RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: COAST GUARD

CASE NUMBER: PD1000771 SEPARATION DATE: 20031119

BOARD DATE: 20111129

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty MK2/E-5 (Communications Watch Stander/Boat Engineer), medically separated from the U.S. Coast Guard in 2003. The Medical Evaluation Board (MEB) narrative summary (NARSUM) indicates that the medical basis for the separation was neck pain subsequent to a cervical spine fracture surgically repaired after a snowmobiling accident in 2002. He did not respond adequately to treatment to fully perform within his specialty rating or meet physical fitness standards. The CI underwent a MEB and was referred to a Physical Evaluation Board (PEB) but the records of proceeding for these boards are not available for review. The CI’s DD Form 294 indicates that he was medically separated with a 10% disability rating.

CI CONTENTION: “The U.S. Coast Guard MEB Board rated my cervical spine at 10%, however the VA has rated this same condition at 30%, therefore I feel my disability should be increased.” He mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Per CI Contention** | **VA (7 Mos. Before Separation) – All Effective 20031120** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Cervical Spine Condition |  | 10% | Cervical Spine Condition | 5242 | 30% | 20030404 |
| ↓No Additional MEB/PEB Entries↓ | Hypertension | 7101 | 10%\* | 20030403 |
| Tension Headaches | 8199-8100 | 10% | 20030404 |
| Tinnitus | 6260 | 10% | STR |
| 0% x 2 / Not Service Connected x 7 | 20030404 |
| **Combined: 10%** | **Combined: 40%\*** |

 \*7101 added at 10% for combined 50% effective 20041101

ANALYSIS SUMMARY: The Board acknowledges that certain Disability Evaluation System (DES) documents, including the MEB and PEB records of proceedings, limited duty profile, and MEB history and physical are not available and could not be located after the appropriate inquiries. Further attempts at obtaining the relevant documentation would likely be futile and introduce additional delay in case processing. The missing evidence will be referenced below in relevant context and it is not suspected it would significantly alter the Board’s recommendations.

Neck Condition. There were three goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, summarized below.

|  |  |  |  |
| --- | --- | --- | --- |
| Cervical ROM  | VA C&P –7 mos Pre Sep | DES – 2 mos Pre Sep | VA C&P –4 mos Post Sep |
| Flexion (45⁰) | 50⁰ | 30⁰ | 15⁰ |
| Combined (340⁰)  | 325⁰ | Incomplete | 240⁰ |
| Comments | No spasm; Pain at 40⁰ flexion; full motion | Extension 45⁰, rotation full | Nontender, no spasm, painful motion |
| §4.71a Rating | 10% | 20% | 30% |

At the time of the NARSUM 11 months prior to separation the CI complained of decreased neck mobility and neck pain that prevented him from adequately performing the duties of his rating. The examiner recorded a history of a C6 cervical fracture with instability, treated with anterior cervical diskectomy and fusion. An abbreviated examination showed a normal motor and sensory exam, and “limited neck mobility.” Two months prior to separation, the CI underwent an additional evaluation “specifically to get his range of motion of [t]he neck measured,” presumably in support of the PEB rating. This examiner found a full ROM of the neck except for anterior flexion limited to about 30⁰. A VA compensation and pension (C&P) exam seven months prior to separation, focusing on the CI’s claimed orthopedic conditions and headaches, documented normal gait and posture, no spasm or tenderness of the neck, and no signs of radiculopathy. Measured ROMs were nearly normal with onset of pain at 40⁰. Imaging studies showed hardware consistent with the described surgery, and evidence of C6-7 fusion. The VA examiner annotated this latter finding as, “There is ankylosis present at C6-7.” A later VA C&P exam, four months after separation, performed by a physician assistant and targeting the CI’s claimed upper extremity conditions, also recorded a neck exam. This exam measured ROMs that were markedly restricted in flexion, extension, and side bending. This exam contained no additional history or change in symptoms that would explain the markedly diminished ROM which is inconsistent with the anticipated severity suggested by the clinical pathology. In considering the probative value of the available ratable evidence, the Board noted that the initial VA exam was complete, of high quality, and was well-documented; that the subsequent VA exam appeared to address the neck only incidentally to the extremity evaluation, was less well-documented, and was markedly and inexplicably different from all prior exams. The Board concluded that the focused ROM exam two months prior to separation bolstered by the initial VA exam was most representative with the totality of the evidence and thus carried the bulk of probative value for rating purposes. The PEB coding choice for the unfitting neck condition is not known. Given that the CI’s date of separation was less than two months after the effective date of the VA Schedule for Rating Disabilities (VASRD) that established the current spine ratings based on ROM, the PEB adjudication likely occurred under the old spine rule set, and was most likely coded 5290. The VA rating was based on the diminished ROMs recorded in the extremity C&P exam. 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 cervical spine condition, coded 5241.

Remaining Conditions. No other conditions were noted in the NARSUM or found elsewhere in the limited DES file available to the Board. 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.

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 and IAW VASRD §4.71a, the Board unanimously recommends a rating of 20% coded 5241 IAW VASRD §4.71a. 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.

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 Fusion | 5241 | 20% |
| **COMBINED** | **20%** |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100501, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 XXXXXXXXXXX

 President Physical Disability Board of Review

U.S. Department of

Homeland Security

United States

Coast Guard

Dear XXXXXX:

**Commandant**

**United States Coast Guard**

Mail St~ 7801

21002 St.

Washington. DC 20593-7801

Staff Symbol: CG-1

MAR 1 2012

I am the Designated Decision Authority for the Coast Guard on applications submitted to the

Department of Defense Physical Disability Board of Review (DoD PDBR). In your case (Case

Number PD-201 0-00771), I accept the recommendation of the DoD PDBR to modify your

combined rating of 10% to 20% without recharacterization of the separation. Enclosed is a copy

of the Board's recommendation and record of proceedings for your information. The

modification of your disability rating will not result in an adjustment to the amount of severance

pay you received at the time of separation.

A copy of this decision has also been provided to the DoD PDBR and the Department of

Veterans Affairs.

If you have any further questions, please contact the. Coast Guard Personnel Service Center at

Rear Admiral, U.S. Coast Guard

Assistant Commandant for Human Resources

Enclosures: (1) PDBR President memo dated December 8, 2011