RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100862 SEPARATION DATE: 20061215

BOARD DATE: 20120817

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (42A20/Personnel), medically separated for chronic neck pain status post C4-5 and C5-6 fusions, without motor neurologic deficit, positive tenderness. The CI developed neck pain without any inciting injury in 2003. The condition did not respond adequately to conservative treatment and spinal fusion of C4-5 and C5-6 was completed in February 2006. The CI was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). Left plantar fasciitis and exercise induced asthma conditions, identified in the rating chart below, were also identified and forwarded by the MEB to the Physical Evaluation Board (PEB) for adjudication. The PEB adjudicated the chronic neck pain condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting and were not rated. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Cervical spine: I still experience symptoms I had prior to the surgery and it is something I have to live with for the rest of my life. “

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 conditions “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.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20061004** | **VA (4 Days Pre -Separation) – All Effective Date 20061216** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Neck Pain status post C4-5 C5-6 Fusions | 5241 | 10% | Cervical Spine status post Discectomy, Fusion and Arthrodesis | 5241 | 10%\* | 20061212 |
| Left Plantar Fasciitis | Not Unfitting | Left Plantar Fasciitis | 5099-5278 | 0% | 20061212 |
| Exercise Induced Asthma | Not Unfitting | Asthma | 6602 | 10%\*\* | 20061212 |
| ↓No Additional MEB/PEB Entries↓ | Left Shoulder DJD | 5201 | 20% | 20061212 |
| Right Shoulder DJD | 5201 | 20% | 20061212 |
| 0% X 3 Others / Not Service-Connected x 2 | 20061212 |
| **Combined: 10%** | **Combined: 50%\*\*\*** |

\*Increased to 20% effective 20071005.

\*\* Increased to 30% effective 20071005.

\*\*\* Increased to 70% effective 20071005 and ultimately to 80% effective 20080830.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of his condition and predictable consequences merit consideration for a higher separation rating. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. 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.

Neck Condition. The CI developed neck pain without any inciting injury in 2003. A cervical spine MRI completed on 20050909 documented a right posterolateral and foraminal C4-5 disc herniation effacing the thecal sac and cervical cord, a small right paracentral C5-6 disc protrusion effacing the thecal sac and cervical cord, and a minimal degenerative protrusion at C6-7 that mildly effaced the thecal sac only. Electrodiagnostic (ENT) studies performed on 20 October 2005 documented a right C5 radiculopathy. The condition did not respond adequately to conservative treatment and spinal fusion of C4-5 and C5-6 was completed in February 2006. A post-operative hematoma required emergent surgical evacuation and a stay in the intensive care unit. Cervical spine x-rays after surgery showed excellent position and placement. Although there was some improvement after surgery, neck pain continued after surgery as did bilateral upper extremity shoulder and interscapular pain and numbness and tingling in the upper extremities. Neurologic examination was normal 3 months after surgery. No further surgery was indicated and the CI was treated conservatively.

There were four 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 | PT ~12 Months Pre-Separation | MEB ~3 MonthsPre-Separation | VA C&P ~3 Days Pre- Separation | VA C&P ~13 MonthsPost-Separation |
| Flex (45⁰ Normal) | 30⁰ (30, 30, 30) | 30⁰ (30, 30, 30) | 35⁰ | 20° |
| Ext (0-45) | 40⁰ (40, 40, 40) | 25⁰ (25, 25, 23) | 45° (55⁰) | 15° |
| R Lat Flex (0-45) | 35⁰ (35, 40, 40) | 30⁰ (30, 30, 30) | 35⁰ | 30° |
| L Lat Flex (0-45) | 30⁰ (30, 35, 35) | 35⁰ (35, 35, 40) | 45⁰ | 30° |
| R Rotation (0-80) | 55⁰ (58, 62, 56) | 50⁰ (50, 50, 50) | 45° (70⁰) | 60° |
| L Rotation (0-80) | 60⁰ (60, 57, 60) | 55⁰ (55, 55, 60) | 45° (70⁰) | 60° |
| COMBINED (340⁰) | 250⁰ | 225⁰ | 250⁰ | 215° |
| Comment | Motion limited by pain. Pain 8/10. | ROM limited by pain and mechanical limitation. Bilateral upper extremities strength 5/5 and normal reflexes in bilateral upper and lower extremities; subjective decreased sensation in C5 and C6 distribution | Pain throughout all ROM no change with repetitive motion. Tenderness to palpation; muscle strength equal bilaterally, sensation intact, and reflexes 2+; Waddell negative. | Pain at extremes of all measurements. No change with repeated motion. No spasm; no guarding; normal spinal contour; sensation intact to light touch, vibration, and sharp/dull discrimination in bilateral upper extremities; strength 5/5 bilaterally, no atrophy; reflexes 2+ bilaterally. |
| §4.71a Rating | 20% | 20% | 10% | 20% |

At the MEB narrative summary (NARSUM) exam performed 3 months prior to separation, the CI reported continuing tingling into his arms and hands as well as continued neck pain. He reported that the numbness and tingling in his entire hand was worse after surgery. However, neurologic exam was documented as normal. He also had some difficulty swallowing and voice changes and was evaluated by ENT in September 2006. Examination there was normal and the diagnosis of dysphagia was noted without any treatment recommendations. At the VA Compensation and Pension (C&P) exam completed 3 days prior to separation, the CI reported continued neck pain rated at 6/10 that was constant and dull to sharp. Activities of daily living were not affected but the CI reported difficulty focusing at work due to pain and a requirement to take 5 minute breaks every hour to get the numbness out of his arms and hands. A repeat VA spine C&P examination was completed approximately a year after separation. At this exam the CI reported intermittent pain rated as high as 6/10 that would last 3 to 4 days at a time and required bed rest to alleviate the pain. There was no affect on daily activities but CI reported missing 12 to 20 days of work in the previous 6 months due to this problem. A separate VA C&P neurology examination was also completed approximately a year after separation but this evaluation focused on headaches. Cervical radiculopathy was not addressed and no neurologic examination was documented.

Both the PEB and the VA rated the chronic neck pain condition as 5241 spinal fusion at 10%. The initial VA rating was based on cervical flexion limited to 35 degrees. The VA increased the rating to 20% within 12 months of separation based on cervical flexion limited to 20 degrees. Neither the PEB nor the VA provided a separate rating for radiculopathy.

The Board directs attention to its rating recommendation based on the above evidence. Service ROM testing completed at both 12 and 13 months prior to separation support a 20% disability rating for cervical spine flexion greater than 15 degrees but not greater than 30 degrees. Although the VA C&P examination completed within days of separation documents cervical spine flexion greater than 30 degrees, it is minimally greater than 30 degrees. Additionally, subsequent VA examination approximately a year after separation documents cervical spine flexion limited to 20 degrees. The totality of evidence and reasonable doubt supports the higher rating of 20%. Although the CI continued to have numbness and tingling in the bilateral upper extremities, all neurological examinations were within normal limits and no functional impairment can be attributed to a cervical radiculopathy. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the chronic neck pain status post C4-5 and C5-6 fusions 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. 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 chronic neck pain status post C4-5 and C5-6 fusions condition, the Board unanimously recommends a disability rating of 20%, coded 5241 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** |
| Chronic Neck Pain status post C4-5 and C5-6 Fusions | 5241 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111017, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXX, AR20120015306 (PD201100862)

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 XXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA