RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100365 SEPARATION DATE: 20040419

BOARD DATE: 20120109

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SGT/E-5 (35F, Special Electronics Devices Repairer), medically separated for cervical and lumbar spine conditions. The CI had a history of atraumatic low back pain dating to 1999, which was exacerbated by a hard landing in a military aircraft during a deployment to Pakistan in December 2001. The CI also began to report paracervical neck pain after the same incident. He was again deployed in 2003, but was not able to successfully complete the deployment; requiring medical evacuation for his neck and back pain. Imaging did not reveal surgical pathology; and, he did not respond adequately to conservative measures to fully perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued permanent U3 and L3 profiles, and referred for a Medical Evaluation Board (MEB). Degenerative joint disease of the cervical spine and mechanical low back pain were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable conditions IAW AR 40-501. Five other conditions, as identified in the rating chart below, were forwarded by the MEB as medically acceptable conditions. An Informal PEB adjudicated the cervical and lumbar conditions as unfitting, rated 10% each, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “I was given a rating for only two out of seven disabilities, which totaled 20%.” He lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20040318** | **VA (2 Mo. Post-Separation) – All Effective 20040420** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Subjective Neck Pain | 5299-5237 | 10% | DJD Cervical Spine | 5242 | 10% | STR\* |
| Mechanical Low Back Pain | 5299-5237 | 10% | Mechanical Low Back Pain | 5299-5237 | 10% | STR\* |
| Bilateral Patellofemoral Pain Syndrome | Not Unfitting | Right Knee Pain | 5299-5260 | NSC | 20040610 |
| Left Knee Pain | 5299-5260 | NSC | 20040610 |
| PTSD | Not Unfitting | PTSD | 9411 | 10% | 20040614 |
| Right Shoulder Impingement | Not Unfitting | Right Shoulder Impingement | 5299-5203 | 10% | 20040610 |
| Headaches | Not Unfitting | Headaches | 8199-8100 | NSC | 20040610 |
| Elevated LDL | Not Unfitting | No Additional VA Entries | 20040610 |
| **Combined: 20%** | **Combined: 30%** |

\* Service Treatment Record – no VA exam conducted proximal to separation.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. 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 his degree of impairment vary over time.

Cervical Spine Condition. Plain radiographs taken in August 2003 showed a normal cervical spine, but magnetic resonance imaging (MRI) revealed minor arthritic degenerative changes at C3-4 on the left and C5-6 on the right. No cervical radicular symptoms were reported. 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 | PT ~4 Mo. Pre-Sep | PT ~1 Mo. Pre-Sep |
| Flexion (45⁰ Normal) | 45⁰ | >45⁰ |
| Combined (340⁰ Normal) | 295⁰ | 295⁰ |
| Comment |  | Pain with motion. |
| §4.71a Rating | 10%\* | 10%\* |

 \* Conceding §4.59 (painful motion) as below.

The MEB’s narrative summary (NARSUM) documented that the CI had been evaluated and treated on several occasions for muscle spasms associated with diffuse paracervical tenderness, but that no focal or neurological deficits were identified. ROM measurements by physical therapy on two occasions, as displayed in the chart above, showed generally full but painful motion. There was no evidence in the service file of “muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour.” The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB’s DA Form 199 suggested application of VASRD §4.59 (painful motion) for its 10% rating determination, which is consistent with §4.71a standards. The VA’s rationale for a minimal compensable rating in the face of a non-compensable loss of ROM is not in evidence, but presumably also relied on §4.59. There is no evidence of ratable peripheral nerve impairment in this case, nor is there evidence of intervertebral disc disease or incapacitating episodes that would justify a higher rating under the 5243 code. The Board concluded that there is no VASRD compliant pathway to a rating higher than 10% for the cervical spine condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s adjudication of the cervical spine condition.

Lumbar Spine Condition. Radiographs showed a normal lumbar spine and MRI evaluation is not in evidence. An outpatient note 10 months prior to separation noted right sciatic radicular pain; and, “radicular symptoms” without elaboration was recorded in the NARSUM. No electrodiagnostic study is in evidence, but all neurologic physical examinations in evidence are normal. 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.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | PT ~4 Mo. Pre-Sep | PT ~1 Mo. Pre-Sep\* |
| Flexion (90⁰ Normal) | 35⁰ | 75⁰ |
| Combined (240⁰ Normal) | Incomplete | 210⁰ |
| Comment |  | Painful motion; normal gait and contour. |
| §4.71a Rating | 20% (Based on Flexion) | 10% |

 \* The PEB and the VA both used these ROM measurements for their rating decisions.

The NARSUM recorded a history of frequent visits to the Troop Medical Clinic for lumbar and thoracic back pain. Outpatient entries over the 12 months prior to separation consistently noted a generally full but painful ROM, paraspinal tenderness without frank spasm, and normal gait and posture. An orthopedic consultation nine months prior to separation documented a normal motor exam without neurologic deficits. The physical therapy ROM exam four months prior to separation, as per the table above, was incompletely documented. Additionally, this exam noted that the lumbar measurements were taken “only from L1 and L5,” suggesting that this was not a VASRD compliant exam. The subsequent physical therapy ROM exam proximate to separation was complete, well documented, and VASRD compliant. A VA Compensation & Pension (C&P) exam more than two years post-separation showed a normal goniometric ROM with painful motion. In deliberating the probative value of the two pre-separation goniometric ROM exams, the Board noted that only the latter exam was complete, VASRD compliant, consistent with the clinical acuity reflected in all of the routine clinical notes, and most proximate to separation. The Board also noted that both the PEB and VA ratings were based on this exam, and that there was no subsequent VA data within the DoDI 6040.44 prescribed 12-month period in evidence. This evaluation was therefore assigned the dominant probative value by the Board for purposes of its recommendation. The PEB and VA chose the same coding option for the condition, and arrived at the same rating. There is no evidence of ratable peripheral nerve impairment in this case, nor is there evidence of intervertebral disc disease or incapacitating episodes that would justify a higher rating under the 5243 code. The Board concluded that there is no VASRD compliant pathway to a rating higher than 10% for this condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s adjudication of the lumbar spine condition.

Other PEB Conditions. The CI’s application implies that compensable ratings should be considered for the other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB: bilateral patellofemoral pain syndrome, PTSD, right shoulder impingement, headaches, and elevated LDL. None of these conditions were profiled, implicated in the commander’s statement or judged to fail 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 MOS duty performance. 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. No other conditions were noted in the narrative summary, identified by the CI on the MEB physical 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 and lumbar spine conditions and IAW VASRD §4.71a, the Board unanimously recommends no change in the respective PEB adjudications. In the matter of the contended bilateral patellofemoral pain syndrome, PTSD, right shoulder impingement, headaches, and elevated LDL conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Subjective Neck Pain | 5299-5237 | 10% |
| Mechanical Low Back Pain | 5299-5237 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110504, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for (PD201100365)

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

CF:

( ) DoD PDBR

( ) DVA