RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200435
BOARD DATE: 20121116

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20050531

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active Guard Reserve SGT/E-5 (71L20/Administrative Specialist), medically separated for chronic neck pain. The condition began in 1999 subsequent to a motor vehicle accident (MVA), and was not associated with a surgical indication. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic neck pain to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB's submission. The PEB adjudicated the chronic subjective neck pain condition as unfitting, rated 10% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: " On 28 October I was diagnosed with "left wrist tendinitis: and awarded a P3, but after further review of my conditions the MMRB process on 26 October 2004 it was decided to send me to MEB for neck pain with a P3 for left wrist tendinitis. The MEB awarded me a 10% disability with severance pay. I consider this determination incorrect since my EMG dated 14 April 2004 revealed that I had carpal tunnel syndrome. The MRI dated on 9 July 2004 indicated (cervical radiculopathy) disk bulges and D.D.D. I was receiving therapy for my neck, back and wrist. They change my therapy to Rodriguez Army Health Clinic and my back pain was never attend again. The final decision was made with a P3 profile that was incorrect and a new profile never was made. My treatment was incomplete and I want a fair decision about my conditions, now I have arthritis on my neck and lower back. VA assign me a wheelchair and wrist brace to treat those conditions. I have others LOD that never was sign by my Commander just the clinic." [*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 wrist tendinitis, carpal tunnel syndrome and low back pain 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 20050103			VA (6 Mos. Post-Separation) – All Effective Date 20050601			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Chronic Subjective Neck Pain	5299-5237	10%	Cervical Degenerative Disc Disease	5243	20%	20051215
↓No Additional MEB/PEB Entries↓			Chronic Low Back Pain – DDD	5243	40%	20051215
			Right Knee Tendinitis	5299-5257	10%	20050726
			Left Carpal Tunnel Syndrome	5299-8515	10%	20050726
			Right Carpal Tunnel Syndrome	8599-8515	10%	20050726
			Right Shoulder Bursitis	5019-5024	10%	20051215
			0% X 2 / Not Service-Connected x 1			20050726
Combined: 10%			**Combined: 70%**			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the gravity of her condition and the significant impairment with which her service-connected condition continues to burden her. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans' Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), 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 Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board's authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation. The Board further acknowledges the CI's assertions that a profile was incorrectly assigned, medical treatment was incomplete and a commander did not sign an LOD; but, must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to such allegations. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of service rating and fitness determinations at separation, as elaborated above.

Neck Condition. Although the CI experienced mild neck pain following a MVA in July 1999, the clinical record is silent regarding neck complaints until 2002. Persistent neck pain associated with hand numbness and elbow pain led to electrodiagnostic studies (EMG) performed on 21 June 2004 which showed no evidence of cervical radiculopathy. A magnetic resonance imaging (MRI) study performed on 7 July 2004 showed some disc bulging at C3 through C6. 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.

Cervical ROM	MEB ~6 Mo. Pre-Sep	VA C&P ~6 Mo. Post-Sep
Flex (45° Normal)	45°	30°
Ext (0-45)	45°	10°
R Lat Flex (0-45)	45°	45°
L Lat Flex (0-45)	45°	45°

R Rotation (0-80)	80°	80°
L Rotation (0-80)	80°	80°
COMBINED (340°)	340°	290°
Comment		+Tenderness, spasm
§4.71a Rating	10%*	20%

*Conceding pain with use

At the narrative summary (NARSUM) examination, the CI reported that flare-ups of neck pain occurred 2-3 times per week. Driving, computer work and reading exacerbated the condition. Medications, physical therapy and rest were helpful. The physical examination noted a normal gait, but was silent regarding spinal contour or objective evidence of pain. Neurologic examination was normal. A VA Compensation and Pension (C&P) exam performed on 26 July 2005, an erect posture and normal gait were noted. Limitation of flexion and extension were observed, but measurements were not performed. Tenderness and spasm of paracervical muscles was present, but spinal contour was not reported. At a spine C&P exam 6 months after separation, the CI reported constant neck pain and stiffness. She required 3 days of rest during the prior year for her spine condition. Physical examination noted normal gait and spinal contour. Upper extremity strength and deep tendon reflexes (DTRs) were normal, but diminished pinprick sensation was noted in the upper extremities.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition, but this did not bear on the rating. The 10% rating by the PEB was based on appropriate application of functional loss (§4.40) in the setting of normal ROM. The Board considered that the exam was silent regarding other criteria for a higher rating, namely muscle spasm or guarding severe enough to result in abnormal spinal contour. However, Board members agreed that completely normal ROM testing was incompatible with the presence of muscle spasm severe enough to cause abnormal spinal contour. The 20% rating assigned by the VA was also appropriate given the limitation of flexion noted by the VA examiner. In its assignment of probative value to such disparate exams, which were equally proximate to separation, the Board must acknowledge that VA goniometric examinations may predispose to a lowered pain threshold since they are vulnerable to the compelling psychological influence of secondary gain. Upon deliberation the Board agreed in this case that the MEB examination was more consistent with outpatient notes, and less vulnerable to the undue influence just elaborated. The Board is therefore relying more heavily on the MEB measurements. The Board also considered rating intervertebral disc disease under the alternative formula for incapacitating episodes, but could not find sufficient evidence which would meet even the 10% criteria under that formula. The Board further deliberated if additional disability was justified for the history of radiating pain and numbness suggestive of radiculopathy. Examiners however recorded normal muscle strength testing. The MRI showed evidence of disc bulging, but the EMG showed no evidence of cervical radiculopathy. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board's decision to recommend any condition for rating as additionally unfitting. There is no evidence in this case of functional impairment attributable to cervical radiculopathy, and the Board therefore concludes that additional disability was not justified on this basis. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the chronic neck pain condition.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the chronic neck pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board's scope of review for consideration.

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

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Subjective Neck Pain	5299-5237	10%
	COMBINED	**10%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120517, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXXX
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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120021216 (PD201200435)

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

XXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA