RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1101026 SEPARATION DATE: 20040108

BOARD DATE: 20120330

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (19K10/Armor Crewman), medically separated for chronic neck and low back pain. The CI’s neck and back pain began after stricking his head on the edge of a tank hatch when the driver suddenly reversed the tank. He initially responded to conservative treatment, but his condition worsened on deployment to include radicular symptoms. He did not respond adequately to conservative treatment, was not a surgical candidate, and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3/L3 profile and underwent a Medical Evaluation Board (MEB). Cervical spine and lumbar spine were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Five other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the neck condition and low back condition as unfitting, rated 10% and 10% respectively; additionally intermittent TMJ dysfunction, plantar fasciitis, allergic rhinitis, positive TB test and status post mandibular hardware implant conditions rated category III; with likely 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: “After the 20% rating from the Army I have had several other problems that the VA has increased my rating with GERD (Due to Motrin 800mg for Neck and Back problems), sleep problems, anxiety and others.”

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **IPEB Admin Correction – Dated 20031108** | | | **VA – All Effective Date 20040109** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam\*** |
| Chronic Neck Pain | 5237 | 10% | DDD Cervical Spine | 5243 | 10% | Based on STR |
| Chronic Low Back Pain | 5237 | 10% | DDD Lumbar Spine | 5243 | 10% | Based on STR |
| Intermittent TMJ Dysfunction | Not Unfitting | | TMJ Joint Dysfunction | 9905 | 0% | Based on STR |
| Plantar Fasciitis | Not Unfitting | | Bilateral Plantar Fasciitis | 5099-5020 | 0% | Based on STR |
| Allergic Rhinitis | Not Unfitting | | Chronic Sinusitis | 6513 | 10%\* | Based on STR |
| Pos TB Skin Test | Not Unfitting | | Pos PPD | 6799-6724 | NSC | Based on STR |
| Status Post Mandibular … Implant | Not Unfitting | | Post Mandibular Hardware Implant | 9999-9913 | NSC | Based on STR |
| ↓No Additional MEB/PEB Entries↓ | | | GERD | 7399-7346 | 10% | 20041014 |
| 0% x 3/Not Service Connected x 3 | | | Based on STR |
| **Combined: 20%** | | | **Combined: 30%\*** | | | |

\* PTSD (9411 @30%) added effective 20100729 (combined 50%): Sinusitis (6513) increased to 30% effective 20110630 (combined 60%): STR is Service Treatment Record.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. The 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s contention for service ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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. The DVA, however, is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The CI’s Marine Corps medical separation for left knee patellofemoral arthritis prior to Army service was noted.

Neck Condition. The CI’s neck and back pain began after striking his head on the edge of a tank hatch when the driver suddenly reversed the tank in 2002. He was wearing a helmet and had no loss of consciousness. Cervical spine radiographs were normal and following two emergency room visits he was treated by chiropractic. MRI demonstrated joint hypertrophy C3-4 and C4-5, narrowing of the nerve roots and C6-7 central disc herniation. He was cleared to deploy with his unit in 2003. While deployed to Iraq, his neck (and back) pain worsened with addition of cervical tightness and spasms and intermittent bilateral last hand (two fingers) numbness. He was evacuated from theater and underwent chiropractic care and medical management (including narcotics) without significant improvement.

At his MEB exam 4 months prior to separation, the examiner stated “(the CI’s) neck pain is aggravated by sudden jerks, sleeping in the wrong position, and wearing Kevlar, and he also reports sharp spasms affecting the muscles of the neck for no apparent reason.” On physical exam, there was tenderness to palpation (TTP) of the cervical spine especially over the left side and palpable spasm of the medial trapezius muscle (neck and back area). Range-of-motion (ROM) measurements were done by the examiner, and they are shown in the chart below from the source goniometric ROMs (rater than the NARSUM-stated median values). The upper extremity reflexes, motor function and sensory exam were normal. There was no evidence of incapacitating episodes aside from four emergency room visits for combined neck and back pain symptoms. There was no VA exam proximate to separation and the initial VA ratings were based on the STR. Multiple VA treatment notes from 2005 through a VA spine rating exam 30 months remote from separation had findings ratable at the 10% rating level.

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| --- | --- |
| Goniometric ROM – Cervical | MEB ~ 4 Mo. Pre-Sep  (20030923) |
| Flex (0-45) | 35⁰ |
| Ext (0-45) | 40⁰ |
| R Lat Flex (0-45) | 25⁰ |
| L Lat Flex (0-45) | 15⁰ |
| R Rotation (0-80) | 60⁰ |
| L Rotation (0-80) | 60⁰ |
| COMBINED (340) | 235⁰ |
| Comment | Tender; spasm of medial trapezius muscle; Left lat foot decreases sensation (S1); SLR negative; motor/DTR normal |
| §4.71a Rating | 10% |

The PEB and the Department of Veterans’ Affairs (DVA) used similar codes for the neck pain, and they assigned the same 10% rating percentage based on the STR. The total duration of incapacitating episodes was less than the 2 weeks required for a higher rating under alternative coding using 5243, Intervertebral disc syndrome. The neck spasm was not accompanied by an abnormal spinal contour, and therefore did not support a 20% rating level. The history of bilateral upper extremity intermittent numbness was not supported by objective findings (normal sensory exam at MEB) and was not indicated as interfering with duty performance. There was therefore no evidence of a ratable radiculopathy (peripheral nerve condition). Symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine is considered under the general spine formula IAW VASRD §4.71a. After careful review of all evidentiary information available, the Board could not find adequate evidence, or reasonable doubt in the CI’s favor, for recommending a rating higher than 10%. The Board therefore, recommends a rating of 10% for the neck pain condition.

Low Back Condition. The CI’s back pain began during the same injury event as the CI’s neck pain discussed above and most treatments and notes were for combined neck and back pain. Lumbar spine radiographs were normal and MRI of the lumbar spine done at the same time indicated a deformity of the anterior/inferior margin of the L1 vertebral body, consistent with a Schmorl's node, disc desiccation at L1-2 without herniation and mild disc bulging at L1-2 and L4-5 without definite evidence of significant nerve root compression at any level. As noted above, he was cleared to deploy with his unit in 2003 and his back pain increased. Spine radiographs after return to CONUS indicated mild thoracic scoliosis and question of L5-S1 disc degeneration

At his MEB exam, 4 months prior to separation, physical exam, indicated tenderness to pressure over the left lumbosacral junction without spasm. ROM measurements were done by the examiner, and they are shown in the chart below from the source goniometric ROMs (rater than the NARSUM-stated median values). The lower extremity reflexes and motor function were normal. Detailed neurological examination revealed decreased sensation along the outer left foot consistent with possible S-1 nerve sensory dysfunction. There was no evidence of incapacitating episodes aside from four emergency room visits for combined neck and back pain symptoms. There was no VA exam proximate to separation and the initial VA ratings were based on the STR. Multiple VA treatment notes from 2005 through a VA spine exam 30 months remote from separation had findings ratable at the 10% criteria level, and a normal sensory exam.

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| Goniometric ROM - Thoracolumbar | MEB ~ 4 Mo. Pre-Sep  (20030923) |
| Flex (0-90) | 75⁰ |
| Ext (0-30) | 20⁰ |
| R Lat Flex (0-30) | 25⁰ |
| L Lat Flex 0-30) | 25⁰ |
| R Rotation (0-30) | 25⁰ |
| L Rotation (0-30) | 25⁰ |
| COMBINED (240) | 195⁰ |
| Comment | Tender; spasm of medial trapezius muscle; Left lat foot decreased sensation (S1); SLR negative; motor/DTR normal |
| §4.71a Rating | 10% |

The PEB and the VA used similar codes for the lower back pain, and they assigned the same 10% rating percentage based on the STR. The total duration of incapacitating episodes was less than the 2 weeks required for a higher rating under alternative coding using 5243, Intervertebral disc syndrome.

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. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. There was no motor impairment. The lateral left foot sensory component in this case may have had a potential functional implication in an armor crewman if there were any evidence of inability to protect the foot or other duty limitations. However, there was no evidence in the commander’s statement, profile, or treatment records to indicate any significant physical impairment related to the peripheral nerve. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. After careful review of all evidentiary information available, the Board could not find adequate evidence or reasonable doubt in the CI’s favor, for recommending a back condition rating higher than 10%; or a preponderance of evidence for addition of a ratable radiculopathy. The Board therefore, recommends a rating of 10% for the lower back pain condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were intermittent TMJ dysfunction, plantar fasciitis, allergic rhinitis, positive TB test and status post mandibular hardware implant. None of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not a preponderance of evidence in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for GERD (VA 10%), sleep problems and anxiety (VA 30%, posttraumatic stress disorder, effective 29 July 2010). These conditions were not mentioned 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.

Remaining Conditions. Chronic sinusitis (VA 10%) was mentioned in the DES file and rated by the VA proximate to separation. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that the condition interfered with duty performance to a degree that could be argued as unfitting. No other conditions were noted in the 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. In the matter of the neck and low back pain conditions, the Board unanimously recommends no change in the PEB adjudications. In the matter of the Intermittent TMJ dysfunction, plantar fasciitis, allergic rhinitis, positive TB Test and status post mandibular hardware implant conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the left lower extremity radiculopathy, chronic sinusitis or any other conditions eligible for consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Neck Pain | 5237 | 10% |
| Chronic Low Back Pain | 5237 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111113, 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

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 Deputy Assistant Secretary

(Army Review Boards)