RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101138 SEPARATION DATE: 20070521

BOARD DATE: 20120829

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SGT/E-5(15T, Helicopter Mechanic), medically separated for chronic neck pain and history of migraine headaches exacerbated by chronic neck pain. The CI’s neck pain started one week following a rear end motor vehicle accident in October 2005. He underwent non-surgical treatments including physical therapy, traction, epidural steroid injections, trigger point injections, and chiropractic without substantial relief and he was not a surgical candidate. The CI had migraine headaches that were exacerbated by the neck pain and neither condition improved adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS). He was issued a permanent P3/U3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic neck pain; migraine headaches, exacerbated by chronic neck pain; and obstructive sleep apnea (OSA), severe, as medically unacceptable IAW AR 40-501. Right carpal tunnel syndrome and hypercholesterolemia, identified in the rating chart below, were also forwarded by the MEB as meeting medical retention standards. The PEB adjudicated the chronic neck pain and migraine headaches conditions as unfitting, rated 10% and 0% respectively, with likely application of AR 635-40 and/or the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “The items for which the PEB made their rating decision were interpreted incorrectly by the medical examiner. During examination, I attempted to fully explain 3 out of the 4 items that I was being treated for at WRAMC. However, the examiner altered my statements to suit the interest of the situation. A good example of this, was when I stated that I took tylenol for my migraine, because the sick call physician in Korea could not help me. Instead the examiner wrote, "classic history of analgesic overuse headache," and award a zero percent rating. Yet, the Veterans Administration medical examiner was able to diagnose, and treat the migraines. Similarly, the examiner did not measure the total loss in the range of motion, due to the chronic neck pain. While, the Veterans Administration medical examiner took care to measure the loss of movement in each direction regarding the range of motion. The examiner at the VA was also able to diagnose cervical degenerative arthritis, which, the examiner at WRAMC failed to diagnose as a part of the chronic neck pain. The right carpal tunnel syndrome was addressed by the MEB, but not the PEB, and did not receive a rating from the PEB. Although, this was also diagnosed and rated by the Veterans Administration medical examiner. On September 24, 2007, I received a the original award from the Veteran Administration. The Veterans Administration awarded thirty percent for "Cervical Degenerative Arthritis," which the PEB awarded a ten percent, as Chronic Neck Pain. The Veterans Administration awarded another thirty percent for "Migraine Headaches," which the PEB awarded zero percent, and cited exacerbated by chronic neck pain. For the right carpal tunnel syndrome the Veterans Administration awarded ten percent, where the PEB choose to not rate it. I receive a overall rating from the Veterans administration of eighty percent, per that award. However, as time pass the Veterans Administration has since increased my overall rating to ninety percent service connected, one hundred percent, permanent and total disability, because of several service connect disabilities.” [*sic*]

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 conditions, right carpal tunnel syndrome and OSA as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting neck pain and migraine headache conditions (hypercholesterolemia is a condition or circumstance not constituting a physical disability IAW DoDI 1332.38, enclosure 5 and is not ratable/compensable). 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 20070404** | | | **VA (1 Mos. Post-Separation) – All Effective Date 20070522** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Neck Pain | 5237 | 10% | Cervical Degenerative Arthritis | 5242 | 30% | 20070618 |
| Migraine Headaches, Exacerbated by Chronic Neck Pain | 8100 | 0% | Migraine Headaches | 8100 | 30%\* | 20070618 |
| Obstructive Sleep Apnea, Severe | Not Unfitting | | Obstructive Sleep Apnea | 6847 | 50% | 20070618 |
| R Carpal Tunnel Syndrome | Not Unfitting | | R Carpal Tunnel Syndrome | 8515 | 10% | 20070618 |
| Hypercholesterolemia | Not Unfitting | | No VA Entry | | |  |
| ↓No Additional MEB/PEB Entries↓ | | | 0% X 0 / Not Service-Connected x 1 | | | 20070618 |
| **Combined: 10%** | | | **Combined: 80%** | | | |

\* Migraine 8100 increased to 50% effective 20091217 with VA granting Individual Unemployability (combined 90%)

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation and worsening severity with which his service-incurred conditions continue 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 Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 Veteran 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 re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should his degree of impairment vary over time. With regard to the CI’s assertion that there were DES irregularities (PEB diagnoses and/or exam deficiencies), the Board must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to suspected improprieties in the disposition of a case. The Board is empowered to evaluate the fairness of fitness determinations, and to make recommendations for rating of conditions which it concludes would have independently prevented the performance of required duties (at the time of separation).

Chronic Neck Pain. There were two 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 | MEB ~4 Mo. Pre-Sep\* | VA C&P ~1 Mo. Post-Sep |
| Flex (45⁰ Normal) | 25⁰ (24/25/26⁰) | 25⁰; “pain from 15 to 25” |
| Ext (0-45) | 25⁰ (25/24/26⁰) | 25⁰ |
| R Lat Flex (0-45) | 25⁰ (25/26/24⁰) | 25⁰ |
| L Lat Flex (0-45) | 20⁰ (20/19/21⁰) | 20⁰ |
| R Rotation (0-80) | 30⁰ (30/29/31⁰) | 30⁰ |
| L Rotation (0-80) | 35⁰ (34/36/35⁰) | 35⁰ |
| COMBINED (340⁰) | 160⁰ | 160⁰ |
| Comment | Decreased right grip strength; decreased sensation R index and thenar eminence (see text) | + muscle spasm; motor and reflexes normal; touch and vibratory intact (subjective decreased sensation 1st /2nd fingers); no ROM change on repetition; grip normal; +Tinel’s/Phalen’s on right |
| §4.71a Rating | 20% (PEB 10%) | 20% (VA 30%) |

\* See text *Measurements done w/inclinometer*?

At the MEB exam, performed 4 months pre-separation, the CI reported severe neck pain not relieved by and therapeutic intervention. Pain was 5/10, steady and stabbing with increase with arm movement or stretching. There was numbness and tingling in the arms with use, movement or carrying, with occasional prickly sensations in his fingertips. The CI had worsening of headaches (see below) with worsening of neck pain. He was taken off medications due to treatment for his headache (see below). The CI also had a diagnosis of mild right carpal tunnel syndrome. The examiner stated “(the CI) has been sent home from duty station approximately 12 times over past year because of neck pain/headaches.” The MEB physical exam noted radiographs with some straightening of the lordotic curve and MRI with multilevel mild diffuse bulging (C3-C7) with minimal thecal sac indentation. ROMs are charted above and it was unclear if they were derived from an inclinometer or goniometer. Treatment notes indicate the CI had normal electrodiagnostic studies (EMG/NCV). Following the MEB, treatment with Neurontin and Reglan (which affect nerves and muscles) was instituted. Orthopedic consult ordered a trial of cervical physical therapy, but therapy was stopped as it was aggravating the condition, and the case proceeded to PEB.

At the VA Compensation and Pension (C&P) exam performed a month after separation, the CI reported a similar history with use of Neurontin as the only medication. Symptoms included flare-ups to 10/10 pain occurring about twice a month lasting from 2 hours to a day. Severe pain included inability to move around 1-2 days each month in the last 12 months, which was not physician prescribed. The examiner stated there was mild degenerative arthritis and no definite evidence of radiculopathy, indicating that carpal tunnel can present with similar signs and symptoms. The pertinent exam is summarized above.

The Board directs attention to its rating recommendation based on the above evidence. Both exams meet the 20% criteria for either forward flexion of the cervical spine greater than 15⁰ but not greater than 30⁰; or, the combined range of motion of the cervical spine not greater than 170 degrees. The VA 30% rating for forward flexion of 15⁰ (per VARD dated 17 September 2007) was not supported by independent review of the source C&P exam. There were no episodes of physician prescribed bed rest to meet the VASRD definition of incapacitating episodes IAW VASRD §4.71a. There was no objective evidence of a radiculopathy interfering with function to support additional peripheral nerve rating from the cervical spine condition. PEB coding of 5237 (cervical strain) and VA coding of 5242 (Degenerative arthritis of the spine) both use the general spine formula and the PEB coding is preferred by the Board.

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 cervical spine condition.

Migraine Headaches. The NARSUM indicated the severe headaches (HA) began at the same time as the neck pain condition (detailed above). Treatments for the neck pain and headache were combined with the CI revered to neurology. The first neurology addendum, (23 January 2007), 4 months pre-separation included symptoms of daily low grade HA on awakening and before sleep. HAs were bi-frontal and left occipital area and typically not associated with other symptoms. Recent HAs had been associated with nausea, vomiting and photophobia. The CI indicated he had decreased concentration during headaches and had missed 12 days of work in the last month. He was taking high doses of Tylenol which only “took the edge off”, and multiple medications for his neck pain. Neurologic exam was non-focal (normal). The neurologist diagnosed headache syndrome from analgesic overuse and changed the CI’s medications to Reglan (HA and muscle effects) and Neurontin (nerve pain) removing analgesics. The second neurology addendum (5 March 2007), by the same neurologist, 2 months pre-separation by the same neurologist stated the CI was off analgesic medications with minimal improvement in symptoms. Exam indicated trigger points over the mid-line occiput. The diagnosis was migraine headache with the examiner indicating exacerbation by cervicalgia and chronic neck pain and stated “while I feel these are two different diagnoses, his headaches are not going to improve beyond their current status unless his neck pain improves…. He is no longer overusing analgesics though continues to get frequent incapacitating attacks.” The neurologist ordered a sleep study which was positive for OSA, but use of CPAP did not decrease the headache symptoms, although sleep was improved.

At the VA Compensation and Pension (C&P) exam the examiner summarized the first neurology addendum from above, and indicated the C-file was not available for review. History indicated HA onset in 2005 following a vehicle crash, similar HA location as the STR and having 10-15 days of incapacitating HA where he was sent home. Epidural and trigger point injections and medications had not provided sustained relief. The CI was on high dose Neurontin and the neurologic exam was non-focal (normal).

The Board directs attention to its rating recommendation based on the above evidence. The PEB disability description notes stated “reported history of Migraine headaches, exacerbated by chronic neck pain, … A recent Neurology evaluation notes classic history of analgesic overuse headache.” However, the Neurology evaluation of (from the same provider as the PEB-referenced neurology evaluation) indicated Migraine headaches off of analgesics. The Board deliberated on the frequency of prostrating HAs for VASRD-only rating of the HA condition. The DoDI 1332.39 (E2.A1.4.1.4) definition effective at the time quotes “the Service member must stop what he or she is doing and seek medical attention”; this significantly differs from the threshold applied by VA raters for ‘prostrating’, where the plain English definition of prostrating is used and there is no requirement for the CI to seek medical attention. The Board precedence is that the individual must stop what he or she is doing for a non-trivial period and seek relief (dark room, leave work, etc.; minor work delay to take medications is not considered prostrating). Both the service record and VA exams indicated missing at least part of 12 days of work over the last 12 months. The single notation of 12 days lost in one month, was potentially an outlier, and did not indicate the CI approached the 50% criteria of “very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability”. Board deliberations focused on the 10% versus 30% rating levels. The overlap of the neck pain and the headaches was considered. The Board considered the timeframe of the 12 days of missed work was most likely from the CI’s work in Korea, which was outside “the last several months” IAW VASRD criteria for rating under code 8100; however, the neurologist indicated “… continues to get frequent incapacitating attacks” without specifying a frequency or providing details of the “incapacitating” episodes. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends a disability rating of 10% for the headache condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were right carpal syndrome and OSA. 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. Neither condition was implicated in the commander’s statement. OSA was judged to not meet retention standards, while carpal tunnel syndrome was judged to meet retention standards.

Mild right carpal tunnel syndrome was diagnosed in 2006 by electrodiagnostic testing. Symptoms were intermittent tingling of the fingers perceived intermittent decreased sensation. MEB exam indicated decreased right grip strength without muscle atrophy, decreased 2-point discrimination over the right index finger and decreased pin prick sensation over that finger and the thenar eminence. The VA exam showed decreased sensation of the median nerve distribution of the right hand with normal motor function and good grip strength. The CTS was not profiled, but the U3 profile for the neck condition may have overshadowed this condition. However, there was scant evidence in the record for any functional impact on duty due to right hand symptoms.

The CI was diagnosed with OSA requiring CPAP and noted indicate that sleep was improved on CPAP. Routinely OSA is not considered unfitting solely on the basis of field and operational impediments to the use of CPAP. There is no evidence in this case that OSA was associated with any unfitting impairments not corrected by CPAP. The PEB’s fitness adjudication was therefore expected and reasonable.

All conditions 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. 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 right carpal tunnel or OSA 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, PEB reliance on AR 635-40 and the USAPDA pain policy for rating the neck pain condition and DoDI 1332.39 on rating the headache condition was operant in this case and the conditions were adjudicated independently of those policies by the Board. In the matter of the cervical spine condition, the Board unanimously recommends a disability rating of 20%, coded 5237 IAW VASRD §4.71a. In the matter of the migraine headaches, exacerbated by chronic neck p ain condition, the Board by a vote of 2:1, recommends a disability rating of 10%, coded 8199-8100 IAW VASRD §4.124a. The single voter for dissent (who recommended adopting the VA rating 8199-8100 at 30%) did not elect to submit a minority opinion. In the matter of the contended right carpal syndrome and OSA conditions, 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Neck Pain | 5237 | 20% |
| Migraine Headaches, Exacerbated by Chronic Neck Pain | 8199-8100 | 10% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111215, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

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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 XXXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120016398 (PD201101138)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from this memorandum:

a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

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 XXXXXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA