RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX. BRANCH OF SERVICE: Army

CASE NUMBER: PD1100805 SEPARATION DATE: 20060215

BOARD DATE: 20120516

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard member, SPC/E4, 31B, Military Police, medically separated for right upper extremity weakness and pain secondary to degenerative disk disease of the cervical spine. The CI had a history of chronic neck and shoulder pain, which began in 2001 while activated for deployment. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS). His profile allowed for an alternate aerobic event. He was issued a permanent U3 profile and underwent a Medical Evaluation Board (MEB). Cervical radiculopathy of C6-C7 and C7-T1, due to paracentral disk protrusion was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the right upper extremity weakness and pain condition as unfitting, rated 20% with application of DoDI 1332.39 and Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “Physical Evaluation Board (PEB) recommended 20% at time of release from Title 10 activation. The board convened on 1.26.06 at Fort Lewis WA and notes on DA Form 199, that neural impingement by myelogram and mri at C6-7, C7-T1 weakness 4/5th and this condition existed when discharged from active duty in 2004.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060126** | | | **VA (6 Mo. After Separation) – All Effective 20050222** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| RUE Weakness/Pain | 8512-8513 | 20% | Bulging disc C6-7 and C7-T1 w/ Mild Nerve Root Impingement C8 and Radiculopathy | 8599-5243 | 10% | 20050823 |
| No Additional MEB/PEB Entries | | | 0% x 0/Not Service-Connected x 1 | | | 20050823 |
| **Combined: 20%** | | | **Combined: 10%** | | | |

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” 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 (BCMR).

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. 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 nor for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA), but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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’s role is 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.

Right Upper Extremity Weakness and Pain Secondary to Degenerative Disc Disease of the Cervical Spine. The CI developed right arm pain while on extended active duty in 2002, during Operation Noble Eagle. The pain was aggravated while deployed in support of Operation Enduring Freedom in 2003. MRI in October 2003 demonstrated bulging cervical spine intervertebral discs at C6-7 and C7-T1 and a CT myelogram in April 2004 confirmed mild bulging discs affecting the right C7 nerve root and possibly the right C8 nerve root. Neurosurgery evaluation in April 2004 documented that the majority of the CI’s pain was in the arm. On examination, there was mild weakness consistent with C7 radiculopathy without loss of reflex or sensation. Cervical spine range-of-motion (ROM) was not limited. The CI did not elect the surgical treatment option offered by a neurosurgeon in April 2004. At VA Compensation Pension (C&P) examinations of spine and joints on 23 August 2005, the CI reported problems with neck pain radiating into the right arm, and pain, weakness, stiffness and numbness in the right shoulder and arm that interfered with safe use of a weapon and his civilian occupation as a welder. Although there were flares, there were no incapacitating episodes in the preceding 12 months. The cervical spine was observed to have normal curvature. There was paraspinous tenderness bilaterally.

Cervical ROM was: forward flexion 40 degrees (normal 45), extension 30 degrees (normal 45), left lateral flexion 20 degrees (normal 45), right lateral flexion 18 degrees, left lateral rotation 70 degrees (normal 80), and right lateral rotation 70 degrees. There was no additional limitation after repetitive movement. Musculature of the upper extremities was symmetric without atrophy, and equal in strength. Shoulder range of motion was normal. There was decreased sensation to pin prick but not light touch of the right hand. A VA nerve C&P examination on 8 September 2005 documented symptoms of intermittent numbness and tingling of the right arm and neck pain and stiffness. On examination there was tenderness. There was no muscular atrophy and muscle tone was normal. Strength was normal in both upper extremities, and was symmetric bilaterally. Deep tendon reflexes were intact and symmetric. There was decreased sensation of the right upper extremity in a non-specific pattern. On electrodiagnostic testing, nerve conduction velocity testing demonstrated moderate carpal tunnel syndrome on the right accounting for hand symptoms. The electromyogram was normal showing no evidence of cervical radiculopathy. The examiner concluded that the CI was experiencing intermittent cervical radicular symptoms based on clinical history and results of imaging from April 2005. The VA assigned a 10% rating for intervertebral disc syndrome (8599-5243) with application of the general rating formula for diseases of the spine. The VA noted the radicular pain but absence of objective examination findings and negative EMG findings for radiculopathy. The pain, whether it radiates or not, is subsumed under the rating for the cervical spine. A 3 October 2005 military clinic appointment notes the CI was on a duty limiting profile and MEB was initiated. On physical examination, there was paraspinal tenderness, but strength and reflexes were intact in all extremities including the right upper extremity and right shoulder girdle. The MEB NARSUM, dated 3 January 2006, records intermittent symptoms of neck pain, shoulder, and arm pain since onset in 2001. On examination, the cervical spine was recorded to demonstrate full ROM. Weakness of the right upper extremity was observed to involve shoulder external rotation, internal rotation, and abduction. Grip strength and pinch was mildly reduced graded 4+/5 by the examiner. A Spurling test was recorded to be positive. The PEB adjudicated a 20% rating coded 8512-8513 (paralysis of lower radicular groups – all radicular groups), mild based on the MEB NARSUM.

The Board discussed the PEB approach of rating the CI’s condition under the diagnostic code for radiculopathy while the VA rated under the diagnostic code for intervertebral disc syndrome and did not grant a separate rating for radiculopathy. The Board considered whether separate ratings were warranted for cervical spine degenerative disc disease (DDD) and radiculopathy. Although the MEB NARSUM recorded examination findings of weakness, these results were inconsistent with the known pathology and the results of the C&P examinations on 23 August 2005, 5 September 2005, and the service treatment record examination on 3 October 2005. Weakness about the shoulder would not be expected from C7 or C8 radiculopathy. While C7 and C8 radiculopathy can cause decreased grip strength, the electrodiagnostic testing demonstrated moderate carpal tunnel syndrome which can cause decreased grip and pinch strength while electromyogram showed no evidence of radiculopathy. Board members agreed that the evidence clearly supported the VA’s approach to rating the condition and that the preponderance of evidence indicated that the radiating pain symptoms did not warrant a separate unfitting rating for radiculopathy when the condition is rated under the code for intervertebral disc syndrome. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. While the CI may have suffered additional pain from the nerve involvement, this is subsumed under the general spine rating criteria, which specifically states “with or without symptoms such as pain (whether or not it radiates).” Therefore the critical decision is whether or not there was a significant motor weakness which would impact military occupation specific activities. There is no evidence in this case that motor weakness existed to any degree that could be described as functionally impairing. The Board therefore concludes that additional disability rating was not justified on this basis. Even if it is conceded that there was a radiculopathy warranting a separate rating, the evidence of the examinations do not support a rating higher than 10%, which, when combined with a 10% rating for the neck condition does not provide for a higher combined rating than that adjudicated by the PEB providing no benefit to the member. Therefore, there is not reasonable doubt in the CI’s favor, to justify a Board recommendation for other than the 20% rating assigned by the PEB for the neck condition.

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. In the matter of the right upper extremity weakness and pain condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. 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** |
| Right Upper Extremity Pain Secondary to DDD C-spine | 8512-8513 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110921, 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 XXXXXXXXXXXXXXX, AR20120011842 (PD201100805)

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 XXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA