RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100425 SEPARATION DATE: 20040423

BOARD DATE: 20120106

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SSG/E-7 (96B, Intelligence Analyst), medically separated for a cervical condition. The CI suffered a neck injury in 1999, which subsequently required surgical intervention. Although improving, he suffered a re-injury in 2000; from which he did not adequately recover after a further trial of conservative management. He was consequently unable to tolerate the field and tactical requirements of his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3 profile and underwent a Medical Evaluation Board (MEB). Cervical degenerative disc disease and cervical discectomy/fusion were forwarded separately to the Physical Evaluation Board (PEB) as medically unacceptable conditions IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The Informal PEB (IPEB) combined the MEB-submitted conditions as a single unfitting condition, “neck pain secondary to discectomy and cervical vertebrae fusion,” rated 0% with presumptive application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI appealed to the Formal PEB (FPEB), and then to the USAPDA for reconsideration; and, was ultimately medically separated with a 10% disability rating for the cervical condition, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD) to the separation rating. A request for continuance on active duty (COAD) and a post-separation (2007) congressional inquiry resulted in no change to the PEB’s final disposition.

CI CONTENTION: The CI states: “The issues why the rating should be changed are as follow [sic]. first [sic] I was told by the board that I was unfit to continue service due to not being able to wear field gear. this [sic] in itself may be correct by regulation however there are many jobs in the Military intelligence Field that does not require the use or even the issue of field gear. Secondly before and after my Discharge I have read articles in the Army Times and several other service [sic] of amputees who were allowed to stay on active duty despite their disability. However these our [sic] the least of the problems for the Regulation to say I am unfit because I cannot wear Field Gear would imply that the condition would not get better and through 6 years of treatment with the Veterans Affairs that has been proven to be true. I am currently working on finding ways to fight Pain and numbness and tingling in my upper and lower extremities. After 15 years of service which caused these problems I was given a severance check and 6 months of TAMP benefits. My neck and Back hurt as bad as they did before I had my neck surgery in 2000. My condition has not gotten better nor will it. However I feel the Medical Board took the most expeditious way out even with letters from my command telling what an asset I was and would of been even with my Disability. However they chose to give me a severance check of which I pay back to the VA through my Disability Check. I was looking forward to retiring and being able to teach young children how to be good citizens through the JROTC program and to be able to say that I am a retired Veteran instead of just disabled. your [sic] Help in this matter would be gratefully appreciated.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20040225** | | | **VA (20 Mo. After Separation) – All Effective 20040424** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Neck Pain Discectomy Fusion | 5241 | 10% | Cervical Spine Condition | 5237 | 10% | 20051212 |
| ↓No Additional MEB/PEB Entries↓ | | | Left Knee Retropatellar Pain | 5262-5014 | 10% | 20030904 |
| Right Knee Retropatellar Pain | 5262-5014 | 10% | 20030904 |
| Generalized Anxiety Disorder | 9400 | 10% | STR |
| Left Tarsal Tunnel Syndrome | 8599-8520 | 10% | 20030904 |
| Right Tarsal Tunnel Syndrome | 8599-8520 | 10% | 20030904 |
| 0% x 4 / Not Service Connected x 5 | | | 200##### |
| **Combined: 10%** | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The VA, operating under a different set of laws (Title 38, United States Code), 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 his degree of impairment vary over time. The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12 month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Neck Condition. The CI’s 1999 trauma was a duty-related vehicular accident, and the re-injury in 2000 resulted from a duty-related fall (down icy stairs). His pathology was two level disc herniations (C5/6 and C5/7), and the intervening surgery between the two injuries was discectomy/fusion of those two levels. He experienced bilateral upper extremity radicular pain without positive neurologic findings (to comprehensive specialty examinations), although upper extremity electrophysiologic evaluation is not in evidence. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of all ratable findings, which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Cervical ROM | MEB ~ 9 Mos. Pre-Sep | VA C&P ~ 20 Mos. Post-Sep |
| Flexion (0-45) | 35⁰ | 45⁰ |
| Combined (340) | 215⁰ | 265⁰ |
| Comment | Normal neuro; painful motion. | Normal gait and posture. |
| §4.71a Rating | 10% | 10% |

The narrative summary (NARSUM) included a comprehensive Physical Medicine (PM) consultation. The CI reported subjective decreased grip strength and paresthesias to both forearms. The combined NARSUM and PM examinations revealed a decreased ROM consistent with the CI’s surgical history, and significant pain on left lateral flexion. Thorough upper extremity motor testing documented normal strength and reflexes for all arm and hand motor groups, and no evidence of atrophy. Although dermatomal sensory testing was not recorded, a positive Tinel’s sign (suggestive of irritation of the median nerve) was noted. The gait was non-antalgic. No mention was made of paracervical spasm, but mild paralumbar spasm was noted. A VA Compensation & Pension (C&P) exam performed seven months prior to separation noted normal gait and posture, and “no neuromuscular deficit identified in either arm or shoulder,” but was otherwise very poorly documented for ratable parameters. A focused cervical spine C&P exam 20 months after separation (albeit well outside the DoDI 6040.44 prescribed range) confirmed the minimally reduced ROM previously noted, and added that there was “no additional limitations by pain, fatigue, weakness, or lack of endurance following repetitive use.” The PEB and VA chose different coding options for the condition, but this did not bear on rating. Both the Service and VA data support a 10% rating under the §4.71a General Rating Formula for Diseases and Injuries of the Spine. There was no evidence of ratable incapacitating episodes which would provide for additional or higher rating. There was no evidence of ratable peripheral nerve impairment in this case. There was no motor weakness demonstrated, and the presumptive sensory component had no functional implications. It is further noted that the VA did not identify ratable peripheral nerve disability. There is not reasonable doubt in the CI’s favor, therefore, to justify a Board recommendation for other than the 10% rating assigned by the PEB for the back condition.

Other Contended Conditions. The CI’s application implies that compensable ratings should be considered for his back. The CI injured his back in the same 2000 fall in which he re-injured his neck. The condition was not profiled, implicated in the commander’s statement, or judged to fail retention standards by any provider. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that the back condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that this condition was not subject to Service disability rating.

Remaining Conditions. Other conditions identified in the DES file were left knee pain; bilateral tarsal tunnel syndrome; gastroesophageal reflux disease (GERD); seasonal allergies; anxiety; atrial fibrillation (single episode of rapid irregular heartbeat, later judged to be secondary to over-the-counter medication); and left varicocele (testicular cyst). The left knee pain began in 1995. The CI was issued a L3 profile and underwent a MOS Medical Review Board (MMRB) resulting in a finding of fit for retention and reclassification from infantry to military intelligence. None of the other conditions were significantly clinically or occupationally active during the MEB period; none carried attached profiles; and, none were implicated in the commander’s statement. All 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 12 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. The Board did not surmise from the record or definitive PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the cervical spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended back pain condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the left knee pain, bilateral tarsal tunnel syndrome, GERD, seasonal allergies, anxiety, atrial fibrillation, left varicocele 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Surgical Residuals, Cervical Spine | 5241 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110605, 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

2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for (PD201100425)

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