RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100193 SEPARATION DATE: 20050328

BOARD DATE: 20120215

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve TSGT/E-6 (4N071/Medical Service Craftsman), medically separated for cervical herniated nucleus pulposus (HNP) associated with intermittent pain despite no nerve impingement. Despite conservative treatment with both chiropractic care and physical therapy, he did not respond adequately to fully perform within his Air Force Specialty (AFS) or meet physical fitness standards. He was issued a permanent P4 profile and underwent a Medical Evaluation Board (MEB). Herniated nucleus pulposus C5-6 was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the cervical herniated nucleus pulposus associated with intermittent pain despite no nerve impingement condition unfitting rated at 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). Additionally tobacco abuse and overweight conditions were adjudicated by the PEB as category III, conditions that are not separately unfitting and not compensable or ratable. The CI made no appeals and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “Because of my Army and Air Force time in service, in addition to my service connected disability, I am requesting a medical retirement.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20041214** | | | **VA (14 Mo. After Separation) – All Effective 20050329** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Cervical Herniated Nucleus Pulposus Associated With Intermittent Pain Despite No Nerve Impingement | 5243 | 10% | Cervical Spondylosis with Herniated Disk C5-6 | 5237 | 10% | 20060525 |
| Radiculopathy C- 6 Dermatome Associated with Cervical Spondylosis with Herniated Disk C5-6 | 8515 | 10% | 20060505 |
| Overweight | Cat III | | Not VA Rated | | | |
| Tobacco Abuse | Cat III | | Not VA Rated | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Not Service Connected x 1 | | | 20060525 |
| **Combined: 10%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention requesting military retirement in considering his Army and Air Force service and his service-connected disabilities. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (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 all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

C5-6 HNP associated with intermittent pain despite no nerve impingement condition. The CI injured his neck and right shoulder in June 2003 while lifting a litter. He did not seek medical care at that time, stating that “he felt it would get better.” Despite later conservative treatment with medications, chiropractic care, physical therapy, and injections by pain management, he continued to experience neck and upper back pain radiating to the right shoulder and arm with symptoms of numbness in his right hand. Cervical MRI on 23 February 2004 showed disk bulges at C3-4, C4-5, C5-6 and C6-7 with a small-moderate size right posterolateral HNP causing very mild ventral impression on the spinal cord. There was cervical spondylosis, asymmetrically greater toward the right at C6-7. There is only one goniometric range-of-motion (ROM) evaluation in evidence which the Board weighed in arriving at its rating recommendation. This VA Compensation and Pension (C&P) examination, 14 months after separation, is summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Cervical | Separation Date: 20050328 | |
| Goniometric ROM | MEB – 20040913  ~6 Mo. Pre-Sep | VA C&P – 20060525 and 20060505  ~14 Mo. Post-Sep |
| Flexion 0-45⁰ normal | Not addressed | 40⁰ |
| Combined 340⁰ normal | Not addressed | 320⁰ |
| Comments | Bilateral upper extremities exhibit full range of motion with no joint laxity noted. Neurologic: DTR's 2+ bilaterally. Hand grasp 5/5 bilaterally. | No tenderness, crepitus or paraspinal spasm; no objective evidence of pain on motion; moderate decrease in pin sensation in right C6 dermatome; mild atrophy of right trapezius and bicep; motor 5/5 bilateral upper extremities; DTRs 2+ equal bilateral |
| §4.71a Rating | 10% | 10% |

The PEB found the cervical (C5-6) herniated nucleus pulposus (HNP) associated with intermittent pain despite no nerve impingement condition unfitting with a 10% rating, using code 5243 for intervertebral disk syndrome. The VA rated the cervical spondylosis with herniated disk C5-6 condition at 10%, coded 5237 for cervical strain. Both codes refer to the general rating formula for diseases and injuries of the spine, thus offering no advantage to the CI related to choice of code. There was no evidence in the record of significant periods of physician prescribed bed rest to warrant application of ratings for incapacitating episodes under the formula for rating intervertebral disc syndrome based on incapacitating episodes. The VA rating of 10% was supported by the forward flexion of 40 degrees. The CI’s complaints of right shoulder and arm pain are also subsumed under the general spine rating as specified in §4.71a, which includes “pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease.”

The narrative summary (NARSUM) and DES file did not contain any goniometric evaluations on which to base a rating. The PEB noted that, although there were minimal objective findings, his condition prevented him from performing his required duties. The VA orthopedic examination was more comprehensive and was the only examination that documented goniometric ROM but was 14 months after separation. It did not support a rating greater than 10%, as assigned by the PEB. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends no recharacterization of the PEB separation rating of 10%, coded 5243 (intervertebral disc syndrome), for the cervical (C5-6) HNP associated with intermittent pain despite no nerve impingement condition, IAW VASRD §4.71a.

Radiculopathy C5-6 dermatome condition. The Board also considered the right upper extremity radiculopathy condition as a potentially separately unfitting and ratable condition. 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. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a.

The NARSUM, six months pre-separation, noted numbness along the C6 dermatome including the thumb, first, and second fingers of the right hand with normal grip strength. EMG and nerve conduction velocities of the upper extremities and cervical spine on 24 February 2004 were unremarkable. The commander’s statement noted that the CI’s medical condition restricted him from performing all required tasks, but did not specify limitations due to neck pain versus radiculopathy. The VA C&P examination (neurology), 13 month after separation, noted motor function to be 5/5 bilaterally with mild bicep and trapezius atrophy and moderately decreased sensation in the right C5-6 dermatome. Reflexes were normal. The VA C&P examination (orthopedic), 13 months after separation, noted no weakened movement. The VA rated the right upper extremity radiculopathy C6 dermatome condition, code 8515 (median nerve), at 10% for mild symptoms.

The Board considered at length whether there were significant functional impairments due to the radiculopathy, which were clearly linked to fitness and prevented the CI from performing the duties of a 4N071/Medical Service Craftsman. The sensory component in this case had no clear functional implications identified in the service treatment records or the DES file. His limitations appear to be due to pain; however, as discussed above, pain (whether or not it radiates) is considered under the above neck coding and rating. The Board therefore adjudged that, with no motor impairment or weakness, the C6 radiculopathy cannot be linked to significant physical impairment. Since no evidence of functional impairment linked to fitness, due to peripheral nerve impairment, exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. The Board notes that subsequent VA treatment records, nearly two years after separation, document current employment as a health technician at a VA facility and that he was currently working on a nursing degree. All evidence considered there is not reasonable doubt in the CI’s favor supporting addition of the right upper extremity radiculopathy condition as an unfitting condition for separation rating.

Other PEB Conditions. No other conditions were forwarded by the MEB; however, the PEB did adjudicate tobacco abuse and overweight as category III conditions that were not separately unfitting and not compensable or ratable. Neither of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. Both were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for either of the stated conditions.

Remaining Conditions. No other conditions were noted in the NARSUM or found elsewhere 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. 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 cervical (C5-6) HNP associated with intermittent pain despite no nerve impingement condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the radiculopathy C5-6 dermatome condition, the Board unanimously agrees that it cannot recommend a finding 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, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Cervical herniated nucleus pulposus (HNP) associated with intermittent pain despite no nerve impingement | 5243 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110328, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

XXXXX

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXX :

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00193

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

Director

Air Force Review Boards Agency