RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1000121 SEPARATION DATE: 20090310

BOARD DATE: 20101008

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SUMMARY OF CASE: This covered individual (CI) was an active duty SSG, 92Y, Supply Specialist, medically separated from the Army in 2009 after 5 years of service. The medical basis for the separation was a neck condition (cervicalgia with left side radiculopathy status post cervical diskectomy and fusion, C4-5 and C5-6). The CI had a long history of neck pain which was tolerable until July 2007 when she was involved in a motor vehicle crash, a rear end collision. Her neck condition failed to improve and she was seen by a neurosurgeon who recommended surgery of cervical diskectomy and interbody fusion, C4-5 and C5-6. Following surgery, and intensive post-surgical therapy there was only minimal improvement. The neck condition still interfered with the CI’s ability to satisfactorily work in her MOS and she was issued a permanent U-3 profile and underwent a Medical Evaluation Board (MEB). Cervicalgia and cervical radiculopathy of the left arm were addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) on the DA Form 3947 as medically unacceptable IAW AR 40-501. Migraine headaches; sleep apnea; gastroesophageal reflux disease (GERD); and depressive disorder, not otherwise specified were forwarded on the DA Form 3947 as medically acceptable conditions IAW AR 40-501. Additional conditions supported in the DES packet are discussed below, but were not forwarded for PEB adjudication on the DA Form 3947 (chronic sinusitis and hyperhidrosis). The informal PEB adjudicated the neck condition (spinal fusion) as unfitting, rated 10% in accordance with the Veterans Administration Schedule for Rating Disabilities (VASRD) General Rating Formula for Diseases and Injuries of the Spine for forward flexion of the cervical spine not greater than 40 degrees with consideration given to VASRD §4.59 (painful motion). The CI made no appeals, and was thus medically separated with a 10% disability rating.

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CI CONTENTION: The CI states: ‘’ Veteran was discharged pursuant to the findings of a Medical Evaluation Board on 11/12/2008. Veteran was subsequently discharged on 3/10/2009 under Honorable Conditions due to disability at 10% for disability associated with surgery and fusion to C4-5 and C5-6. The subsequent pain associated with this surgery has resulted in periods of major depressive disorder with migraine headaches.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20081126** | | | **VA (pre Separation) – All Effective 20090311** | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | | **Code** | **Rating** | **Exam** |
| Cervical Spinal Fusion | 5241 | 10% | Cervical Fusion C4/5/6 w scar … | | 5242 | 10% | 20090203 |
| Scar, right side of neck | | 7800 | 0% | 20090717 |
| Sleep Apnea | Not Unfitting | | Sleep Apnea | | 6847 | 50% | 20090203 |
| Depressive Disorder, NOS | Not Unfitting | | Depressive Disorder | | 9434 | 30% | 20090209 |
| GERD | Not Unfitting | | GERD | | 7346 | 10% | 20090203 |
| Migraine headaches | Not Unfitting | | Migraine …& Tension Headaches | | 8100 | 0%\* | 20090203 |
| ↓No Additional DA Form 3947 Entries↓ | | | Bilateral Pes Planus | | 5276 | 10% | 20090203 |
| Lumbar Strain | | 5237 | 10% | 20090203 |
| Right Hallux Valgus | | 5280 | 0% | 20090717 |
| Bilateral Achilles tendonitis | 5099-5024 | | 0% | 20090203 |
| Cervical Cyst | 7699-7612 | | 0% | 20090203 |
| Hyperhidrosis | 7899-7806 | | 0% | 20090203 |
| Chronic sinusitis … & allergic | 6522-6512 | | 0% | 20090203 |
| Non-PEB X 12 / NSC X 1 | | | | |
| **TOTAL Combined: 10%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 80%** | | | | |

\* Migraine/Mixed Headaches, rated 10% effective 20090612

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ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for pain and conditions which will predictably worsen over time. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration.

Spinal Fusion (cervical) with Radiation of Pain into Upper Extremity. There were eight range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. The five exams proximate to separation are summarized in the chart below.

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| --- | --- | --- | --- | --- | --- |
|  | Surgery: 20080222 Separation: 20090310 | | | | |
| Cervical ROM | Military 20080530 | Military 20080627 | NARSUM 20080808 | MILITARY 20081015 | VA C&P 20090203 |
| Flex (45°) | 45° | 45° | 40° | 20° | 35° |
| Comb (340°) | 305° | 320° | 260 | 200° | 260° |
| 4.71a Rating | 10% | 10% | 10% | 20% | 10% |
| Comments | w/spasm | w/pain | w/pain | w/pain | w/pain |

Gait showed reduced body on head rotation until the 20080627 exam, where it was normal, as it was on subsequent exams. The Physical Therapy (PT) exam, on 20081015, documented 21° flexion [20° for rating IAW VASRD General Rating Formula for Diseases and Injuries of the Spine, NOTE (2)], which is below the 30° threshold for a §4.71a rating of 20%. The numerous preceding PT and physician accomplished ROMs never demonstrated this level of disability. The VA exam by a physician follows the 20081015 PT exam, is more comprehensive and accomplished by a physician. The 20081015 exam appears to be an outlier and does not carry the probative value by itself to justify a 20% recommendation from the Board. The Board adjudged the pre-separation VA exam as having the highest probative value for separation rating. The CI had pain as a major component of her cervical spine disability, and is considered within the General Rating Formula for “With or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease.” The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB chose 5241, Spinal Fusion and the VA chose 5242, Degenerative arthritis of the spine. There was no evidence of ratable peripheral nerve impairment in this case. The CI’s non-pain radicular symptoms were entirely sensory, consisting of occasional numbness of the left hand. The VA exam specifically noted “no numbness” and all exams proximate to separation demonstrated normal sensory and motor exams of the upper extremities. The documented non-pain radiculopathy was noted to be relatively minor and not linked to fitness, and there was no motor component that had any bearing on fitness. This leaves no grounds for Board recommendation of an additionally unfitting neuropathy, and there are no diagnostic underpinnings for any other ratable disability referable to the upper extremities. The Board, therefore, cannot recommend any upper extremity conditions as additionally unfitting for separation rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB adjudication for the cervical spinal condition, 5241, at 10%.

Depressive Disorder. The CI contends that the pain associated with the neck surgery has resulted in periods of major depressive disorder with migraine headaches. The depressive disorder was not unfitting at the time of the MEB (it was profiled as S-2). Although the MEB’s judgment that a condition meets AR 40-501 retention standards is but a factor in the PEB’s fitness determination, it raises the bar for an adjudication of unfitting. The psychiatrist’s evaluation for the MEB in Aug 2008 specifically noted that the CI’s depressive symptoms, which began in 2007, did not and forseeably would not restrict her occupational or military performance, and that her condition was medically acceptable IAW AR 40-501. Global Assessment of Functioning (GAF) was assessed in the range which connotes mild transient psychiatric symptoms, expectable reactions to psychosocial stressors, and no more than slight impairment in social, occupational, or school functioning (GAF = 70-75). A psychologist’s evaluation for the VA one month pre-separation exam (20090209) noted onset of depression to 2004 and showed greater anxiety and depression than previously documented, and stated the CI’s psychiatric symptoms cause “intermittent inability to perform occupational tasks although generally the person is functioning satisfactorily…” Global functioning was rated in the moderately impaired range (GAF = 55). During the timeframe of this examination, one would expect the CI to experience an increase in symptoms of stress and anxiety due to external stressors, as her transition from the military loomed less than one month away. This is reflected in the Axis IV diagnosis identified during this examination, “Problems related to the social environment (adjustment to returning to civilian life),” and is also reflected in the lower GAF score. There are several observations that suggest the CI’s mental condition was not unfitting at the time of separation: 1) The CI had completed 5 years of military service with no evidence of significant duty impairments due to mental illness. 2) The physical profile was S-2 with no weapon restriction. 3) The Commander’s Statement and NCOER suggest satisfactory performance within the limits of the physical profile. 4) The history obtained by the examiner at the time of the MEB physical resulted in an opinion that the depression was not interfering with duty and would not foreseeably do so. 5) Several service treatment record (STR) entries after the CI’s neck surgery documented cursory mental status exams and/or the psychiatric component of systems review as normal. No suggestion of psychiatric impairment is evidenced elsewhere in the STR including the MEB psychiatric addendum. 6) The CI never sought mental health evaluation and was never treated for mental illness at any time while on active duty (low, non-psychotherapeutic dosage of nortriptyline [25mg], was prescribed for chronic pain). The Board therefore determined that there was not reasonable doubt in the CI’s favor supporting the addition of depression as an unfitting condition for separation rating.

Migraine Headaches. Migraine headaches were also noted on the PEB as not unfitting, as there was no evidence of prostrating attacks, hospitalizations, or interference with military performance. After separation, the CI was reevaluated on 20090717, where she complained of increased severity and frequency of headaches (weekly attacks of 1-2 days’ duration, most attacks prostrating). She subsequently received an increase in the VA rating from 0% to 10% effective 20090612. An evaluation of 10% was assigned because she took medication for her headaches, which were characterized by prostrating attacks averaging one in two months over the previous several months. This was adjudged to be a worsening of the CI’s headache condition. The Board cannot find any evidence to support an opinion that the headache condition had risen to the level of an unfitting impairment at the time of separation. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB adjudication for the headache condition as not unfitting.

Other DA Form 3947 Conditions (Sleep Apnea [OSA]; GERD): These conditions were judged to be within AR 40-501 standards, were not profiled, and were not identified as impairments in the Commander’s statement. PEB’s across the services do not routinely find sleep Apnea/OSA, with or without Continuous Positive Airway Pressure (CPAP) requirement, unfitting if symptoms are controlled and functioning is unimpaired. The burden of providing CPAP in field and deployment environments is not considered to be a critical factor with the common availability of portable generators and sanitary facilities. The PEB’s fitness adjudication was therefore expected and reasonable. The CI ‘s GERD appeared to be long standing and controlled. There were no indications that any gastrointestinal symptoms rose to the level of being unfitting. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB adjudication for Sleep Apnea or GERD conditions as not unfitting. Several other relatively minor medical conditions were identified in the NARSUM and MEB physical, including chronic sinusitis, hyperhidrosis, and bleeding hemorrhoids. They had no connection with fitness and are not relevant for Board consideration as additionally unfitting and ratable.

Other Conditions: Only Bilateral Pes Planus (flat feet) and a lower back (Lumbar Strain) condition were rated at 10% or higher by the VA within one year following separation. Both conditions were noted in the MEB history and physical without any profile restrictions or limitations in duty. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of Pes Planus or Lumbar Strain as unfitting conditions for separation rating. There are therefore no additional conditions in this case appropriate for Board recommendation as additionally unfitting 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 condition (cervical spine fusion with radiation of pain in the upper extremity), and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the depression, migraine headaches, Sleep Apnea [OSA] and GERD conditions the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Cervical Spinal Fusion w/Pain Radiation into Left Arm | 5241 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100302, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

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Deputy Director

Physical Disability Board of Review

