RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100840 SEPARATION DATE: 20021018

BOARD DATE: 20120524

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SSG/E-6(11B, Infantryman), medically separated for limitation of cervical motion, s/p cervical fracture w/C1/2 fusion following a training injury (LOD), followed by a motor vehicle accident. The CI had surgery at WRAMC in August 2000, undergoing a C1-2 fusion w/transarticular screws and bone graft w/cables. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS). He was issued a permanent U4/H3 profile and underwent a Medical Evaluation Board (MEB). Old type II odontoid fracture vs. os odontoideum, severe 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 medically acceptable conditions. There were also three conditions on the MEB addendum (pg 113), see rating chart below, that were addressed by the PEB. The Informal PEB (IPEB) adjudicated limitation of cervical motion, s/p cervical fracture w/c1/2 fusion as unfitting, rating it 20%; with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The IPEB rated the MEB diagnosis, s/p C1-2 fusion secondary to old type odontoid fracture vs. os odontoideum, severe, as medically acceptable and did the same for the MEB diagnosis, sensory neural hearing loss, moderate. The three diagnoses on the MEB addendum were adjudicated as not unfitting, not ratable. The CI appealed to Formal (FPEB), and was then medically separated with a 10% disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

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. 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 FPEB – Dated 20020619** | **VA (3 & 5 Mo. After Separation) – All Effective Date 20021019** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Limitation of Cervical Motion, S/P Cervical Fracture w/C1/2 Fusion\* | 5290 | 10% | S/P Cervical Fusion, C1-2, w/Minimal Osteoarthritis & Limitation of Motion | 5010-5290 | 20% | 20030115 |
| S/P C1-2 Fusion | Medically Acceptable | See Condition Above |  |  |  |
| Sensory Neural Hearing Loss  | Medically Acceptable | Bilateral Hearing Loss | 6100 | 0% | 20030326 |
| Tinnitus | 6260 | 10% | 20030326 |
| Bell’s Palsy, Due to Lyme Disease | Not Unfitting | Lyme’s Disease | 6319 | 0% | 20030115 |
| Bell’s Palsy | 8207 | 0% | 20030115 |
| Hypertension | Not Unfitting | Hypertension | 7101 | 10% | 20030115 |
| Abnormal EKG; Normal Stress-Thallium | Not Unfitting | No VA Entry |  |
| ↓No Additional MEB/PEB Entries↓ | Lumbar Radiculopathy Bilateral at L5 | 5293 | 20% | 20030115 |
| Radiculopathy, RUE | 5293-8613 | 20% | 20030115 |
| Radiculopathy, LUE | 5293-8613 | 20% | 20030115 |
| Chronic Mild Degenerative Disc and Joint Disease of the Lower Lumbar Spine\*\* | 5242 | 20% |  |
| 0% x 0/Not Service Connected x 2 | 20030115 |
| **Combined: 10%** | **Combined: 70%** |

\*FPEB identified this as MEB Diagnosis 1: Old Type II Odontoid Fracture vs. OS Odontoideum, Severe.

\*\*Not on original VARD, appeared on VARD 4/7/11, backdated to 10/19/02; then decreased to 10% on 10/29/10.

ANALYSIS SUMMARY: The Board notes that the 2002 Veteran Administration Schedule for Rating Disabilities (VASRD) standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004. The 2002 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. When older cases have goniometric measurements in evidence and when the VASRD 2002 code 5292 (for limitation of motion, lumbar spine) is applicable, the Board reconciles (to the extent possible) its opinion regarding degree of severity for 5292 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.

Limitation of Cervical Motion s/p Cervical Fracture with C1/2 Fusion. The CI was involved in a minor rear end motor vehicle crash in May 2000 (accident report documented minor rear end damage to the CI’s car) at which time X-rays disclosed a congenital anomaly of the cervical spine, os odontoideum (odontoid hypoplasia and failure of the odontoid process to fuse to the body of C2) that causes instability of the cervical spine at the C1-C2 junction. In retrospect there was a 5 year history of diffuse neck pain with headache and occasional left arm paresthesia after vigorous exercise, and service treatment records documented occasional care for basal headache and neck pain consistent with the condition. There was a history of minor neck injuries in training and a history of a serious motor vehicle crash prior to service when the CI was 18 years of age, resulting in facial fractures and concussion. Due to the risk for neurologic injury resulting for the instability between C1 and C2 vertebrae, the CI underwent neurosurgery to fuse the C1 and C2 vertebrae in August 2000. Post-operatively, imaging confirmed successful fusion with appropriate alignment and absence of compression of neural structures. No movement between the fused vertebra was detected on flexion and extension X-rays. Neurologic examination by neurosurgery was normal. An electromyogram, performed 28 February 2001 demonstrated findings of bilateral C5, C6 radiculopathy and recorded CI complaint of numbness in both arms below the elbow with prolonged flexion of the neck (such as reading). The electromyographer indicated the changes were consistent with a healing phase. The MEB NARSUM, dated 11 March 2001, reported that chronic neck pain prevented wear of the Kevlar helmet, and participation in physical training. The neurologic examination was normal, including normal muscle strength and tone, normal gait, coordination, sensation, and reflexes. A June 2001 stress test for an abnormal EKG was normal, and was notable for the CI’s ability to attain 18 METS of exertion consistent with a very high level of aerobic fitness from regular vigorous exercise. An addendum, dated 30 November 2001 documented a cervical spine range of motion: flexion 30 degrees, extension 40 degrees, rotation 40 degrees bilaterally, and side bending 35 degrees bilaterally. The NARSUM addendum reported that there was no change in the CI’s condition since March 2001. The CI appealed the IPEB rating for the neck condition (20% for moderate limitation of motion). The FPEB rated the CI’s neck condition 10%. A USPDA memorandum explaining the FPEB’s rationale, states that the FPEB used the AMA guide for impairment evaluation. The VA compensation and pension (C&P) examination was 15 January 2003, 3 months after separation. Symptoms included pain and numbness in the arms with prolonged neck flexion. The CI was asymptomatic at the time of examination. On examination there was mild discomfort with movement. Range of motion was flexion 25 degrees, extension 20 degrees, right lateral bending 15 degrees, left lateral bending 25 degrees, right rotation 25 degrees and left rotation 45 degrees. On neurologic examination, sensation and strength were intact and normal with intact reflexes. As noted previously, the Board must correlate the above clinical data with the 2002 rating schedule. The applicable diagnostic code in this case is 5290 limitation of cervical spine motion, which requires as assessment of limitation as slight (10%), moderate (20%) and severe (30%). There was no ankylosis to warrant rating under 5287 (ankylosis of cervical spine), no intervertebral disc disease to warrant rating under 5293 (intervertebral disc syndrome). The records were unclear with regard to a final medical opinion whether the CI’s cervical spine condition was a congenital abnormality or a fracture from trauma. The MEB listed that the abnormality may have been due to a remote type II odontoid fracture versus the congenital abnormality while the PEB listed it as a fracture related to a training injury while on active duty. Regardless, the residual symptoms did not approach the severity required for rating under 5285 (residuals of vertebral fracture) which otherwise directs rating under limited motion. Board members agreed that the range of motion documented in the MEB NARSUM as well as the post-separation C&P examination was most consistent with moderate limitation of motion correlating with the 20% rating under the VASRD guidelines in effect at the time of separation as well as current guidelines. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the cervical spine 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. As discussed above, PEB reliance on the AMA guidelines for rating the cervical spine condition was operant in this case and the condition was adjudicated independently of that guideline by the Board. In the matter of the cervical spine condition, the Board unanimously recommends a disability rating of 20%, coded 5290 IAW VASRD §4.71a. 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** |
| Limitation of Cervical Motion s/p Cervical Fracture with C1/2 Fusion | 5290 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110901, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXX

 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, AR20120010160 (PD201100840)

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 rating to 20% without 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 XXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA