RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD11-00201 SEPARATION DATE: 20060227

BOARD DATE: 20121009

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (21N30/Construction Equipment Supervisor), medically separated for chronic radiating neck pain. The CI developed recurrent radiating neck pain after cervical disc surgery. This condition could not be adequately rehabilitated with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). Cervical stenosis and cervical myelopathy were also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the chronic radiating neck pain condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (DoDI) 6040.44, Enclosure 3, paragraph 5.e. (2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060120** | | | **VA (3 Mos. Post-Seperation) – All Effective Date 20060228** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Neck Pain… | 5241 | 10% | Cervical Spine Condition | 5242 | 20% | 20060601 |
| ↓No Additional MEB/PEB Entries↓ | | | Lumbar Spine Condition | 5242 | 10% | 20060601 |
| Left Shoulder Condition | 5201 | 20% | 20060601 |
| 0% X 2 / Not Service-Connected x 4 | | | 20060601 |
| **Combined: 10%** | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member’s career, and then only to the degree of severity present at the time of final disposition. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veteran Affairs (DVA), but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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’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, based on severity at the time of separation.

Chronic radiating neck pain condition. The CI underwent neck surgery in April 2005 for cervical disc disease with symptoms of pain and numbness in both arms and hands. After surgery symptoms were improved, but recurred after participation in a road march with full combat load five months later. Magnetic resonance imagery (MRI), performed in October 2005, showed degenerative disc disease (DDD), with moderate central canal narrowing with C5-6 myelopathy with cord contusion. At a neurosurgical evaluation performed 14 October 2005, four months prior to separation, bilateral upper extremity strength was 4/5 with normal pinch strength in both hands. Reflexes were hyper-active and sensation was reported as subjectively decreased in the right upper extremity. On neurosurgical consultation for the MEB, performed 2 November 2005, three months prior to separation, severe restricted range-of-motion (ROM) of the neck was noted, but not detailed further. Motor strength of the upper extremities was normal at 5/5 except for slight reduction of 4/5 at the left triceps and wrist extensors. Electro-diagnostic studies documented a radiculopathy at the C7 level (radial nerve), but were otherwise normal. There were two goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

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| Cervical ROM  Degrees | MEB~3 Mos. Pre-Sep  (20051118) | VA C&P ~3 Mos. Post-Sep  (20060601) |
| Flexion (45 Normal) | 40 | 45 |
| Extension (45) | 30 | 15 |
| Combined (340) | 180 | 210 |
| Comment | Painful motion.  Muscle tightness  Decr. Sensation L palm.  Triceps muscle 4/5; all other muscles 5/5 | Painful motion.  Neck supple, no spasm.  Normal curvature  Upper arm strength normal.  Left grip 4/5, right 5/5.  Sensation and reflexes wnl. |
| §4.71a Rating | 10% | 10% |

At the MEB narrative summary (NARSUM) exam performed on 18 November 2005, approximately three months before separation, the CI reported neck pain and paresthesias in both hands. The neck pain was described as constant, rated 3-10/10, varying with activity and responding to heat, medication and massage. The CI described the hand condition as varying from a dull tingling to a generalized decrease in sensation, but noted the symptoms to be unchanged since November 2003. Findings on physical examination are summarized in the chart above. At the VA Compensation and Pension (C&P) exam performed on 1 June 2006, three months after separation, the CI reported neck pain three to four times a week, tingling in both hands, and weakened grip in the left hand resulting in dropping items. He was unemployed at this time and offered that the condition did not affect his ability to drive or fish. Findings on physical examination are noted in the chart above. Increased pain was reported on repeated motion of the neck. The Board directs attention to its rating recommendation based on the above evidence. The Board notes the CI to be right hand dominant. Both the PEB and VA rated the neck condition using the VASRD §4.71a general rating formula for diseases and injuries of the spine. The PEB rated 10%, coded 5241, spinal fusion, citing flexion of 40 degrees and combined ROM of 180 degrees with minimal evidence of myelopathy. A higher rating of 20% requires flexion between 15 to 30 degrees or combined ROM less than 170 degrees. The VA rated 20%, code 5242, degenerative arthritis, with application of §4.45 based on subjective report that “during flare-ups you claim you cannot move your left shoulder and arm.” The Board found no evidence in the service treatment record (STR) of functional impairment due to fatigue, weakness or lack of coordination with repeated neck motion which would support rating increase IAW §4.45. The Board unanimously agreed that preponderance of evidence supports a 10% rating. The Board also considered if additional disability rating was justified for impairment due to radiculopathy. The CI had documented myelopathy with radiculopathy related to cervical disc disease with symptom of paresthesias and weakness documented in the STR. However, examinations document minimal to no weakness in the arms and hands, minor sensory changes and no systemic findings. 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. Therefore the critical decision is whether or not there was a significant motor weakness or sensory abnormality which would impact military occupation specific activities. There is no evidence in this case that motor weakness or sensory abnormality existed to any degree that could be described as functionally impairing. Although mild left triceps weakness was documented, neck pain was cited as the functionally limiting symptom. The Board, therefore, concludes that additional disability rating was not justified on this basis. The Board considered rating based under incapacitating episodes/intervertebral disc syndrome. An incapacitating episode is defined as a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician. The Board finds no evidence in the record that the CI was placed on quarters, prescribed bed rest by a health professional, or reference to incapacitating episodes in the commander’s statement or the CI’s performance evaluations. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the chronic neck pain condition.

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. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Neck Pain | 5241 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110320, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

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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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXX, AR20120019095 (PD201100201)

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 XXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA