RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100501 SEPARATION DATE: 20030315

BOARD DATE: 20120606

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Specialist (E-4) (96B10 Intelligence Analyst), medically separated for chronic neck pain condition. He did not respond adequately to conservative, non-operative treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3 profile (although the medical condition was improperly stated as “L4-5 and S1 dysfunction [neck pain]”) and underwent a Medical Evaluation Board (MEB). Constant mild neck pain without radicular findings by physical exam or EMG nerve conduction study was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two 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 condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI stated “Requesting review of existing conditions as rated by the Veterans administration. 5290-LIMITED MOTION IN CERVICAL SPINE 20%, 5203-CLAVICLE OR SCAPULA, 10%, 5295-BACK STRAIN 10%, 7346-HIATAL HERNIA 10% SC, 8100-MIGRAINE HEADACHES 0%.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in 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. The gastroesophageal reflux disease (GERD) and migraine conditions requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview and are addressed below, in addition to a review of the ratings for the unfitting condition. The remaining conditions rated by the VA at separation and listed on the DD Form 294 application are not within the Board’s purview. 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 the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20030106** | **VA (~2 Mo. Pre Separation) – All Effective Date 20030316** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Neck Pain  | 5299-5295 | 10% | C-Spine DDD | 5293-5290 | 20% | 20030121 |
| GERD | Not Unfitting | GERD | 7346 | 10% | 20030121 |
| Migraines | Not Unfitting | Migraines | 8100 | 0% | 20030121 |
| ↓No Additional MEB/PEB Entries↓ | Rt Shoulder Strain | 5203 | 10% | 20030121 |
| Low Back Strain | 5295 | 10% | 20030121 |
| Lt Hip Strain | 5252 | 10% | 20030121 |
| Tinnitus | 6260 | 10% | 20030121 |
| RUE Neuritis | 5293-8615 | 10% | 20030121 |
| 0% x 1(listed above) / Not Service-Connected x 3 | 20030121 |
| **Combined: 10%** | **Combined: 60%** |

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 the degree of impairment vary over time.

Chronic Neck Pain Condition. The CI sustained two motor vehicle accidents (MVAs) without loss of consciousness resulting in whiplash neck injuries and migraine headaches. He was treated conservatively with physical therapy, chiropractic care, and physical medicine rehabilitation and had temporary relief but continued to have daily pain of 5 out of 10, 10 being the worst, which worsened to 10 of 10 with activity. Further evaluation included radiographs which demonstrated minimal multilevel degenerative disc disease (DDD) of the cervical spine, and he had a normal EMG. He was offered surgical treatment but elected to continue a non-operative treatment plan and was referred to a MEB. His commander’s statement corroborated his clinical pathology and noted the CI’s inability to meet requirements to advance in rank. There were five goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; three are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Cervical ROM | Chiropractor-7 Mos Pre Sep | PT (MEB) – 4 Mos Pre Sep | VA C&P –2 mos Pre Sep |
| Flexion (0-45) | 50⁰ | 30⁰ | 70⁰ |
| Combined (340) | 280⁰ | N/A | 290⁰ |
| Comments | Painful motion | Painful motion | Painful motion |
| Old spine rules | 10% | 20% | 10% |
| §4.71a Rating | 10% | 20% | 10% |

The MEB physical exam documented tenderness to palpation over the paraspinous muscles, and normal neuromuscular exam. The examiner diagnosed constant mild neck pain without radicular findings by exam or EMG, but the CI did have sensory symptoms which best correlated with a C6 nerve root type irritation. At the VA Compensation and Pension (C&P) exam 2 months prior to separation, the CI reported constant neck pain with the inability to wear helmets, carry a backpack or go on ruck marches. Driving or working at a keyboard aggravated his neck discomfort and resulted in further loss of range of motion. The C&P exam documented normal curvature of the spine, no tenderness, slight decreased right grip strength but an otherwise normal neuromuscular exam (repetitive motion was not attempted).

The Board directs attention to its rating recommendation based on the above evidence. The There is a disparity between the MEB and VA examinations, with some implications regarding the Board's rating recommendation. The Board carefully deliberated its probative value assignment to these conflicting evaluations, and reviewed the service file for corroborating evidence in the 12-month period prior to separation. The Board notes that the VA ROM exam was sufficiently well documented in terms of ratable criteria under the current VASRD as opposed to the MEB ROM exam which lacked a combined ROM. However, the CI’s overall condition and described physical findings were congruent between these two exams except for the degree of forward flexion. The Board carefully considered the whole record IAW VASRD §4.2 (Interpretation of examination reports) in order to derive a consistent picture of the CI’s neck condition and agreed in this case that the ROM documented in the STR and particularly the chiropractic exams on July 24, 2002, and September 11, 2002, consistently reflected a forward flexion and combined ROM similar to that of the VA exam. While there was a 12 month, prior to separation, ROM exam that was consistent with the MEB ROM exam, that exam was more remote from separation than the other referenced exams. Therefore, the Board assigned higher probative value to the VA evaluation. The PEB and VA chose different coding options for the condition which had some implications on the rating for the Board to consider.

The 2002 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were modified on 23 September 2002 to add incapacitating episodes (5293, intervertebral disc syndrome), and then changed to the current §4.71a rating standards in September 2003. The 2002 standards for rating based on ROM impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. For the reader’s convenience, the 2002 rating codes under discussion in this case are excerpted below. When older cases have goniometric measurements in evidence and when the 2001 VASRD code 5290 (for limitation of motion, cervical spine) is applicable, the Board reconciles (to the extent possible) its opinion regarding degree of severity under code 5290 with the objective thresholds specified in the current §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation.

**5293** Intervertebral disc syndrome:

Pronounced; with persistent symptoms compatible with: sciatic

 neuropathy with characteristic pain and demonstrable muscle

 spasm, absent ankle jerk, or other neurological findings appropriate

 to site of diseased disc, little intermittent relief ………………..….……….….. 60

Severe; recurring attacks, with intermittent relief ……………..…….………..….… 40

Moderate; recurring attacks ……………………………….……………............…... 20

Mild ……………………………………………………………..…………….….… 10

Postoperative, cured …………………………………….………..……………....….. 0

**5295** Lumbosacral strain:

Severe; with listing of whole' spine to opposite side, positive

Goldthwaite's sign, marked limitation of forward bending in

standing position, loss of lateral motion with osteo-arthritic

 changes, or narrowing or irregularity of joint space, or some

 of the above with abnormal mobility on forced motion …………………..…... 40

With muscle spasm on extreme forward bending, loss of lateral spine

motion, unilateral, in standing' position ……………...…….……..…...….….. 20

With characteristic pain on motion ………………………………..……...…….…. 10

With slight subjective symptoms only ……………………...…….…………...……. 0

**5290** Spine, limitation of motion of, cervical:

Severe........................................................ 30

Moderate...................................................... 20

Slight........................................................ 10

The PEB rated the condition 10% coded analogous to 5295 (lumbosacral strain) for characteristic pain on motion which was consistent with the VASRD general rating formula for diseases and injuries of the spine in effect at the time. However, the 5290 code would have been a more accurate anatomic descriptor (spine limitation of motion, cervical). The Board reviewed the PEB’s analogous rating under the 2002 VASRD 5295 code. The 20% rating for code 5295 required “muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position.” The CI’s condition clearly did not meet that threshold even at the pre-separation VA examination. The Board concluded the combined ROM demonstrated at the VA exam justified a 10% rating under the VASRD 5290 code in effect at the time, as well as current VASRD guidelines. The VA, however, rated the condition 20% coded 5290 citing the MEB flexion measurement in spite of its own normal ROM exam, and analogized it to code 5293 (intervertebral disc syndrome) which further reflected the clinical pathology. The Board next considered whether a higher rating was warranted under the guidelines for intervertebral disc syndrome, code 5293. The CI had intervertebral disc disease with radicular symptoms but without clear objective neurologic findings. Minimally diminished right hand grip strength, compared to the left, was evident in the VA exam as well as the chiropractic exam on 16 March 2002, and the Board concluded this was likely due to pain since the CI’s EMG was normal, without nerve pathology. Therefore there was no significant motor component and the sensory component has no functional implications. Since there is no evidence of functional impairment, the Board cannot recommend a higher rating under the guidelines for the 5293 code. There were also no incapacitating episodes that warranted consideration under the VASRD criteria for rating that became effective prior to the CI’s separation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends no change in the disability rating of 10% for the chronic neck pain as conferred by the PEB. The Board does however recommend a change to code 5293-5290 in order to accurately describe the clinical pathology of the neck condition (as opposed to using a lumbosacral spine code) and to maintain compliance with the DoDI 6040.44 requirement for strict adherence to the VASRD.

Contended PEB Conditions. The conditions adjudicated as not unfitting by the PEB were GERD and migraines. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering 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.

None of these conditions were profiled and none were judged to fail retention standards. All were reviewed by the action officer and considered by the Board. The CI was treated up to age 13 for migraine headaches and was headache free until the first MVA. The CI then reported having three to four headaches a week and was placed on both prophylactic and abortive medications, which decreased the headaches to one per week. There was no evidence of prostrating episodes or missed work. The GERD condition was well controlled with medications. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the contended PEB conditions and, therefore, no additional disability ratings can be recommended.

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 condition, the Board unanimously recommends a disability rating of 10% coded 5293-5290 IAW the 2002 VASRD, and which is also IAW VASRD §4.71a. In the matter of the contended GERD and Migraine conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Neck Pain | 5293-5290 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110706, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXX

 Director of Operations

 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 XXXXXXXXXXXXX, AR20120011916 (PD201100501)

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 description without modification of the combined rating or 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:

Encl XXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA