RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100020 SEPARATION DATE: 20030829

BOARD DATE: 20110118

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Active Guard Reserve member, SFC/E-7 (77F4H/Petroleum Supply Specialist), medically separated for limitation of motion cervical spine (C-spine). The initial onset of the CI’s C-spine condition began in the summer of 2001 with complaints of chronic neck pain. The CI’s condition suddenly worsened in November 2001 when she presented to a civilian emergency room (ER) with complaints of increasing headache and loss of vision in her right eye. CT and MRI scans at that time revealed a congenital defect impinging on the medulla. After oral steroids and a soft cervical collar the CI’s condition stabilized and she was released from the ER with moderate improvement and referred to a neurosurgery service. In March 2002, she subsequently required a C3 cervical fusion. Despite surgery and aggressive therapy she did not respond adequately to treatment and was unable to perform within her Military Occupational Specialty (MOS) or meet physical fitness standards. She was placed on a permanent P3 profile and in November 2002 underwent a Medical Evaluation Board (MEB). The MEB forwarded “medulla impingement secondary to congenital occipitalization and odontoid angulation status post (s/p) transoral resection” condition to the to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The IPEB adjudicated “chronic neck pain, s/p transaction of odontoid process and posterior occipital fusion for medulla impingement secondary to congenital C1 occipitalization and odontoid angulation” condition as minimal, intermittent, stating the condition existed prior to service (EPTS) and was not permanently aggravated by service but was compensable IAW 10 USC 1207a (greater than eight years of active service). The condition was rated at 0%. The CI appealed to the Formal PEB (FPEB) which adjudicated “limitation of motion c-spine, flexion 20 degrees, extension 15 degrees, s/p transection of odontoid process and posterior occipital fusion for medulla impingement secondary to congenital C1 occipitalization and odontoid angulation” condition as moderate. Again, the FPEB stated the disability existed prior to service, was not permanently aggravated by service, but was compensable IAW 10 USC 1207a. A rating of 20% was determined with application of the US Army Physical Disability Agency (USAPDA) pain policy, Department of Defense Instruction (DoDI) 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD), respectively. The CI was thus medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “I feel that the 20% rating was unfair due to the fact that I only have about 15-20% range of motion when turning my head to the left. There is also always constant neck pain and numbness in the head in different sections due to the extensive surgery to the C-I vertebrae. I have to sleep with a neck pillow because my head has to be elevated in order for me to sleep to alleviate me being uncomfortable due to the pieces of metal rods in the neck. There is always tightness and stiffness in my neck every morning and I have to do neck exercises to start my day. It is also very difficult to drive sometimes especially when I'm trying to turn my head to “the the” left to watch for oncoming traffic. I have to turn my entire body. I was a Senior Non Commissioned Officer who loved serving my country and leading my soldiers. I served for II years with an outstanding service record and feel that the board should have taken that into consideration when they determined my rating. I was told by the Colonel during my medical boarding process that I could only get 30% if I could only look forward and not turn left or right at all. It's sad that for II years of service, with 9 years to retire, that the board thought I was just worth severance pay and sent me on my way without the ongoing benefits of being 30% or higher.”

She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service FPEB – Dated 20030501** | **VA (3 Mo. After Separation) – All Effective Date 20030830** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Limitation of Motion C-spine, Flexion 20 Degrees, Extension 20 Degrees, s/p Transection of Odontoid Process and Posterior Occipital Fusion for Medulla Impingement Secondary to Congenital C1 Occipitalization and Odontoid Angulation | 5290 | 20% | Limitation of Motion, Status Post Tran section of Odontoid Process With Cervical Fusion; Cervical Spine | 5290 | 30% | FPEB 20030501 |
| C2 Neuralgia | 8299-8205 | \*10% | 20201006 |
| ↓No Additional MEB/PEB Entries↓ | Mechanical Lower Back Pain | 5295 | 10% | 20031204 |
| Sinusitis | 6513 | \*\*10% | 20100811 |
| 0% x 5/Not Service Connected x 0 | 20031204 |
| **Combined: 20%** | **Combined: 40%** |

\*Effective 20100518 \*\* Effective 20100714

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests Service ratings should have been conferred for the neck condition documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the DES operates. While the DES considers all of the Service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12 month interval for special consideration for post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation

Neck Condition. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams and one other without goniometric measurements are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM – Cervical | MEB ~ 7 Mo. Pre-Sep | \*Neurosurgery Exam~ 4 Mo. Pre-Sep | VA C&P ~ 3 Mo. After-Sep |
| Flex (0-45) | Decrease noted | 20⁰ | 50 (45⁰) |
| Ext (0-45) | Decrease noted | 15⁰ | 10⁰ |
| R Lat Flex (0-45) | No Gonio done  | 25° | 10⁰ |
| L Lat Flex (0-45) | No Gonio done | 20° | 10⁰ |
| R Rotation (0-80) | Full | 27°  | 50⁰ |
| L Rotation (0-80) | None | 15° | 10⁰ |
| COMBINED (340) |  | 122° | 140⁰ (135) |
| Comments | Right rotation full; No Left rotation; decreased flexion/extension C-Spine |  | Significant motion loss; Neurovascular intact in bilat UE; 5/5 Strength and normal sensation throughout |
| §4.71a Rating |  | 20% | 20%\* |

 \*VA confirmed and continued 30% rating based on service exam. See text below.

The 2003 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were modified on 23 September 2002 to add incapacitating episodes (5293 Intervertebral disc syndrome), and then changed to the current §4.71a rating standards on 26 September 2003. The earlier 2003 standards for rating based on ROM impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in measured degrees of ROM impairment. When older cases have goniometric measurements in evidence, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation. Furthermore, the Board policy of reconciling recommendations under the older 5290 rating schedule with current §4.71a based recommendations (when reasonable to do so) was considered.

A head CT scan and MRI done in November 2001 demonstrated a congenital medullar impingement by the odontoid process. n March 2002 the CI underwent a transoral resection of the odontoid process with spinal decompression and occipital to C3 posterior fusion and right iliac crest grafting. A clinical summary exam done in November 2002, nine months prior to separation, noted occasional paraspinal muscle neck discomfort and lifting limited to no more than 10-15 pounds. The MEB examination in January 2003, seven months prior to separation, indicated decreased flexion and extension. In March 2003 the IPEB rated the condition at 0% for minimal/intermittent pain. The CI appealed and the FPEB requested ROM measurements from the neurosurgeon. These were measured in April 2003 and are in the chart above. Based on this information, the FPEB rated her neck condition as “moderate” limitation of motion of the cervical spine at 20%. The VA used this same examination in its rating but applied a 30% rating for severe limitation of motion. The original VA rating decision (VARD) from September 2003 stated the initial rating decisions were made based on the CI’s service treatment record (STR) because the CI had been discharged prior to receiving a VA Compensation and Pension (C&P) examination. The first VA C&P examination was completed three months post separation and it noted morning neck stiffness and significant motion deficit. The first VARD issued after the completion of this C&P examination did not include any further decision analysis on the neck condition but did note a rating of 30%. In July 2005 the CI requested an increase evaluation. The VA considered the initial C&P examination dated December 4, 2003 as well as treatment records and a subsequent C&P examination from October 5, 2005 to confirm and continue the initial 30% rating. This decision was issued in a November 16, 2005 VARD. This VARD noted that in the intervening time period, the rating criteria had been changed to those which are in current use. A higher evaluation of 40% was not warranted under the old rating criteria because there was no demonstrable deformity of a vertebral body from fracture. Also, a higher rating was not warranted using the new criteria as there was no evidence of unfavorable ankylosis of the entire cervical spine. The VARD noted that as the CI continued to show to have significantly limited range of motion in left lateral rotation without warranting an increased rating, the 30% rating was confirmed and continued under the old rating criteria. The VARD also stated the evaluation under the old criteria can only be reduced as a result of evidence showing sustained improvement in your condition and cannot be reduced based solely on a change in rating criteria.

The PEB and the VA used the same rating code 5290 (spine, limitation of motion of, cervical) however the PEB rated the condition 20% for moderate limitation of motion and the VA rated 30% for severe limitation of motion. Although the medulla impingement secondary to congenital C1 occipitalization and odontoid angulation condition was EPTS and not permanently aggravated by service, the condition was considered compensable in accordance with 10 USC 1207a as the CI had more than eight years of active duty. The Board must correlate the above clinical data with the 2003 rating schedule which, for convenience, is excerpted below:

5290 Spine, limitation of motion of, cervical:

Severe...................................................... 30

Moderate................................................. 20

Slight........................................................ 10

The Board noted that both the MEB and VA exams were sufficiently documented in terms of ratable data for the criteria in place at the time of their rating determinations and that the CI’s overall condition and described history were congruent between the MEB exam and the VA exam. The neurosurgery exam was more complete and more proximate to the separation and adjudged to have the higher probative value than the MEB examination from January 2003. The VA C&P exam was more proximate to the date of separation than the Neurosurgery examination but occurred after separation and thus has slightly less probative value than that examination.

The Board considered the PEB’s rating under the 5290 code. All exams documented cervical motion limitation which could be considered either moderate or severe. Today’s VASRD rating criteria for diseases and injuries of the spine focuses on forward flexion and total combined range of motion. Under these rating criteria, a 20% rating is applied for cervical forward flexion greater than 15° but not greater than 30° or a combined range of motion of the cervical spine not greater than 170°. A higher rating is not applied unless cervical forward flexion is 15° or less or there is favorable ankylosis of the entire cervical spine. If today’s criteria were applied to the neurosurgery examination would result in a 20% rating for both flexion and combined range of motion and the VA C&P examination would result in a 20% rating for the combined range of motion of 140 degrees. After due deliberation, considering all of the evidence, and mindful of VASRD §4.3 (reasonable doubt), the Board determined the CI’s cervical limitation of motion was moderate and therefore a 20% rating is warranted at the time of separation.

The Board could find no evidence for an unfitting radiculopathy justifying additional Service rating for peripheral nerve impairment. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. There was no evidence of any motor or functional impairment, therefore the Board cannot support a recommendation for additional rating based on peripheral nerve impairment.

Remaining Conditions. Other conditions identified in the DES file were sinusitis, bilateral conjunctivitis, heart palpitations, depression or excessive worry and cervical dysplasia. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB 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 mechanical lower back pain, C2 neuralgia and sinusitis several other non-acute conditions were noted in the VA 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.

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. In the matter of the limitation of motion c-spine condition, the Board unanimously recommends a rating of 20% coded 5290 IAW VASRD §4.71a. In the matter of the sinusitis, bilateral conjunctivitis, heart palpitations, depression or excessive worry and cervical dysplasia conditions or 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Limitation of Motion C-spine | 5290 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110103, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for (PD201100020)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

CF:

( ) DoD PDBR

( ) DVA