RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200156 SEPARATION DATE: 20060819

BOARD DATE: 20120927

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated National Guard SGT/E-5 (13M20, MLRS/HIMARS Crew), medically separated for chronic neck pain and conversion disorder. His initial injury occurred after a fall while deployed to Iraq. After conservative measures failed to relieve his neck pain, a surgical fusion was performed. Subsequent to that procedure, the CI began experiencing intermittent episodes of alteration in consciousness and abnormal body movements that after a normal neurological evaluation was diagnosed as conversion disorder. The neck pain and conversion disorder conditions could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3/U3/S3 profile and referred for a Medical Evaluation Board (MEB). The MEB referred the cervical disk disease (chronic neck pain), sleep apnea, conversion disorder and right shoulder pain for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic neck pain, unfitting and rated zero percent with likely application of the US Army Physical Disability Agency (USAPDA) pain policy; and the conversion disorder also adjudicated as unfitting and rated zero percent with likely application of Department of Defense Instruction (DoDI) 1332.39. The sleep apnea and right shoulder pain were adjudicated as not unfitting and therefore not ratable. The CI made no appeals and was medically separated with a 0% disability rating.

CI CONTENTION: “Member was injured in Iraq while serving in the Army. Upon returning home from this tour in February 2005, a fusion was performed on neck at BAMC (Brooke Army Medical Center) in San Antonio, TX. Six months later at Irwin Medical Center at Fort Riley, surgery was performed on right shoulder. Following the first surgery, several reports were completed by member’s case worker for spouse reporting “seizure” like activity. The MED board in 2006 found nothing wrong with member but was discharged with an honorable discharge and medical disability severance pay. As of today in 2012, members VA primary physician has said that at this time member cannot work. The VA has also recognized TBI/PTSD (traumatic brain injury and posttraumatic stress disorder) and awarded disability of 80%. There is a review pending at this time for unemployability.”

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 chronic neck pain, right shoulder pain and “seizure” like activity (conversion disorder) as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. The other requested condition, TBI/PTSD, is 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 20060711** | **VA (4 Mo. After Separation) – All Effective Date 20060820** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Radiating Neck Pain | 5241 | 0% | Cervical Spondylosis | 5241 | 10% | 20070221 |
| Conversion Disorder | 9424 | 0% | Conversion Disorder w/ Seizures | 9434 | 10%\* | 20070221 |
| Sleep Apnea | Not Unfitting | Obstructive Sleep Apnea | 6847 | NSC | 20070221 |
| Rt Shoulder Pain | Not Unfitting | Rt Shoulder Impingement Syndrome | 5203 | 0%\* | 20070221 |
| ↓No Additional MEB/PEB Entries↓ | Not Service Connected x 1 | 20070221 |
| **Combined: 0%** | **Combined: 20%\*** |

\* Increased right shoulder coded 5201 to 30% effective 20090330 (combined 40%); Conversion disorder increased to 30% with PTSD and MDD effective 20090605 (combined 60%)

ANALYSIS SUMMARY:

Neck Condition. There were two goniometric 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.

|  |  |  |
| --- | --- | --- |
| ROM – Cervical | NARSUM/PT ~2 Mo. Pre-Sep | VA C&P ~6 Mo. After-Sep |
| Flex (0-45) | 250 | 35⁰ |
| Ext (0-45) | 250 | 35⁰ |
| R Lat Flex (0-45) | 10⁰ | 40⁰ |
| L Lat Flex (0-45) | 10⁰ | 30⁰ |
| R Rotation (0-80) | 40⁰ | 50⁰ |
| L Rotation (0-80) | 50⁰ | 45⁰ |
| COMBINED (340) | 160⁰ | 235⁰ |
| Comment: Surgery ~14 Mo. Pre-Sep | + pain w/ motion; strength 5/5 (see text) | + pain w/ motion; No DeLuca decrease; normal STR & DTR |
| §4.71a Rating | 20% | 10% |

 Rounding IAW general spine formula Note (4), and use of DeLuca criteria

The narrative summary (NARSUM), performed 3 months prior to separation indicated the CI’s initial injury was in September 2004 while deployed to Iraq when he fell and struck the right side of his head and neck on a barrier. The CI initially had an X-ray and physical therapy (PT) in Iraq and was able to complete his deployment in spite of continued pain. Re-evaluation of his neck pain and radicular symptoms resulted in a C5-6 anterior cervical discectomy and fusion/plating with thecal sac and nerve root decompression, 14 months prior to separation. After the procedure, the CI’s right arm radicular symptoms resolved, but he continued to have neck pain. The NARSUM referred to the PT ROMs summarized above. The examiner stated that “grip, hand, arm, and shoulder strength are 5/5. The right is definitely weaker than left in the shoulder musculature.”

At the VA Compensation and Pension (C&P) exam, 6 months after separation, the CI reported neck pain has improved after surgery, but still has intermittent flares in his pain. CI uses non-steroidal anti-inflammatory medications and muscle relaxers occasionally for severe pain. Limited physical exercise with lifting restricted to less than 20 pounds. The back exam is summarized above.

Both the PEB (0%) and VA (10%) coded the CI’s neck pain under 5241, spinal fusion. The PEB 0% rating cited “exam shows pain-limited motion…Rated for pain-limited motion” which indicated use of the USAPDA pain policy. The service exam is four months more proximal to separation and is the probative exam in this case. Of note, the VA exam’s forward flexion was within 1⁰ (rounded within 5⁰) of the 20% rating criteria. 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.

Conversion Disorder Condition. The psychiatric NARSUM addendum prepared six months prior to separation notes alteration in consciousness associated with bodily movements, arms greater than legs, which occur once or twice a month and began subsequent to CI’s neck surgery. He sometimes speaks during these events and has no bowel or bladder incontinence. The CI’s mental status exam was normal. He had normal electroencephalogram and brain computed tomography scan. No hospitalizations for psychiatric reasons and no medications were prescribed. Paraphrasing the NARSUM psychiatric evaluator: these spells have minimal impact on day-to-day functioning, hehas been unable to drive, is currently partially capable to work full time in civilian employment, may have to have some mild employment restrictions if these episodes continue, but should be able to function at a pretty high level, otherwise. The Axis I diagnosis was, “conversion disorder with seizures or convulsions as manifested by body convulsions and loss of consciousness that suggest a neurologic condition, which has been unable to be satisfactorily explained after a thorough appropriate investigation. These symptoms do not appear to be intentionally produced. These symptoms have caused a significant distress in his social occupational and other areas of functioning.”

VA C&P mental disorders examination, 6 months after separation, documents a history and physical examination similar to that of the NARSUM. The CI’s spouse was present at the exam and provided history details. Also documented was the following: “he reports that as long as he is not actively having one of these pseudoseizure episodes, he is able to do all activities of daily living unassisted. The patient is employed on a regular basis. He denies any interference of these symptoms with his work. However, it is apparent that these episodes have caused problems in his relationships with his wife and daughter, and his overall functional ability at home. It is apparent that the patient does in fact evidence conversion disorder with convulsions or seizures in response to the neck surgery. The overall degree of impairment appears to be focused upon family relationships and social relationships. The severity of impairment is judged to be in the mild to low moderate range. The patient does not evidence clinically significant depression or anxiety at this time; Global Assessment of Functioning (GAF)=65.” Of note, the VA general medicine C&P exam indicated usual occupation as a mechanic, the CI was currently employed part-time as a shift manager at grocery store and he had lost 6 weeks of work during the last year due to looking for work and had problems with occupational functioning due to lifting limits.

The Board directs attention to its rating recommendation based on the above evidence. The PEB found the CI’s conversion disorder as unfitting, coded it 9424, and rated it 0% stating “industrial impairment rated as mild to none based upon no driving restrictions.” This language indicated likely application of DoDI 1332.39 criteria versus VASRD-only criteria. The VA coded the condition as 9434, major depressive disorder, and rated it 10%. Both psychiatric evaluations agree the CI had a conversion disorder. There is a specific VASRD code for conversion disorder, 9424, along with rating criteria utilizing the General Rating Formula for Mental Disorders. Rating analogously under VASRD §4.122 psychomotor epilepsy, or IAW VASRD §4.124a, as an epilepsy condition was not supported by the record. Board deliberations focused on the level of impairment that a “no driving” restriction and other symptoms equated to within the VASRD §4.130, Schedule of ratings-mental disorders criteria.

The Board considered the CI’s restriction from driving and adjudged the CI’s symptoms and disability picture was closer to the 10% criteria of occupational and social impairment due to mild or transient symptoms, than the 30% criteria as there was little evidence to support intermittent periods of inability to perform occupational tasks caused by his symptoms, and the CI denied a linkage of his conversion disorder symptoms to his occupation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the conversion disorder, coded 9424.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was right shoulder pain. The Board’s first charge with respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudication. 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. The NARSUM, six months prior to separation indicated right shoulder limited ROM with other exams of ROMs referenced. The CI’s right shoulder was evaluated a month prior to separation (7 months after undergoing a rotator cuff repair and sub acromial decompression) that revealed slight right shoulder ROM limitations. The NARSUM documents “he still has difficulty with use of the shoulder if significant force is required.” The commander’s statement did not specify conditions that limited duty performance. The profile included a U3 duty restriction for neck pain, and the shoulder condition was not listed. Review of the service treatment records reveals that right shoulder pain was judged to meet standards and to be not unfitting. There was no indication from the record that this condition significantly interfered with satisfactory duty performance at the time of separation. 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 shoulder pain condition; and, therefore, no additional disability rating 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 likely application of the USAPDA pain policy for rating chronic neck pain condition was operant in this case and the condition was adjudicated independently of that policy by the Board. As discussed above, PEB likely application of DoDI 1332.39 for rating conversion disorder condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic neck pain condition, the Board unanimously recommends a disability rating of 20%, coded 5241 IAW VASRD §4.71a. In the matter of the conversion disorder condition, the Board unanimously recommends a disability rating of 10%, coded 9424 IAW VASRD §4.130. In the matter of the contended right shoulder pain condition, the Board unanimously recommends no change from the PEB determination 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 Radiating Neck Pain | 5241 | 20% |
| Conversion Disorder | 9424 | 10% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120114, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXX, AR20120019894 (PD201200156)

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 the date of 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 XXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA