RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1100194 SEPARATION DATE: 20040903

BOARD DATE: 20120202

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, CPT/O3 Army Nurse Corps (66H, Medical Surgical Nurse). He was medically separated for chronic neck pain. He did not respond adequately to treatment and was unable to perform the more strenuous duties required in his Military Occupational Specialty (MOS), particularly in a deployed setting. He was issued a permanent U3/E2 profile and underwent a Medical Evaluation Board (MEB). Cervical spine degenerative disc disease (DDD) was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Seven other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the chronic neck pain as unfitting, rated 10%, 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 made no appeals and was medically separated with a 10% combined disability rating.

CI CONTENTION: “The findings from the VA was higher than that of the board. The VA gave a rating of 30% at time of separation. I have been told I may need to have further surgery for the continuing symptoms.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20040628** | **VA (1 Mo. Pre Separation) – All Effective 20040910** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Neck Pain, DDD, discectomy/fusion | 5299-5243 | 10% | Cervical Spine DDD  | 5243 | 10% | 20040810 |
| R shoulder pain |  Not Unfitting | R shoulder impingement | 5201 | 10% | 20040810 |
| Allergic Rhinitis | Allergic Rhinitis  | 6522 | NSC | 20040810 |
| Gastroesophageal reflux | GERD | 7346 | 0% | 20040810 |
| Onychomycocis | Left foot onychomycosis | 7813 | 0% | 20040810 |
| Achilles tendinitis | Right achilles tendonitis | 5099-5024 | 0% | 20040810 |
| Persistent hand parasthesias | Left Upper Extremity with left hand paresthesias | 5201-8515 | 10% | 20040810 |
| Vision defect | No VA Entry |
| ↓No Additional MEB/PEB Entries↓ | 0% x 4/Not Service Connected x 1 | 20040810 |
| **Combined: 10%** | **Combined: 30%** |

\* VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY: The Military Services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. However, the Department of Veterans’ Affairs (DVA), operating under a different set of laws, can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The DVA can also increase or decrease ratings based on the changing severity of each condition over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations compared to VASRD standards, as well as the fairness of PEB fitness adjudications at the time of separation. The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations; but, remains adherent to the DoDI 6040.44 “fair and equitable” standard.

Neck Pain Condition. There were three goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These examinations are summarized in the chart below.

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| --- | --- | --- | --- |
| Goniometric ROM – Cervical | MEB H&P~5 Mo. Pre-Sep | Orthopedic MEB ~ 4 Mo. Pre-Sep | MEB ~ 3 Mo. Pre-Sep |
| Flexion (45⁰) | 35⁰ | 20⁰ | 20⁰ |
| Extension(45⁰) | 20⁰ | 30⁰ | 20⁰ |
| Right Lateral Flexion (45⁰) | 20⁰ | 10⁰ | 20⁰ |
| Left Lateral Flexion (45⁰) | 15⁰ | 10⁰ | 15⁰ |
| Right Rotation (80⁰) | 45⁰ | 40⁰ | 45⁰ |
| Left Rotation (80⁰) | 50⁰ | 45⁰ | 45⁰ |
| Combined (340⁰) | 185⁰ | 155⁰ | 165⁰ |
| Comment |  | Tenderness in cervical spine. | Tenderness in cervical spine. |
| §4.71a Rating | 10% | 20% | 20% |

The CI developed neck pain associated with paresthesia in the left hand in 2002. Subsequently he was diagnosed with degenerative disk disease at the C5-C6 and C6-C7 levels and underwent anterior cervical discectomy and fusion in April 2002. He continued to have neck pain and difficulties in lifting and working overhead, however continued to performed his primary military duties. In March 2004 he indicated he was not capable to deploy due a profile (U2). He was referred for evaluation leading to MEB for chronic neck pain secondary to degenerative disc disease status post anterior cervical discectomy and fusion C5/C6, C6/C7. All examinations documented normal strength, and intact reflexes of the upper extremities. The CI had numbness and tingling of the middle, ring and little fingers of the left hand. Electrodiagnostic testing 1 June 2004 was normal. The VA Compensation and Pension (C&P) examination 10 August 2004, one month before separation, did not document a spine exam but documented normal strength and intact reflexes. There was persistent numbness left hand. The orthopedic surgery exam specifically documented intact and symmetric sensation of the finger tips. The C&P examiner noted diminished sensation over the left thumb and index finger. The narrative summary (NARSUM) indicated that the CI continued to work as a nurse in the intensive care unit but that deployability was questionable due to intolerance of Kevlar, rucksack and heavy lifting that would be required if deployed to a field hospital in a combat zone. ROMs were relatively consistent between examinations although the earlier MEB examination in April 2004 documented a significantly better flexion than the later examinations. The first examination correlated with a 10% rating while the latter two examinations correlated with a 20% rating based on limitation of motion both in flexion and combined range of motion. The VA C&P examination referred to the MEB examination, and the VA rating of 10% cited the high variability in the flexion examination. Although the PEB and VA coded similarly (5243) and assigned a 10% rating, it is not clear the rating was based on the same rationale. The PEB may have applied the US Army Physical Disability Agency (USAPDA) pain policy while the VA cited variability in flexion measurements. The Board discussed the different examination results, but concluded the latter two examinations, supporting the 20% rating, including the orthopedic surgeon examination, were consistent with the documented pathology which included diffuse degenerative disc disease involving the cervical spine above the two levels that were surgically fused. Board members concluded the preponderance of evidence favored a rating of 20% under the general formula for rating injuries and diseases of the spine. 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 left hand numbness related to the cervical spine condition. Although there was subjective numbness, and the C&P examiner documented decreased sensation of the left thumb and index finger, electrodiagnostic testing was normal, the orthopedic surgeon documented intact sensation in all fingers, and all examiners recorded normal muscle strength with intact reflexes. 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. The Board therefore concludes that additional disability was not justified on this basis. 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 neck pain condition (5243).

Other PEB Conditions. The other conditions forwarded by the MEB as meeting retention standards and adjudicated as not unfitting by the PEB were right shoulder pain status post rotator cuff surgery, allergic rhinitis, gastroesophageal reflux, onychomycosis, recurrent Achilles tendinitis, persistent hand paresthesias (addressed under the cervical spine condition), and vision defect (near sighted, E2 profile). The CI underwent two surgeries on his right shoulder, November 2001 and November 2002, for repair of labral tears, rotator cuff tear, and impingement syndrome due to an acromioclavicular joint separation (Mumford procedure with distal clavicle resection). The NASUM recorded difficulty with heavy lifting especially overhead, but stated he was able to continue with his military duties despite the painful motion. On examination, right shoulder ROM showed “mild” limitation in elevation to 130 degrees. The orthopedic NARSUM similarly recorded persistent right shoulder pain with pain with overhead use that prevented performance of push-ups, however the examiner stated the CI was able to complete essentially all of the activities required of active duty. On examination there was mild decrease in elevation (flexion 160 degrees, abduction 165 degrees) with normal internal and external rotation, and extension (80, 90, and 45 degrees respectively). Strength of the right upper extremity was recorded as normal (5/5). The 10 August 2004 C&P examination had similar results and the examiner noted that there was pain with motion but no reduction in range of motion, no fatigability, and no incoordination after repetitive movement during the examination. None of these conditions were profiled (except vision defect) 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 his primary duty 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 hearing loss, joint pain in both hands, right hand fracture, and renal calculi. 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. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions 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. In the matter of the chronic neck pain secondary cervical degenerative disc disease condition, the Board unanimously recommends a rating of 20% IAW VASRD §4.71a. In the matter of the left hand numbness condition, right shoulder condition, 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Neck Pain Secondary to DDD Status Post Discectomy and Fusion C5/C6 and C6/C7 | 5299-5243 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110325, 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 (PD201100194)

1. 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 to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

 BY ORDER OF THE SECRETARY OF THE ARMY:

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA