RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1101020 SEPARATION DATE: 20020322

BOARD DATE: 20120322

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (88M10 / Motor Transport), medically separated for chronic neck pain operative residuals for left C7 radiculopathy with C4/5 and C5/6 degenerative disc disease (DDD). The CI had severe left upper extremity radiculopathy (C-7) following a lifting injury and exacerbated by a motor vehicle crash. Conservative treatment was not successful and he was treated with surgical decompression and fusion of the cervical spine. Following recuperation from surgery, the radiculopathy resolved; however, cervical spine/neck pain and limited motion continued. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3 profile and underwent a Medical Evaluation Board (MEB). Chronic neck pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the neck condition as unfitting, rated 0%; with specified application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 0% combined disability rating.

CI CONTENTION: “4 Different Rating Letters – 2003, 2005, 2009, 2010” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions beyond the VA ratings.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20020204** | | | **VA (4 Mo. After Separation) – All Effective Date 20020323** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Neck Pain … | 5099-5003 | 0% | Status Post Cervical Spine Fusion Secondary to Large Osteophytes and Spine Stenosis of Cervical Area | 5293-5290 | 10%\* | 20020711 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 0/Not Service Connected x 0 | | | 20020711 |
| **Combined: 0%** | | | **Combined: 10%\*** | | | |

\* Code changed to 5242 with 10% continued in VA ratings through 20101123 (spine exam 20100825)

ANALYSIS SUMMARY: The 2002 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were modified on 23 September 2002 to add incapacitating episodes (5293 intervertebral disc syndrome), and then changed to the current §4.71a. rating standards on 26 September 2003. 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. The Board is required to apply the VASRD in effect at the time of separation. For the readers convience the cervical spine criteria are excerpted below:

5285 Vertebra, fracture of, residuals:

With cord involvement, bedridden, or requiring long leg braces 100

Consider special monthly compensation; with lesser

involvements rate for limited motion, nerve paralysis.

Without cord involvement; abnormal mobility requiring neck

brace (jury mast)............................................ 60

In other cases rate in accordance with definite limited motion

or muscle spasm, adding 10 percent for demonstrable deformity

of vertebral body.

Note: Both under ankylosis and limited motion, ratings should

not be assigned for more than one segment by reason of

involvement of only the first or last vertebrae of an

adjacent segment.

5286 Spine, complete bony fixation (ankylosis) of:

Unfavorable angle, with marked deformity and involvement of

major joints (Marie-Strumpell type) or without other joint

involvement (Bechterew type)................................. 100

Favorable angle.............................................. 60

5287 Spine, ankylosis of, cervical:

Unfavorable................................................. 40

Favorable.................................................... 30

5290 Spine, limitation of motion of, cervical:

Severe........................................................ 30

Moderate...................................................... 20

Slight........................................................ 10

5293 Intervertebral disc syndrome:

Pronounced; with persistent symptoms compatible with sciatic

neuropathy with characteristic pain and demonstrable muscle

spasm, absent ankle jerk, or other neurological findings

appropriate to site of diseased disc, little intermittent

relief....................................................... 60

Severe; recurring attacks, with intermittent relief........... 40

Moderate; recurring attacks................................... 20

Mild.......................................................... 10

Postoperative, cured.......................................... 0

Neck Condition. There were two cervical spine evaluations in evidence which the Board weighed in arriving at its rating recommendation. Only the cervical spine segment was involved (no dorsal or lumbar sine disability was indicated).

|  |  |  |
| --- | --- | --- |
| ROM – Cervical | MEB ~ 3 Mo. Pre-Sep  (20011219) | VA C&P ~ 4 Mo. After-Sep  (20020711) |
| Flex (0-45) | Touch chin-to-chest | 50⁰ (45⁰) |
| Ext (0-45) | 10⁰ | 30⁰ |
| R Lat Flex (0-45) | 30⁰ | 30⁰ |
| L Lat Flex (0-45) | 30⁰ | 20⁰ |
| R Rotation (0-80) | 45⁰ | 60⁰ |
| L Rotation (0-80) | 45⁰ | 60⁰ |
| COMBINED (340) | ~205⁰ | 250⁰ |
| Comment | No tenderness; normal upper extremity strength, sensation, and reflexes | Upper extremity strength 4/5 symetric; normal reflexes; decreased pinprick of left arm from elbow to hand |
| §4.71a Rating | 10% (PEB 0%) | 10% |

The service and Department of Veterans’ Affairs (DVA) exams proximate to separation both indicated slight pain-limited cervical ROM which would meet the 10% rating criteria under disability code 5290, spine, limitation of motion of, cervical. There was no indication that the cervical spine limited motion approached the moderate (20%) level. The service exam indicated completely resolved upper extremity radiculopathy of any type and indicated no radicular pain symptoms; however, the VA exam indicated a sensory loss of the left upper extremity. There was no motor loss and no indication that the “decreased pinprick” finding had any functional limitations or would have interfered with duty performance. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment.

Multiple VA exams remote from separation indicated slightly increased cervical ROMs with increase of neck pain and a pain radiculopathy. This was remote from separation and not indicative of the CI’s condition at the time of separation.

The PEB coding of 5099-5003 was IAW the USAPDA pain policy, and the spine coding of 5293 (Intervertebral disc syndrome) and 5290 (limitation of motion cervical) combined as 5293-5290 as coded by the VA was predominate for VASRD-only coding. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.59 (painful motion), the Board recommends a separation rating of 10% for the cervical spine condition with no addition of any peripheral nerve impairment.

Remaining Conditions. Possible hypertension and high cholesterol were identified on the MEB physical. High cholesterol is a laboratory abnormality and not a physical disability. Neither condition was profiled or noted as limiting duty performance. No other conditions were noted in the narrative summary (NARSUM), identified by the CI on the MEB physical or found elsewhere in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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 condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the cervical spine condition, the Board unanimously recommends a rating of 10%, coded 5293-5290 IAW VASRD §4.71a. In the matter of peripheral nerve (radiculopathy), condition or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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 | 5293-5290 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111104, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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 10% 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

Deputy Assistant Secretary

(Army Review Boards)