RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100956 SEPARATION DATE: 20040430

BOARD DATE: 20121003

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated Reserve SSGT/E-6 (92Y/Supply Technician Supervisor), medically separated for chronic neck and back pain. He was injured in a motor vehicle accident while deployed in Kuwait. Chronic neck and back pain did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U4, L4 profile and referred for a Medical Evaluation Board (MEB). Hypertension, bilateral plantar foot pain and bilateral anterior knee pain conditions, identified in the rating chart below, were also identified and forwarded by the MEB as meeting retention standards. The Physical Evaluation Board (PEB) adjudicated the combined chronic neck and back pain conditions as unfitting rated 10%, with application of the Department of Defense Instructions (DoDI). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I have been treated by the V A and I am 100% permanent total as a result of numerous injury. I was diagnosed with Gulf War Syndrome. Service connected disabilities will be listed on page 12. I take 11 medications Rx by the VA. I am not a community ambulator due to chronic back/knee pain. (use a scooter and have a back up wheelchair. I recently had carpel tunnel on the R hand and will be having it on the left also. I have chronic low back pain and cervical spinal spondylosis.” The CI lists all of his VA service connected conditions and ratings.

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. The foot injury and knee pain conditions requested for consideration and the unfitting chronic neck and back pain conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested conditions are not 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 Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20040318** | **VA (2 Mo. After Separation) – All Effective Date 20050401** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Neck and Back Pain | 5237 | 10% | Lumbar Spine Strain | 5099-5019 | 20% | 20040504 |
| Cervical Spine Strain w/Spondylosis C6-7 | 5242 | 10% | 20040504 |
| Hypertension | Not Unfitting | Hypertension | 7101 | 0% | 20040504 |
| Bilateral Foot Pain | Not Unfitting | L/Plantar Fasciitis w/Heel Spurs | 5015-5024 | 0% | 20040504 |
| R/Plantar Fasciitis w/Heel Spurs | 5015-5024 | 0% | 20040504 |
| Bilateral Knee Pain | Not Unfitting | R/Knee Pattellofemoral Pain Syndrome | 5099-5019 | 10% | 20040504 |
| R/Knee Pattellofemoral Pain Syndrome | 5099-5019 | 10% | 20040504 |
| ↓No Additional MEB/PEB Entries↓ | L/Shoulder Rotator Cuff Syndrome | 5020 | 10% | 20040504 |
| L/Shoulder Rotator Cuff Syndrome | 5020 | 10% | 20040504 |
| 0% x 4/Not Service Connected x 3 | 20040504 |
| **Combined: 10%** | **Combined: 60%** |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a 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 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 Veteran 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 Veterans Administration Schedule for Rating Disabilities (VASRD) standards, based on severity at the time of separation.

Chronic Neck and Back Pain with a History of Humvee Accident. The PEB combined the neck and back conditions as a single unfitting condition, VASRD coded 5237 and rated 10%. The Board noted that PEBs often combine multiple conditions under a single rating when those conditions considered individually are not separately unfitting and would not cause the member to be referred into the DES or be found unfit because of physical disability (DoDI 1332.38, paragraph E3.P3.4.4.; “Overall Effect”). This approach by the PEB reflects its judgment that the constellation of conditions was unfitting, not a judgment that each condition was independently unfitting. When combining conditions in this manner, the PEBs concluded that there was no need for separate fitness adjudications. When considering a separate rating for each condition, the Board first must satisfy the requirement that each unbundled condition was unfitting in and of itself based on a preponderance of evidence. When the Board recommends separate fitness recommendations in this circumstance, its recommendations may not produce a lower combined rating than that of the PEB.

The CI was involved in a motor vehicle crash in Kuwait on 27 February 2003 when the Humvee he was riding in rear ended another military vehicle (according to medical records contemporaneous with the incident). The CI was taken to the emergency room. The emergency room record indicates the CI was restrained by seatbelts when his vehicle rear ended another vehicle (LMTV – light medium tactical vehicle) and was complaining of neck, right chest and left knee pain. Treatment records reported that the CI had been hit by a duffle bag in the back of the head. There had been no loss of consciousness. On examination, the CI was alert and oriented, there was neck tenderness, the right side of the chest was tender without deformity and there was a two centimeter laceration on the medial aspect of the left patella without swelling or tenderness. Because X-rays obtained at the emergency room were technically inadequate to properly visualize the lower cervical spine, the CI was transferred to another facility where X-rays of the cervical spine were normal (no fractures). X-rays of the knee and chest were also normal. The following day the CI complained of back spasms in addition to neck pain. Neurologic examination was normal, and despite back pain, the gait was “non-spastic”. The CI was released to light duty the next day on 28 February 2003. On
1 March 2003, 3 days after the vehicle crash, a follow up clinic appointment documented CI complaint of “sore neck otherwise no complaints”. At a follow up clinic appointment performed on 2 March 2003, 5 days after the vehicle crash, there was mild neck soreness, and good range-of-motion (ROM) with minimal pain. A clinic follow up appointment performed on 7 March 2003 recorded continued neck pain and right chest wall pain without mention of back pain. Following this appointment, service treatment records (STR) fall silent for neck pain. A
9 April 2003 clinic follow up appointment which noted recurrent low back pain following the vehicle crash but at that time there were “no significant symptoms now.” The physical examination was normal. An 18 April 2003 physical therapy evaluation noted that prior symptoms of cervical, thoracic, and lumbar spine pain had resolved. However, low back pain had recurred following a Humvee ride of 2 hours duration. The examiner noted the CI’s unit was preparing for a move north in 2 to 14 days. The physical therapist concluded the CI had been non-compliant with his prescribed home exercises because the CI was unable to demonstrate the exercises. On examination of the back, the examiner noted the presence of pain with examination maneuvers not expected to cause back pain. A physical therapy appointment performed 5 May 2003 at a different facility by a different physical therapist makes no mention of neck pain. On examination of the back, the examiner noted the presence of pain with four examination maneuvers not expected to cause back pain. ROM was normal (100%) except in flexion which was 75% of normal. Clinic encounter records complaint dated
8 May 2003 of neck pain and complaints of increased pain in the prior two days. On 17 May 2003, an examiner explained to the CI that if symptoms persisted for more than two more weeks, he would need to be processed administratively back to the U.S. Symptoms subsequently worsened and the CI was returned to the U.S. performed in June 2003 for continued care.

Neck Pain Condition. The Board considered whether the neck pain condition, separate from the back pain condition, was unfitting for continued military service. Following return to the Army, magnetic resonance imaging (MRI) of the cervical spine was normal and STR documents predominantly back pain, not neck pain. A family practice clinic examination performed on
7 October 2003 noted the neck was supple. A clinic examination performed 4 November 2003 documented “full” cervical spine ROM, but with grimacing. A profile dated 4 November 2003 initiated MEB processing. The MEB history and physical examination performed on
18 November 2003, documented tenderness with tight muscles without spasm. Strength and reflexes were normal. Physical therapy examination performed on 24 November 2003, documented cervical spine ROM with limitation in lateral bending and rotation. Family practice clinic appointments performed on 17 December 2003 recorded the neck and back were held in a rigid position without any history of repeat injury to explain the observation. At the time of the MEB narrative summary (NARSUM), performed 12 February 2004, the examiner recorded CI report that he was involved in a head-on HUMVEE accident (as opposed the rear end accident described in records contemporaneous with the incident) with neck pain. The CI reported continuing neck pain, which interfered with running, jumping, marching or wearing of military load bearing equipment or body armor. At the VA Compensation and Pension (C&P) examination performed on 29 April 2004, the day before separation, there was report of pain with motion, but range of motion was improved and near normal. There was no tenderness, muscle spasm, or evidence of radiating pain with movement. The Board noted that according to STRs, the neck pain incurred during the vehicle crash had resolved in theater by the time of an 18 April 2003 physical therapy appointment and that only the back pain remained a primary focus of attention until the time of start of the MEB process in November 2003 when complaints of neck pain recurred without new injury. The Board members concluded that the preponderance of evidence did not show that the neck pain condition standing alone would have caused the CI to be referred into the DES or be found unfit due to the neck condition.

Back Pain Condition. The Board considered whether the lumbar back pain condition, separate from the neck pain condition, was unfitting for continuing military duties. Review of STRs indicate there was a history of recurrent low back pain prior to the vehicle crash. There was no complaint of back pain at the time of initial medical attention following the crash, however, there were back spasms the day following and back pain was the primary focus of clinical attention both before return to the U.S. and afterwards leading up to referral for MEB. At the time of the 5 May 2003 physical therapy examination, the CI was able to perform a full squat, single leg squat, and walk on toes and heels. The CI flexed the back to 75% of normal with complaint of stiffness and fully extended (100%) with “little pain.” Right and left sided bending was normal (100%). Rotation was normal (100%) with complaint of pain. The examiner noted the presence of pain with four examination maneuvers not expected to cause back pain (also observed by a different physical therapist on 18 April 2003). Following return to the U.S. imaging by MRI was normal. The MEB history and physical examination performed on
18 November 2003 documented tenderness and tight muscles without spasm. Strength and reflexes were normal and no signs of radiculopathy were present. The 24 November 2003 physical therapy MEB ROM documented marked limitation of thoracolumbar motion that was not consistent with prior examinations without history of interceding injury to explain the change. Family practice clinic appointments performed on 17 December 2003 recorded the neck and back were held in an absolutely rigid position without any history of repeat injury to explain the observation. At the time of the MEB NARSUM, performed on 12 February 2004, the examiner recorded CI report that he was involved in a head-on HUMVEE accident (as opposed the rear end accident described in records contemporaneous with the incident) with immediate back pain (documented to be the day after by records contemporaneous with the incident). The CI reported continuing back pain, that interfered with running, jumping, marching or wearing of military load bearing equipment or body armor. The Board concluded that the preponderance of evidence of the STR supported a conclusion that the back pain condition standing alone would have caused the CI to be referred into the DES and to have been determined to be unfit. The Board then considered its rating recommendation for the unfitting back pain condition at the time of separation. The ROM examinations in evidence are as listed in the chart below.

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| Thoracolumbar ROMDegrees | PT ~12 Mo. Pre-Sep(20030512) | PT ~5 Mo. Pre-Sep(20031124) | VA C&P ~1 Mo. Post-Sep(20040429) |
| Flexion (90 Normal) | 65 (75%) | 35 | 45 |
| Extension (30) | 30 (100%) | 25 | 15 |
| R Lat Flex (30) | 30 (100%) | 25 | 30 |
| L Lat Flex (30) | 30 (100%) | 30 | 30 |
| R Rotation (30) | 30 (100%) | 30 | 30 |
| L Rotation (30) | 30 (100%) | 35 | 30 |
| Combined (240) | 215 | 180 | 150 |
| Comments | PT exam expressed ROM as % of normal. |  | Painful motionNo muscle spasmNormal gait. |
| §4.71a Rating | 10% | 20% | 20% |

At the VA C&P examination performed on 29 April 2004, the day prior to separation, there was report of pain with motion, and ROM was similar to the November 2003 PT ROM. There was no tenderness and no muscle spasm. Gait was normal. There was no complaint of radiating pain on movement and no signs of radiculopathy. There was no reported history of incapacitation. The Board noted the varying CI reports of the vehicle crash and injuries recorded in subsequent VA examinations that were not consistent with the evidence of the records contemporaneous with the incident and STRs including: a head-on crash at 35 mph with the other vehicle moving at 50 mph, a roadside bomb caused a vehicle collision, roadside IED exploded and flipped the vehicle, pinned between engine and another Humvee for 5-6 minutes, pinned by the other Humvee’s engine block, combative and confused at the scene, loss of consciousness (LOC), LOC for half a day, LOC woke up in the hospital, hospitalized for 2 weeks, hospitalized for one month, in the hospital for 6 weeks, unable to walk for 2 months, performed light duty from his cot, did not receive any PT or other treatment. In its assignment of probative value to the disparate flexion results, the Board must acknowledge that MEB and VA C&P spine examinations may predispose a lowered pain threshold or increased symptom reporting since the examinee is generally quite aware that the severity of symptoms and pain tolerance on ROM and other testing is directly correlated with the resulting rating and financial gain. The measurement of ROM reflecting pain with motion is dependent on the examinee’s reported pain and effort, with scant ability by the examiner to objectively confirm it. The Board carefully considered and discussed the whole record in order to develop a consistent picture of the CI’s back condition. The Board noted the physical therapy encounter performed in April 2003 that recorded that lumbar pain had resolved following the vehicle crash but returned when the CI had ridden in a Humvee for two hours without injury. Subsequent imaging was normal and there was no injury or activity to explain the apparent worsening at the time of the MEB and C&P examinations.

The majority of the Board agreed in this case that the May 2003 physical therapy examination was more consistent with outpatient notes, more reflective of the anticipated severity suggested by the objective findings and less vulnerable to the undue influence just elaborated. The majority of the Board agreed a 10% rating most nearly approximated the consistent picture of the disability based on the preponderance of evidence (overcoming reasonable doubt) of the service treatment records considered in their totality. The minority voter noted there were two ROM examinations more proximate to separation that supported the higher rating of 20% and concluded the higher rating was supported with application of the benefit of the doubt. There was no evidence of intervertebral disc disease or incapacitating episodes due to intervertebral disc disease, and no radiculopathy present for rating consideration under alternate codes. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends a separately unfitting determination for the lumbar back pain condition with a disability rating of 10%, coded 5237 lumbosacral strain.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were hypertension, bilateral foot pain and bilateral knee pain. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. At the time of the MEB NARSUM examination, both knees had tenderness to palpation of the patellar margins and positive retropatellar grind with negative patellar apprehension. The knee ligaments were normal. There was mild tenderness of the plantar fascia in both feet. The CI’s blood pressure was controlled with medication. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. None of these conditions were profiled; none were implicated in the commander’s statement; and, none were judged to fail retention standards. All were reviewed by the action officer and considered by the Board. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended conditions and, therefore, no additional disability ratings can be recommended.

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, the PEB bundled the neck and back pain conditions together in its determination of unfit and assigned a single rating. The Board considered each condition separately with regard to fitness.

In the matter of the neck pain condition, the Board unanimously recommends a determination of not separately unfit. In the matter of the back pain condition, the Board by a vote of 2:1 recommends a determination of separately unfit with a rating of 10% coded 5237. The single voter for dissent (who recommended a 20% rating) did not elect to submit a minority opinion. In the matter of the contended hypertension, bilateral foot pain and bilateral knee pain, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Neck Pain | Not Unfit  | -- |
| Chronic Back Pain | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110929, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXX

 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

For XXXXXXXXXXXXXXXXXXXXX, AR20120019339 (PD201100956)

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 description without modification of the combined rating or 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 XXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA