RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100830 SEPARATION DATE: 20030702

BOARD DATE: 20120524

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (96B30/Intelligence Analyst), medically separated for chronic neck pain and associated headaches due to cervical spondylosis. His neck pain and headaches started in approximately 1998 with no history of trauma and gradually increased. He was not a surgical candidate and did not respond adequately to conservative management to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was consequently issued a permanent U3 profile and a temporary L2 profile and underwent a Medical Evaluation Board (MEB). “Cervical spondylosis with neck pain and headaches and idiopathic chronic daily headaches” were 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 chronic neck pain and headaches due to spondylosis conditions as a single unfitting condition, rated 20% with specified application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “The condition has not got [sic] better. But has gotten worse and unmanageable [sic]. The Headaches [sic] are getting increasingly stronger every day and are there 24 hrs a day. my [sic] neck is getting more difficult to turn. my Right [sic] arm has been getting weaker over time due to the pressure in my neck. I have tried thru the VA to get surgery but the doctor in Seattle said I was not a good candidate for surgery. At times the pain is so intense that I am unable to focus my eye’s [sic] on any thing [sic]. My life has changed considerable [sic] due to the neck pain and headaches. The pain is there all the time, [sic] the medication just dulls it so getting thru the day is bearable.”

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.” The neck and headache conditions, as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below as parts of the CI’s unfitting conditions. The right arm condition is not within the Board’s purview, except as it relates to the rating for the unfitting neck condition. 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 20030505** | | | **VA (1 Mo. Pre-Separation) – All Effective 20030703** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Neck Pain/Headaches Due to Spondylosis | 5099-5003 | 20% | Cervical Spine HNP w/ DJD | 5293-5290 | 10% | 20030605 |
| Headache Secondary to Cervical HNP … | 8199-8100 | 30% | 20030605 |
| ↓No Additional MEB/PEB Entries↓ | | | Right Knee Patellofemoral Pain Syndrome (PFS) | 5299-5024 | 10% | 20030605 |
| Left Knee PFS | 5299-5024 | 10% | 20030605 |
| Right Elbow Epicondylitis | 5206-5024 | 10% | 20030605 |
| Left Shoulder Tendonitis | 5203-5024 | 10% | 20030605 |
| Right Ankle Strain | 5271 | 10% | 20030605 |
| Left Ankle Strain | 5271 | 10% | 20030605 |
| Low Back Strain | 5295 | 10% | 20030605 |
| 0% x 1/Not Service-Connected x 0 | | |  |
| **Combined: 20%** | | | **Combined: 70%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, that the gravity of his condition and predictable consequences merit consideration for a higher separation rating. 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 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 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.

The 2003 Veterans’ Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards on 26 September 2003. The 2003 standards for rating based on range-of-motion (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. The older spine criteria also does not have the current “general rating formula for diseases and injuries of the spine” nor the indicator that spine rating is “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”. For the reader’s convenience, the 2003 rating codes under discussion in this case are excerpted below.

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.

With incapacitating episodes having a total duration of at 60

least 6 weeks during the past 12 months....................

With incapacitating episodes having a total duration of at 40

least four weeks but less than 6 weeks during the past 12

months.......................................................

With incapacitating episodes having a total duration of at 20

least 2 weeks but less than 4 weeks during the past 12

months.......................................................

With incapacitating episodes having a total duration of at 10

least a week but less than 2 weeks during the past 12

months.......................................................

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. ``Chronic orthopedic and neurologic

manifestations'' means orthopedic and neurologic signs and

symptoms resulting from intervertebral disc syndrome that are

present constantly, or nearly so..

Note (2): When evaluating on the basis of chronic

manifestations, evaluate orthopedic disabilities using

evaluation criteria for the most appropriate orthopedic

diagnostic code or codes. Evaluate neurologic disabilities

separately using evaluation criteria for the most appropriate

neurologic diagnostic code or codes..

Note (3): If intervertebral disc syndrome is present in more

than one spinal segment, provided that the effects in each

spinal segment are clearly distinct, evaluate each segment on

the basis of chronic orthopedic and neurologic manifestations

or incapacitating episodes, whichever method results in a

higher evaluation for that segment..

Chronic Neck Pain and Associated Headaches Due to Spondylosis Condition. The PEB rated chronic neck pain/headaches under the single analogous 5003 (degenerative arthritis) code. This coding approach was countenanced by the USAPDA pain policy and AR 635-40; however, IAW DoDI 6040.44 the Board must apply only VASRD guidance to its recommendation. The Board must therefore apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD §4.71a. and §4.124a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting; and, that there was no need for separate fitness adjudications, not a judgment that each condition was independently unfitting. Thus the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. Since the VA provided separate ratings for each condition in this case, the Board will evaluate separate fitness evaluations and separate ratings as follows; a cervical spine condition and a headache condition.

Neck Condition: There was clear and convincing evidence from the initial MEB, commander’s statement, and PEB disability description that neck pain was the principle duty-limiting condition. There were two cervical spine exams, including one goniometric ROM evaluation 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 ~13 Mo. Pre-Sep | MEB ~6 Mo. Pre-Sep | VA C&P ~1 Mo. Pre-Sep |
| Flex (45⁰ Normal) | “full range of motion” | “neck has decreased range of motion” | 40⁰ |
| Ext (0-45) | 45⁰ |
| R Lat Flex (0-45) | 25⁰ |
| L Lat Flex (0-45) | 25⁰ |
| R Rotation (0-80) | 55⁰ |
| L Rotation (0-80) | 55⁰ |
| COMBINED (340⁰) | 245⁰ |
| Comment | “minimal myofascial tenderness; motor 5/5; sensory intact; reflexes 2+ throughout; gait normal | Left deltoid & biceps weakness relative to the right side 4/5; decreased sensation to touch and pin prick throughout the right side of his face, arm as well as leg; “(radiculopathy) exam findings did not correlate with … MRI” (see text) | Normal contour; reflexes +2; sensation intact; gait normal; weaker throughout ROM when resistance applied; fatigability and pain increase with repetitive use |
| §4.71a Rating | 10% | 10% | 10% |

Magnetic resonance imaging (MRI) of the cervical spine showed some degenerative changes and multi-level herniated nucleus pulposis (HNP) with mild spinal stenosis; C5-6 HNP extended into the right neural foramen with some cord compression and some narrowing of the right neural foramen. The narrative summary (NARSUM), 6 months prior to separation, and the VA exam, a month prior to separation, indicated slight decreased cervical ROMs. The NARSUM indicated upper extremity weakness and sensory decrease which did not correlate with MRI findings. The VA examiner stated that “all the joints in the neck and back below were weaker throughout ROM when resistance was applied. Fatigability was noted with repetitive use. The pain was noted to increase throughout range of motion with repetitive use.”

There were daily pain and activity limitations; but, there was no evidence of “incapacitating episodes” (as defined by 5293 as bed rest prescribed by a physician). There was significant overlap between the neck and headache conditions regarding disruption to daily activities, requirement for urgent medical attention and loss of duty time. The spine rating criteria do not address the headache criteria which are discussed below. There was slight evidence of the CI seeking medical care with duty restrictions, but no clear periods of prescribed bed rest, and certainly not equating to 2 weeks in the last year. The Board therefore could not find evidentiary justification for recommending a cervical spine rating greater than 10% under the 5293 criteria. Any peripheral nerve rating is outside of the scope of the Board as noted above. The preponderance of the record indicated slight pain-limited cervical ROM and the VA’s 10% rating and coding of 5293-5290 best portrayed the CI’s neck disability with intervertebral disc syndrome and rating criteria of slight limited motion.

Headaches: The Board first considered if headaches, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. The first MEB did not include headache (or potential surgical correction of the cervical spine) which the second MEB specifically considered. The final MEB listed a separate diagnosis of idiopathic daily headache as medically unacceptable IAW AR 40-501. The CI had a temporary P2 profile added that included headaches, but with fewer restrictions than the permanent U3 profile. At the MEB exam, the CI reported increasingly severe headaches over 5 years. Headaches were “usually an aching sensation rated 4/10, sometimes with shooting sensation forward to the forehead. It is present 24 hours/day, 7 days a week and can go up to 10/10.” Medications included Fioricet (Acetaminophen, Butalbital [barbiturate], and caffeine) and Naproxen. Prior treatments had included multiple occipital and supratrochlear nerve injections. The exam findings are charted above in the neck section and of note included left deltoid and biceps weakness relative to the right side 4/5 and “decreased sensation to touch and pin prick throughout the right side of his face, arm as well as leg.” Attributing these symptoms to migraine-like headaches would be mere speculation. The neurologist stated the CI “clearly has headaches, at least in part due to greater occipital neuralgia. There is a question of cervical radiculopathy. However, findings on physical examination did not correlate with findings with the lesion as seen on the MRI.” The CI was started on Neurontin (Gabapentin—for nerve conditions), surgical traction and scheduled for additional injections. The addendum indicated “The patient failed greater occipital nerve injections. Therefore, he most likely has idiopathic chronic daily headaches, possibly due in part to his neck pain. The CI had five headache treatment notes in the year prior to separation including two injections, one profile request, and two for medication. Notes did mention intractable pain, and the memo from the spouse to the MEB regarding pain (neck versus headache was not specified) were noted. There was no evidence of specific “characteristic prostrating attacks” from the headaches.

The commander’s statement did not mention the headache condition and duty limitations of wearing military equipment, load bearing equipment (LBE), kevlar or rucksack; closely mirrored the U3 profile which did not include the headache condition. The commander stated the CI “has continued to maintain his motivation and contribute to the battalion's daily mission within the limited capacity of duties that he can execute. However, I feel that due to his physical limitation, he can no longer serve in a unit with the potential to deploy to any training or contingency operation.” There was no indication of functional impairment in MOS garrison duties.

At the VA Compensation and Pension (C&P) exam, a month prior to separation, the CI reported headaches that started with his neck pain in 1997 without trauma. “The (CI) states he has headaches everyday with nausea and blurred vision. The headache will last all day long and he rates it as 6-10/10 pain. The headache involves the entire head. The (CI) states it affects his daily activities and occupation because it makes it difficult to concentrate. The veteran currently is treated with Zoloft, Gabapentin (Neurontin), and Fioricet, which decreases the headache to 6/10 for approximately 3 hours.” The CI’s only medication side effect was drowsiness. As noted in the cervical section above the exam indicated “all the joints in the neck and back below were weaker throughout ROM when resistance was applied. Fatigability was noted with repetitive use. The pain was noted to increase throughout ROM with repetitive use.” The diagnosis was “headache secondary to cervical herniated nucleus pulpous.” The VA rated this exam at 30%, analogous to migraine headaches (8199-8100 - with characteristic prostrating attacks occurring on an average once a month over last several months).

The Board had prolonged deliberation regarding the headache details from the entire record and the evidentiary standard for the “unbundled” headache condition to be considered unfitting and separately compensable. The Board discussed the differences in definitions for “incapacitating episodes” for 5293, intervertebral disc syndrome (§4.71a; spine) and “prostrating attacks” from the older DoDI and from VASRD 8100 migraine criteria (§4.124a—schedule of ratings–neurological conditions) which would only be applicable if headaches were considered unfitting. The possibility of an unfitting headache condition was considered with a rating of 10% or 30% analogously to either “attacks averaging one in 2 months over last several months,” or “on an average once a month over last several months.” However, there was insufficient objective evidence to indicate decreased concentration and duty performance as indicated in the VA C&P exam history. The Board majority determined that the headache condition was not unfitting and therefore did not merit a separate service rating.

Rating Chronic Neck Pain and Associated Headaches Due to Spondylosis Condition. Board coding of an unfitting neck condition at 10% and a not unfitting headache condition would be strictly IAW VASRD criteria. However, the Board recommendation may not produce a lower combined rating than the 20% provided by the PEB. The Board majority therefore recommended no change in the PEB 20% adjudication.

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. As discussed above, PEB reliance on the USAPDA pain policy for rating the neck and headache conditions was operant in this case and the conditions were considered independently of that policy by the Board. In the matter of the neck pain and associated headaches condition(s) and IAW DoDI 6040.44, the Board by a vote of 2:1 recommends no change in the PEB adjudication. The single voter for dissent (who recommended an unfitting headache condition and adopting the VA rating 5293-5290 at 10% and 8199-8100 at 10%, for a combined 20%) did not elect to submit a minority opinion. 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Neck Pain/Headaches Due to Cervical Spondylosis | 5099-5003 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110928, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXX

President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / Mr. Brower), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXX, AR20120011826 (PD201100830)

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 XXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA