RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100120 SEPARATION DATE: 20040315

BOARD DATE: 20120130

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized Army National Guard SGT/E-5 (95B, Military Policeman) medically separated for chronic neck pain. The condition began in 1988 and was not associated with a surgical indication. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3 S3 profile and underwent a Medical Evaluation Board (MEB). Chronic neck pain with cervical disc herniated nucleus pulposus and depression were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Four other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the neck pain condition as unfitting, rated 20% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). It was determined that the remaining conditions were not unfitting. The CI made no appeals and was medically separated with a 20% disability rating. The CI elected disability severance pay in lieu of transfer to the retired Reserve.

CI CONTENTION: The CI’s contention is his separation rating was unfairly assigned due to the PEB’s rush “to separate soldiers and get them off active duty,” and that his rating should be higher because the VA assigned an 80% rating. He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20031201** | | | **VA (3 Mo. Pre Separation) – All Effective 20040316** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Neck Pain | 5243-5299-5237 | 20% | Cervical Deg. Disc Disease | 5242-5243 | 20% | 20031211 |
| Depression | Not Unfitting | | Major Depressive Disorder | 9434 | 30% | 20031223 |
| Hypertension | Not Unfitting | | Hypertension | 7101 | 10% | 20031211 |
| Bilateral Pes Planus | Not Unfitting | | Bilateral Pes Planus | 5276 | 30% | 20031211 |
| Hyperlipidemia | Not Unfitting | | Hyperlipidemia | Not Service Connected | | 20031211 |
| Chronic Headache | Not Unfitting | | Headaches | 8199-8100 | 10% | 20031211 |
| ↓No Additional MEB Entries↓ | | | Coronary Artery Disease | 7005 | 10% | 20031211 |
| 0% x 1 / Not Service Connected x 1 | | | 20031211 |
| **Combined: 20%** | | | **Combined: 70%** | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 all service connected conditions without regard to impact on performance of military duties 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.

Neck Condition. The CI first experienced neck pain after sustaining a hyperextension injury while on extended active duty in 1988. During his final period of extended active duty in 2003 he presented for worsening pain that was determined to be secondary to osteoarthritis. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Cervical ROM | MEB ~ 5 Mo. Pre-Sep | VA C&P ~ 2 Mo. After-Sep |
| Flexion 0-45⁰ normal | 20⁰ | 40⁰ |
| Extension 0-45⁰ normal | 22⁰ | 20⁰ |
| Combined 340⁰ normal | 149⁰ | 190⁰ |
| §4.71a Rating | 20% | 10% |

An outpatient physical therapy (PT) examination on 7 August 2003 reported tingling of the left upper extremity that occurred twice per week and lasted for 30 seconds. There was mild tenderness of the left paraspinal muscles, and sensation and muscle strength were intact. The narrative summary (NARSUM) examiner (1 October 2003) reported left-sided neck pain with radiation and occasional numbness in the left upper extremity, but no left upper extremity weakness. His neck pain improved with activity restriction, but worsened with push-ups, sit-ups, jumping and running. His condition did not respond well to a course of physical therapy, and he declined neurosurgical evaluation and pain management referral. Examination showed normal strength and sensation, but was silent regarding spinal contour, tenderness or spasm. X-ray showed mild straightening of the cervical spine with no sign of previous fracture. Magnetic resonance imaging (MRI) noted disc space reduction at C4 through C6, and central disc extrusion with moderate spinal canal stenosis at C4-C5. Mild bilateral foraminal narrowing was present at C6-C7. The VA Compensation and Pension (C&P) examiner (11 December 2003) documented that the CI required no quarters or convalescent leave during the preceding 12 months. The neck pain was described as constant and weakness was sometimes experienced in the left arm. Examination revealed a straight posture and gait. Muscle strength and deep tendon reflexes were normal. The PEB and VA chose different coding options for the condition, but this did not bear on rating. Based on the documented limitation of motion at the time of the MEB NARSUM, and IAW VASRD §4.71a criteria, the PEB’s 20% rating was appropriate. The VA C&P examination range of motion after separation was consistent with a 10% IAW with the VASRD. The Board also considered rating intervertebral disc disease under the alternative formula for incapacitating episodes, but could not find sufficient evidence which would meet even the 10% criteria under that formula. The Board further deliberated if additional disability was justified for the history of left upper extremity numbness, tingling and weakness. MRI showed moderate canal stenosis and mild bilateral neuroforaminal impingement. All examiners however recorded normal neurologic findings, including muscle strength. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. There is no evidence in this case of functional impairment attributable to peripheral neuropathy. While the CI experienced some radiating pain, this is subsumed under the general spine rating criteria, which specifically states “with or without symptoms such as pain (whether or not it radiates).” The Board therefore concludes that additional disability was not justified on this basis. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the neck pain condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were depression, hypertension, bilateral pes planus, hyperlipidemia and chronic headache. Depression symptoms began in October 2002 when the CI was called to active duty in support of Operation Noble Eagle Homeland Defense (entered active duty 4 October 2002) and consisted of sleep disturbance, hopelessness, irritability, decreased appetite, anhedonia and suicidal ideations. Outpatient notes refer to family problems related to deployment. He was prescribed an antidepressant medication in February 2003 which he did not take. A psychology note on 25 June 3003 opined that the symptoms were deployment related, and stated the CI “declined treatment.” Other clinical entries indicated non-compliance with a prescribed antidepressant medication. The CI reported in an outpatient visit on 20 August 2003 that his depression was “stable.” The psychiatric NARSUM addendum (26 August 2003) confirmed that the symptoms were related to continued military deployment (CI remained assigned in the continental United States) and separation from his wife and family. Although he was placed on an S3 profile, the commander’s statement did not implicate depression as an impairment to his occupational functioning. The CI declined any treatment and on report of medical assessment form completed by the CI on 17 July 2003, the CI did not list depression as a concern except for sleep problems. Board members concluded the preponderance of evidence did not show the CI’s depressive symptoms were unfitting for service. None of the 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 requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were recurrent sinusitis and left ear hearing loss. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant 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 coronary artery disease and several other non-acute 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.

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 chronic neck pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the depression, hypertension, bilateral pes planus, hyperlipidemia and chronic headache conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the recurrent sinusitis and left ear hearing loss 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. 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Neck Pain | 5243-5299-5237 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110321, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXX (PD201100120)

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:

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA