

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200910
BOARD DATE: 20130123

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20040224

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated National Guard Soldier, PFC/E-3(51B/Carpentry & Mason), medically separated for chronic neck pain due to cervical strain. The CI sustained his neck injury in a motor vehicle accident (MVA) in May 2002 while in a civilian status. His pain resolved in August 2003; however, it was aggravated by physical training and other functional activities of a 51B. Although the CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards, his Company and Battalion Commander requested that he remain in the National Guard. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic neck pain as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated chronic neck pain due to cervical strain as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The PEB also identified the condition as existed prior to service (EPTS) and aggravated by current service, but made no deduction for EPTS. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

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 rating for the unfitting condition of chronic neck pain due to cervical strain will be reviewed. 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 PEB – Dated 20031002			VA*			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Neck Pain due to Cervical Strain	5237	10%	Neck Injury	5010-5242	NSC	STRs
↓No Additional MEB/PEB Entries↓						
Combined: 10%			Combined: NSC			

*VA application 5 yrs after separation; no VA Exam or rating. NSC = Not service connected/not subject to compensation.

ANALYSIS SUMMARY:

Chronic Neck Pain. The CI sustained a neck injury as the driver of a motor vehicle that struck a tree in June 2002. At the time he was a civilian. Initial Computerized Tomography (CT) of the

neck showed an anterior fracture of C2, but repeat CT the following day did not show any evidence of fracture or subluxation. The CI was hospitalized for 5 days and treated with analgesics for complaint of neck pain. The CI presented for primary care follow-up 3 months after the accident. The service treatment record (STR) noted pain with normal lateral range-of-motion (ROM) and referred the CI to physical therapy (PT). Eight months after the MVA, PT evaluation recorded normal cervical flexion with pain on motion; extension “minimal loss” (75-85% of normal); and minimal loss of lateral motion with pain on ROM. Recordings of ROM over the next several months remained essentially unchanged; pain on motion was the only positive finding, which improved slightly over time. Throughout the course of treatment, there were no reported gait abnormalities and no palpable spasms. Approximately 6 months prior to separation, the CI presented to the primary care clinic for a fit for duty evaluation and he was placed on profile and referred to MEB. At the MEB exam (approximately 5 months prior to separation), performed by the treating physician, the CI reported that the 6 weeks of PT improved his ROM, but pain persisted with on-and-off numbness of the left upper extremity that resolved the month prior (August 2003). On examination, the cervical ROM showed forward flexion of 45 degrees (normal), and combined ROM of 230 degrees (normal 340 degrees) with noted pain with motion. Five years post separation, the CI filed a VA claim for his neck injury. There was no VA exam accomplished. The VA reviewed the STR and a not service-connected (NSC) determination was made.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the condition at 10% coded 5237 (cervical strain). The VA used STRs, lack of subsequent treatment records, and lack of evidence of a current disability to support their NSC determination. The Board adjudged that the permanent service aggravation determination was administratively final and that the record sufficiently documented clear evidence for the rating of 10%. There was no documented evidence of frequent spasm, gait abnormality, or sufficient ROM limitation or incapacitating episodes to support a higher rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication of the cervical strain 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 cervical strain 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 neck pain due to cervical strain	5237	10%
	COMBINED	10%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120618, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF
Director
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB / XXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXX, AR20130003003 (PD201200910)

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

XXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)