RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100307 SEPARATION DATE: 20080212

BOARD DATE: 20120214

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92F20/Petroleum Supply), medically separated for cervical and thoracic strain.The CI twisted his back while deployed to Iraq in August 2006. 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/L3 profile and underwent a Medical Evaluation Board (MEB).Chronic neck and upper back pain secondary to degenerative disc disease of the thoracic spine and of the cervical spine was forwarded to the Physical Evaluation Board (PEB) 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 PEB adjudicated the cervical strain condition and thoracic strain condition as unfitting, rated 10% and 10% respectively, with application of Veterans Administration Schedule for Rating Disabilities (VASRD).The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “I have 8 herniated discs in my spine which are pressing on nerves that, at times, render my left side useless. I am unable to drive due to this and the 4 per day vicodin prescription. Due to the damage to my spine I have developed ED and it has effected my intimate relationship with my wife. I have also been diagnosed with PTSD.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Service IPEB – Dated 20071109 | | | VA (19 Mo. After Separation) –Effective Date 20090219 (Spondylosis) | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Cervical Strain | 5237 | 10% | Not Rated |  |  |  |
| Thoracic Strain | 5237 | 10% | Lumbar Spondylosis | 5239 | 10% | 20090916 |
| ↓No Additional MEB/PEB Entries↓ | | | Post Concussion Syndrome\* | 8045-9304 | 30% | 20020912 |
| Patellofemoral Syndrome\* | 5299-5257 | 10% | 20020912 |
| 0% x 0/Not Service Connected x 2 | | | 20020912 |
| **Combined: 20%** | | | **Combined: 40%** | | | |

\*Post-Concussion Syndrome and Patellofemoral Syndrome ratings pre-date latest period of active duty; originally rated 10% and 0% respectively effective 19940812 and later increased to 30% and 10% respectively effective 20020115 to 20040706 and 20080213 to present.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the DES operates. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board also acknowledges the CI's contention suggesting that service ratings should have been conferred for other conditions not diagnosed while in the service (but later determined to be service-connected by the DVA). 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. The DVA, however, 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.

Neck and Back Pain Conditions. The CI sustained a twisting injury to his back while deployed to Iraq in August 2006. He had pain in the thoracic spine area, and was treated with medication and activity modifications. Cervical spine radiographs were normal. A magnetic resonance imaging (MRI) in November 2006 showed a prominent C6-7 disc protrusion without spinal or foraminal narrowing. Neurosurgical evaluation in December 2006 found some mild right upper and lower extremity weakness. A subsequent MRI of the spinal cord revealed multi-level degenerative disc changes of the thoracic spine without stenosis. Neurosurgery determined he was not a surgical candidate, and the CI was treated with medication and a permanent L2 profile. The CI reinjured his back in July 2007 and his symptoms worsened. His command requested a fit for duty evaluation. Orthopaedic evaluation in September 2007 noted pain from T1-T6, without radiation, and some neck pain, without neurological findings. Orthopedics recommended an MEB, but the CI wished to reclassify. A second opinion in October 2007 noted pain radiation from the base of the skull to the shoulder blades, without radicular symptoms. Exam found some neck and thoracic spine pain without neurological findings. The second opinion determined that the CI had reached maximum medical improvement and recommended proceeding on to an MEB.

At the 21 October 2007 MEB narrative summary (NARSUM) evaluation, four months prior to separation, the CI complained of pain in his neck and upper back, worse with coughing but not sneezing, and exacerbated by lifting and overhead reaching. He denied pain, numbness, or tingling into any of his extremities, but stated that he had been electrocuted as a child and always had some mild left sided body numbness. He was taking a narcotic and a muscle relaxer for his pain. Examination revealed tenderness along the cervical and thoracic paraspinal muscles, but no spasm or deformity. The examiner stated there was full range of motion of his neck and back, but physical therapy goniometric measurements taken one week later show some limitation of motion, as in the chart below. The examiner diagnosed chronic neck and upper back pain secondary to degenerative disc disease, with no clinical findings of radiculopathy. The examiner noted that the CI “has failed all conservative treatment measures and is not a surgical candidate and is unable to perform his military duties.” The IPEB of 9 November 2007 adjudicated the neck and upper back pain as two separate unfitting conditions; cervical strain, VA code 5237, at 10% disability and thoracic strain, VA code 5237, also at 10% disability for a combined 20% disability rating.

At the 16 September 2009 VA Compensation and Pension (C&P) evaluation, the CI complained of neck pain that occasionally radiated into the right arm and left hand, and upper back pain that interfered with sleep and sometimes radiated into the left foot and hip. He had no bowel or bladder problems but was having some erectile difficulties. Sneezing sometimes caused electric feelings in his left arm. An MRI in March 2009 showed a bulging C6-C7 disc without neural compromise. Neurosurgery had recommended epidural steroid injections but the CI was unable to afford the treatments. Instead he was taking two narcotic tablets a day and using a transepidermal neural stimulator (TENS) unit. He was working full time and had not missed work because of his neck and back pain. Examination revealed tenderness from T3 to T8 with some trapezius spasm. Gait was normal. Neurological examination, including strength, reflexes, sensation and special tests, was normal. Range-of-motion (ROM) of the cervical and thoracolumbar spines was as per the chart below. Radiographs of the neck were normal and radiographs of the thoracic spine showed mild spondylosis. The VARD of 2 October 2009 assigned a 10% evaluation for lumbar spondylosis based on painful range of motion. No neck condition was adjudicated by the VA. Two goniometric ROM evaluations were in evidence in the treatment record, which the Board weighed in arriving at its rating recommendation. These two exams are summarized in the chart below.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Goniometric ROM –Lumbar & Cervical | Normal ROM | | PT ~ 4 Mo. Pre-Sep  (20071026) | | VA C&P ~ 19 Mo. After-Sep  (20090916) | |
| Lumbar | Cervical | Lumbar | Cervical | Lumbar | Cervical |
| Flexion | 90° | 45° | 85⁰ | 35⁰ | 80⁰ | 50°→45° |
| Combined | 240° | 340° | 185⁰ | 235⁰ | 230⁰ | 280⁰ |
| Comment |  |  |  |  |  |  |
| §4.71a Rating |  |  | 10% | 10% | 10% | 10% |

The Board carefully reviewed all evidentiary information available. The Board noted that the thoracolumbar range of motion measured by the MEB physical therapy and the VA C&P exams each fit the VASRD criteria for a 10% rating based on both forward flexion and combined motion. The cervical range of motion measured by the MEB physical therapy exam fit the VASRD criteria for a 10% rating based on both forward flexion and combined motion, while the VA C&P exam fit the VASRD criteria for a 10% rating only on combined motion. There was no evidence that the CI was having incapacitating pain episodes that would warrant a higher rating under the code 5243 (intervertebral disc syndrome). There was no evidence of ratable peripheral nerve impairment in this case. No exam in evidence documented an abnormal gait or contour which would qualify for a §4.71a rating of 20%. All evidence considered there is not reasonable doubt in the CI’s favor to justify a Board recommendation for other than the 10% rating assigned by the PEB for each of the neck and back pain conditions respectively.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for erectile dysfunction (ED) and post traumatic stress disorder (PTSD). However, neither condition is mentioned 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 either condition as an additional unfitting condition for separation rating.

Other VA Rated Conditions:

In June 1994 a previous PEB found the CI unfit for post-Concussive syndrome with posttraumatic headaches, 9304-8045. This PEB also adjudicated right patellofemoral syndrome as not unfitting and he was separated with a 10% disability. He filed a VA claim and both conditions were service connected and rated as shown in the rating comparison chart above. Despite this disability he served in the National Guard and returned to active duty in 2004. No physical examination information prior to entering active duty in 2004 is available in the record for the Board to review. Neither condition is mentioned in the current 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 either condition as an additional unfitting condition for separation rating.

Remaining Conditions. Other conditions identified in the DES file were sebaceous cyst left scrotum, mole on the left lower back, testicular torsion, and right constant exotropia. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically 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. 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.

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. As discussed above, PEB reliance on DoDI 1332.39 for rating the cervical and thoracic strain conditions was operant in this case and the conditions were adjudicated independently of that instruction by the Board. In the matter of the cervical and thoracic strain conditions and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the scrotal sebaceous cyst, lower back mole, testicular torsion, exotropia, 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.

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 Strain | 5237 | 10% |
| Thoracic Strain | 5237 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110405, 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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

Deputy Assistant Secretary

(Army Review Boards)