | 5099-5024 | 10% | 20090715 |
| Dequervain’s Tenosynovitis (R) | 5099-5024 | 10% | 20090715 |
| Left Elbow Medial Epicondylitis | 5299-5260 | 10% | 20090715 |
| Right Knee Retropatellar Pain  | 5299-5260 | 10% | 20090715 |
| 0% x 4 / Not Service Connected x 4 | 20090715 |
| **TOTAL Combined: 20%** | **TOTAL Combined: 100%** |

ANALYSIS SUMMARY:

Neck and Back Conditions. There were three goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These three ROM exams are summarized in the chart below.

|  |  |
| --- | --- |
|  | Separation Date: 20091009 |
| Goniometric ROM | MEB – 17 mos Pre Sep | PT – 11 mos Pre Sep | VA C&P – 3 mos Pre Sep |
| Lumbar | Cervical | Lumbar | Cervical | Lumbar | Cervical |
| Flexion  | 70⁰ | 35⁰ | 65⁰ | 20⁰ | 55⁰ | 25⁰ |
| Combined  | 210⁰ | 210⁰ | 175⁰ | 110⁰ | 135⁰ | 240⁰ |
| Comments | No spasm | No spasm | No spasm | No spasm | No spasm | No spasm |
| §4.71a Rating | 10% | 10% | 10% | 20% | 20% | 20% |

Review of the service treatment record (STR) reveals a number of exams with ROMs recorded over the two-year period, from the onset of MEB proceedings to the CI’s final separation from service. Many of these exams are complete, well documented, and internally consistent. These exams faithfully address the essential VASRD ratable criteria to include normal gait, absence of spasm, normal spinal contour, total ROM as well as ROM at onset of pain, and any additional limitations with respect to DeLuca criteria.

The VA exam was also well documented. The examiner noted normal gait, no spasm or loss of contour of any spinal segment, and no evidence of radiating pain, muscle weakness, or guarding of movement. However, there were some internal inconsistencies in the VA examination, including varying descriptions of spinal contour and measured ROM only to the point at which pain began in every plane for both cervical and thoracolumbar, despite the observation that there was no guarding of movement. Additionally, a compensation and pension (C&P) exam performed three weeks prior had shown thoracolumbar ROMs of 80⁰ flexion and 195⁰ combined, with no recorded evidence of any adverse event in the brief interval between exams to account for the markedly diminished ROMs recorded. In weighing all of these factors, the Board agreed that the 11-month pre-separation exam carried the highest probative value for rating purposes. The Board also noted that the CI’s contention included an assertion that the PEB did not consider this exam in their rating decision. There was no evidence of ratable peripheral nerve impairment in this case. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the neck condition and 10% for the thoracolumbar back condition.

Other PEB Conditions. Migraine headache and carpal tunnel syndrome were adjudicated as “not unfitting” by the PEB. Although cited on the CI’s permanent profile, there were no duty limiting restrictions due to these two conditions. Ten other conditions were forwarded by the MEB as medically acceptable, and adjudicated as “not unfitting” by the PEB. None of these remaining conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Shoulder pain, knee pain, and several other conditions were also documented in the Disability Evaluation System (DES) file. None of these conditions were clinically significant during the MEB/PEB period, none carried profiles, and none were implicated in the commander’s statement. These conditions were all 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, bilateral tenosynovitis, right elbow epicondylitis and several other conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. The Board does not have the authority under DoDI 6040.44 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 unfitting conditions for separation rating.

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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 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 neck pain condition, the Board unanimously recommends a rating of 20% (coded 5241) IAW VASRD §4.71a. In the matter of the back pain condition, the Board unanimously recommends a rating of 10% (coded 5241) IAW VASRD §4.71a. In the matter of the migraine headaches, carpal tunnel syndrome, the ten other medically acceptable conditions cited in the MEB, and any other 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 and that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Neck Pain  | 5241 | 20% |
| Back Pain  | 5241 | 10% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100107, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.



