RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100692 SEPARATION DATE: 20030523

BOARD DATE: 20120305

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, A1C/E-3 (2A533B, Integrated Avionics Systems, Instrument and Flight Controls Apprentice), medically separated for limited range-of-motion (ROM) of cervical spine, status post fusion C1-C5. The CI had a history of a C2-5 cervical fusion at age 15 (1996) following a motor vehicle accident. The CI recovered, was asymptomatic, and was able to enter the service in July 2001. In September 2001 while doing sit-ups, he experienced right upper extremity pain and numbness. Radiologic studies revealed C1-2 instability, and he underwent C1-2 fusion in April 2002. Despite post-operative rehabilitation, with cervical collar, medications, and physical therapy, his neck pain and limited ROM persisted. He did not respond adequately to treatment and was unable to perform within his Air Force Specialty (AFS) or meet physical fitness standards. He was issued a temporary U4 profile and underwent a Medical Evaluation Board (MEB). “Severely limited range of motion in the cervical spine following fusion from C1-C5” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file are discussed below. The PEB adjudicated the neck condition as unfitting, rated 20% with a deduction of 10% for the component that existed prior to service (EPTS), with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI appealed for a Formal PEB (FPEB), which reaffirmed the PEB decision, and he was then medically separated with a 10% disability rating.

CI CONTENTION: “The unfitting cervical instability condition and the treatment received altered the course of my career and subsequently my life. Although rated less than 20% this condition has impacted 100% of my life. It has meant a significant change in range of motion, physical activities, limited job availability, and medical care coverage for me and my family. The early years after my Air Force service were more manageable than now. The VA originally rated my conditions at 30% and "deferred" the other issues, it’s been a struggle ever since to get care and for treatment. I was advised pre- and post -surgical treatment and recovery, that the quality and function of my lower vertebrates would be compromised and now they are. The cervical fusion of C1-C5 has placed my thoracic spine under tremendous strain and pain. It was not until significant evidence from private doctors and private healthcare insurance did the VA take issue with the original rating. The private doctors came at personal expense. Ironically, the VA still denies the radiculopathy in my right arm which the Air Force doctors treated. Seeking out and finding adequate treatment, pain management, prescriptions, or physical therapy has placed a financial and emotional strain on my family and private health care insurance carrier. Which the carrier would like to absolve themselves of under "pre-existing" condition clauses and "third party liability" terms. I have attached my [VA] ratings information for your review and consented to allow the VA to provide you with all of my records. I hope that this will provide some insight into my unfitting condition and the significant impact it has had on my life beginning with my Air Force career. I urge you to reconsider.” Having cited and attached his VA conditions and ratings, a contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20030402** | | | **VA (4 Mo. After Separation) – All Effective Date 20030524** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Limited Range Of Motion Of Cervical Spine Status Post Fusion C1-C5. EPTS With Service Aggravation | 5290 | 20%-10% = 10% | Instability Of C1, Fusion C1-C5 With Scoliosis Cervical Spine | 5299-5290 | 20% | 20030920 |
| Tender Scar, Cervical Spine … | 7804 | 10% | 20030920 |
| Headaches a/w Spinal Surgery … | 8199-8100 | 0%\* | 20030920 |
| R (Arm) Radiculopathy a/w Spinal Surgery … | 8799-8713 | NSC | 20030920 |
| Scoliosis of Thoracic Spine a/w Spinal Surgery … | 5299-5291 | NSC | 20030920 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 1/Not Service Connected x 2 | | | 20030920 |
| **Combined: 10%** | | | **Combined: 30%** | | | |

\* Headaches 8199-8100 increased to 30% effective 20100524 (combined 50%)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current earning ability and quality of life. It is a fact, however, that the Disability Evaluation System (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 Board utilizes DVA evidence proximate 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 6040.44, 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.

Limited ROM of Neck. The CI’s neck condition must be rated IAW 2003 VASRD standards, following VASRD changes of 23 September 2002 to criteria of 5293, intervertebral disc syndrome, and before the VASRD change of 26 September 2003 when the current spine criteria became effective. The older VASRD spine criteria did not have the current general rating formula for diseases and injuries of the spine inclusion of “with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease.” Additionally, the VASRD criteria prior to 23 September 2002 used substantially different criteria for diagnostic code 5293, intervertebral disc syndrome which specifically included neuropathy and pain with assessment of frequency of attacks and relief; however, they are not applicable to this case given the date of separation (23 May 2003).

**5285** Vertebra, fracture of, residuals:

With cord involvement, bedridden, or requiring

long leg braces ............................................. 100

Consider special monthly compensation; with

lesser involvements rate for limited motion,

nerve paralysis.

Without cord involvement; abnormal mobility requiring

neck brace (jury mast) ....................................... 60

In other cases rate in accordance with definite

limited motion or muscle spasm, adding 10

percent for demonstrable deformity of vertebral body.

NOTE: Both under ankylosis and limited motion,

ratings should not be assigned for more than

one segment by reason of involvement of only

the first or last vertebrae of an adjacent segment.

**5287** Spine, ankylosis of, cervical:

Unfavorable .......................................................... 40

Favorable ............................................................ 30

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

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

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

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

**5293** Intervertebral disc syndrome:

Evaluate intervertebral disc syndrome (preoperatively or

postoperatively) either on the total duration of

incapacitating episodes over the past 12 months or by

combining under Sec. 4.25 separate evaluations of its

chronic orthopedic and neurologic manifestations along with

evaluations for all other disabilities, whichever method

results in the higher evaluation. …//….

Note (1): For purposes of evaluations under 5293, an

incapacitating episode is 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. ……//….

There were two cervical spine examinations proximate to separation, including ROM evaluations, in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams, along with the CI’s enlistment exam (discussed below), are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| ROM – Cervical | ***Enlistment PE***  ~ 26 Mo. Pre-Sep | MEB ~ 6 Mo. Pre-Sep | VA C&P ~ 4 Mo. After-Sep |
| Flex (0-45) | (60⁰) 45⁰ | “approximately only 10⁰” | 20⁰ |
| Ext (0-45) | 45⁰ | “approximately 20-30%”  [10⁰-15⁰] | 25⁰ |
| R Lat Flex (0-45) | 45⁰ | “approximately only 20⁰” | 14⁰ |
| L Lat Flex (0-45) | 45⁰ | “approximately only 20⁰” | 10⁰ |
| R Rotation (0-80) | 60⁰ | Not reported | 21⁰ |
| L Rotation (0-80) | 60⁰ | Not reported | 15⁰ |
| COMBINED (340) | 300⁰ | unk | 105⁰ |
| Comment: Surgery 13 Mo. Pre-Sep+ | Painless ROM | Appeared in mild pain throughout exam, neck held in stiff upright position, neuro normal, gait normal, incision well healed | TTP over superior aspect of scar, neuro normal, x-rays – scoliosis of lower C-spine |
| ‘Old’ §4.71a Rating | 10% | 20%-30% (PEB 20%) | 20% |

The narrative summary (NARSUM), six months pre-separation, reported the CI appeared to be in mild pain throughout the exam, and he held his neck “in a stiff upright position.” Although the ROM exam was incomplete and approximate values were given, the documented ROM decrement was significant. The examiner noted a well-healed incision, normal neurological evaluation, and the remainder of the exam was unremarkable. Radiographs showed a solid fusion from C1 to C5.

The VA Compensation and Pension (C&P) exam, four months after separation, noted ROM decrements as charted above, tenderness to palpation (over the superior aspect of his incision scar), and a history of “headaches,” which on further questioning were determined to be suboccipital and high cervical pain rather than head pain. Neurological evaluation was normal. Radiographs demonstrated scoliosis of the lower cervical spine, limited ROM, posterior fusion at C1-4 with post-operative changes, and narrowed disc spaces at C2-4. The examiner diagnosed muscular tension headaches more likely than not due to his transarticular screw C1-2 fusion, back pain more likely than not secondary to cervical muscular tension headaches, and cervical scoliosis due to cervical fusion surgery, and congenital thoracic scoliosis.

Both the service and VA rated the CI’s neck condition under diagnostic code 5290. The service rated their exams at 20% for “moderate” limitation of cervical motion; although a forward flexion of “approximately only 10⁰” (normal 45⁰) may have met the severe (30%) criteria. The VA exam’s ROM with 20⁰ of forward flexion met the 20% (moderate) rating criteria. The Board adjudged that the military exam had the highest probative value for rating, given that it occurred prior to separation and applying §4.7, higher of two evaluations, since “the disability picture more nearly approximates the criteria required for that [severe (30%)] rating.” The cervical spine ROM was not sufficiently limited to consider analogous rating to 5287, ankylosis. There was no evidence of vertebral fracture or demonstrable deformity of vertebral body, and there was no evidence of episodes of incapacitation for alternative rating.

The service deducted 10% for the EPTS component of the CI’s cervical spine condition and the Board deliberated evaluation and application of the PEB’s EPTS deduction determination. The Board’s authority for recommending a change in the service’s EPTS determination is not specified in DoDI 6040.44, but is considered adjunct to its DoD-specified obligation to review service fitness adjudications. As with its consideration of fitness adjudications, the Board’s threshold for countering service EPTS 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. The CI’s enlistment exam, performed 26 months prior to separation, reported one-level cervical fusion (C2-3), with “no sequelae.” ROMs were painless, and were full in all directions except rotation, with a combined ROM of 300⁰ (normal 340⁰). The enlistment exam would rate 10% for “slight” limitation of motion. The Board adjudged that there was insufficient evidence to recommend reversing the PEB’s deduction for the EPTS component. Given the CI’s history of pre-service cervical fusion with slightly reduced ROM, a 10% EPTS deduction was deemed reasonable.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% (30%-10%) for the neck condition, coded 5290.

Neck Condition (Radiculopathy). There was no evidence of unfitting peripheral nerve impairment in this case. Prior to surgery, the CI endorsed radiating pain down his right arm and numbness in his right hand. All post-operative exams, including both exams proximate to separation showed normal sensory and motor function in the upper extremities. There was no report of muscle weakness or atrophy proximate to separation. This leaves no grounds for a Board recommendation of an additionally unfitting neuropathy. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of any upper extremity radiculopathy (peripheral nerve) as an unfitting condition for separation rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for his thoracic spine condition (VA NSC for scoliosis), right arm radiculopathy (VA NSC; discussed above), and headaches (VA 0%). All of these conditions were reviewed by the action officer and considered by the Board. The CI’s neck pain may have precipitated upper thoracic pain/spasm and muscle tension headaches. The VA exam noted congenital deformity (scoliosis) in the thoracic spine. Thoracolumbar ROMs were mildly reduced during the VA exam, which also reported a normal gait with a “slightly flexed posture in the lumbar spine.” Neurosurgery and internal medicine notes indicated that although the CI continued to have daily headaches, they were much better following the neck surgery. Although the VA exam noted the CI tried narcotic pain medications for his headaches, there was no indication of prostrating headaches post surgery or proximate to separation, and headaches were not profiled or mentioned in the commander’s statement. Although it is possible that impairments from the thoracic spine or headache conditions were overshadowed by the neck condition, that possibility is unduly speculative as the basis for a Board fitness recommendation. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were right shoulder pain, right hip pain, severe overbite with crowding and displaced teeth, foot pain (unspecified side), and abdominal (epigastric) pain. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant 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. 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 neck condition, the Board unanimously recommends a final rating of 20% (30% minus 10% for EPTS = 20%) coded 5290 IAW VASRD §4.71a. In the matter of the thoracic spine condition, right arm radiculopathy, and headache conditions 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 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** |
| Limited Range of Motion of Cervical Spine S/P Fusion C1-C5 | 5290 | 30%-10% (EPTS) |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110825, 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

PDBR PD-2011-00692

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Title 10, United States Code, Section 1554a (122 Stat. 466) and Title 10, United States Code, Section 1552 (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating XXXXXXXXXX, be corrected to show that the diagnosis in his finding of unfitness for Limited Range of Motion of Cervical Spine S/P Fusion C1-C5, VASRD Code 5290,was rated at 20% rather than 10%.

XXXXXXXXXXX

Director

Air Force Review Boards Agency

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXX

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. § 1554a), PDBR Case Number PD-2011-00692.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended modification of your assigned disability rating without re-characterization of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

Sincerely,

XXXXXXXXXX

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

cc:

SAF/MRBR

DFAS-IN