RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100801 SEPARATION DATE: 20040916

BOARD DATE: 20120525

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (91W, Health Care Specialist) medically separated for a cervical spine condition. The CI experienced on onset of neck pain in 1994, which progressed over time. In 2003 she was diagnosed with cervical disc disease, electing conservative management over a surgical option. The condition, however, could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was consequently issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). The cervical spine condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Three other conditions (as identified in the rating chart below) were addressed by the MEB, and forwarded as meeting retention standards. The PEB adjudicated the cervical spine condition as unfitting, rated 10%, citing criteria of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I do not believe that my duties were hindered by my condition. If it did hinder my duties, then I should have been given an opportunity to reclassify to another MOS.” She does not elaborate further or specify a request for Board consideration of any additional conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 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.” Since none of the conditions determined to be unfitting by the PEB are requested for review, only the rated cervical spine condition falls 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:

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| --- | --- |
| **Service PEB – Dated 20040527** | **VA (2 Mo. Pre-Separation) – All Effective Date 20040917** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Neck Pain, Degenerative Disc | 5237 | 10% | Cervical Stenosis, Bulging Disc | 5243 | 0% | 20040721 |
| Migraines | Not Unfitting | Migraine Headaches | 8100 | 10% | 20040721 |
| Bilateral Knee Pain | Not Unfitting | Bilateral Knee Pain  | 5099-5019 | NSC | 20040721 |
| Gastroesophageal Reflux Disease | Not Unfitting | GERD | 7399-7346 | 0% | 20040721 |
| No Additional MEB/PEB Entries | Chronic R Shoulder Strain | 5010-5201 | 10% | 20050309 |
| Chronic R Ankle Strain | 5271-5024  | 10% | 20050309 |
| 0% X 2 / Not Service Connected x 5 | 20040721 |
| **Combined: 10%** | **Combined: 30%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention suggesting that she is contesting the PEB decision that she was medically unfit for continued service, believing that she was inappropriately denied an opportunity to reclassify into a different MOS. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize, render opinions, or offer remedy in reference to service decisions of this nature. That jurisdiction and authority resides with the ABCMR. IAW DoDI 6040.44, the Board’s authority is limited to making recommendations on correcting disability determinations. The Board’s role is thus confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Cervical Spine Condition. The CI attributed the 1994 onset of symptoms to “working out.” At that time she had associated pain in the right shoulder, but developed radiation down the right arm associated with intermittent paresthesias. Her symptoms were managed with anti-inflammatories and temporary profiles, but worsened in 2002. Imaging in 2003 revealed degenerative changes with bulging discs at C5/6 and C6/7, with left foraminal encroachment (contralateral to the radicular symptoms). Surgery was offered, and recommended, although it was noted that the expected results were questionable given the anatomic disparity between findings and symptoms; thus, the CI declined surgical intervention. A further trial of conservative measures, including epidural steroid injections, was unsuccessful. There were two goniometric range of motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Cervical ROM | MEB PT ~5 Mo. Pre-Sep | VA C&P ~2 Mo. Pre-Sep |
| Flexion (45⁰ Normal) | 30⁰ | 65⁰ |
| Combined (340⁰) | 250⁰ | 340⁰+ |
| Comments | + Tenderness; ROM limited by pain.  | No spasm, tenderness, abnormal contour, or painful motion. |
| §4.71a Rating | 20% | 0% |

The MEB examiner noted only the standard profile limitations as functional impairments associated with the condition, stating that she was “able to perform the activities of daily living including driving;” but, noted a statement from the CI that she “has a hard time doing IV’s” due to right hand “weakness and numbness.” The CI remained active in her MOS in a supervisory role. The MEB physical exam noted mid-line cervical and right trapezial tenderness without mention of spasm. ROM measurements were deferred to physical therapy (PT) as charted above. The neuro exam noted biceps, triceps, and deltoid strength of “4/5 limited only by pain”; but was otherwise normal. The pre-separation VA Compensation and Pension (C&P) examiner reported that “the condition does not interfere with her ordinary lifting or carrying, activities of daily living service functions.” The VA examiner reported normal physical findings and ROM measurements greater than the normal range as charted above. The neurological examination reported 5/5 muscle strength in all groups and normal reflexes. The only comparison evidence found in the record to corroborate the disparate ROM evaluations noted above was a neurology consultant (12 months pre-separation) who commented that cervical ROM “was mildly decreased.” His detailed neurological examination noted no abnormal findings regarding cervical radiculopathy or otherwise. There were numerous corroborating neurologic examinations of the right upper extremity in evidence (including by specialty consultants); all of which noted normal strength, reflex, and sensory findings. A complaint of right cervical radicular type pain was frequent, however.

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s DA Form 199 quoted the *passive* ROMs measured by the PT examiner (flexion 45⁰, combined 340⁰), and cited cervical tenderness as the VASRD §4.71a basis for its 10% determination. The Board relies on active ROM measurements (as charted) to reflect pain-limited ROM for rating purposes. Given the conflicting evidence from the VA exam, however, the Board must make a probative value judgment in its selection of ROM evaluations on which to base its recommendation. The 30⁰ active flexion per the MEB physical therapist is the threshold for a 20% rating IAW §4.71a. After deliberation, members agreed that this single finding was not sufficiently probative as a basis for the higher recommendation for the following reasons: the only corroborating evidence was more consistent with minimally impaired ROM; the combined active ROM was incongruent with the significantly limited flexion; the VA evaluation was temporally closer to the date of separation; and, the VA and corroborating evidence was derived from physician evaluators. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the cervical spine condition.

The Board additionally considered whether additional rating could be recommended under a peripheral nerve code for the associated cervical radiculopathy in this case. Firm Board precedence requires a functional impairment tied to fitness to support a recommendation for addition of a peripheral nerve rating disability in spine cases. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. The only evidence for any functional impairment from the radiculopathy, unrelated to pain, was the CI’s comment to the MEB examiner regarding problems with her MOS task of starting IV’s; but, there is no basis for a conclusion that this rendered her unfit for the MOS in her grade; and, there is no indication of any objective impairment attributable to cervical neuropathy. It is further noted that the VA did not confer (and has not since conferred) a peripheral nerve rating for radiculopathy. There is thus no evidence of a separately ratable functional impairment (with fitness implications) from the cervical radiculopathy; and, the Board cannot support a recommendation for an additional disability rating on this basis.

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 spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of cervical radiculopathy associated with the unfitting spine condition, the Board unanimously agrees that it cannot recommend additional rating for peripheral nerve impairment. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Cervical Degenerative Disc Disease | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110919, 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

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, AR20120010151 (PD201100801)

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 XXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA