RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX
CASE NUMBER: PD1201305
BOARD DATE: 20130205

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030710

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (88H/Cargo Specialist) medically separated for chronic neck pain with right arm radiculopathy that initially manifested in January 2002. Despite physical therapy (PT), medications and surgery, the soldier could not be rehabilitated to meet the requirements of her Military Occupational Specialty (MOS) or physical fitness standards. She was consequently issued a permanent U3L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded four diagnoses cervical spondylosis, radicular pain, weakness in the right biceps and hand, and continued postoperative pain to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were forwarded by the MEB. The PEB incorporated all four diagnoses into the single unfitting chronic neck pain with right arm radiculopathy condition and rated it 20% disabling. The CI made no appeals and she was medically separated with a 20% disability rating.

CI CONTENTION: The application states "I do not feel that I was given the proper rating, when reviewed by VA Doctors I was given a higher disability rating." She did not elaborate further or specify a request for Board consideration of any additional conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (DoDI) 6040.44 (Enclosure 3, paragraph 5.e.2) is limited to those conditions 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 chronic neck pain with right arm radiculopathy condition is addressed below. 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 service Board for Correction of Military Records.

RATING COMPARISON:

Service PEB – Dated 20030426			VA (5 Mos. Post Separation) –All Effective 20030711			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Chronic Neck Pain w/ Right Arm Radiculopathy	8510	20%	Residuals, Cervical Foraminotomy w/ Right Sided Radiculopathy	8599-8510*	20%	20031210
			Degenerative Arthritis Cervical Spine	5010*	10%	20031210
			Degenerative Arthritis Lumbosacral Spine	5010*	10%	20031210
↓No Additional PEB Entries↓			Not Service Connected x2*			
Combined: 20%			**Combined: 20%***			

*Both VASRD codes 5010 added & Combined rating to 40% effective 20030711; 8599-8510 changed to 8599-8513 and increased to 40% based on VA C&P exam of 20051031, both 5010s changed to 5010-5242 and increased to 20% & Combined rating to 60%, Not Service Connected to 3; effective 20050415

ANALYSIS SUMMARY: The Board notes the current Department of Veterans Affairs (DVA) ratings for all of her service-connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The DVA ratings, which it considers in that regard, are those rendered most proximate to separation. The Disability Evaluation System has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the DVA.

The PEB rated chronic neck pain with right arm radiculopathy under the single 8510 (paralysis of the upper radicular group) code. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting, and that there was no need for separate fitness adjudications, not a judgment that each condition was independently unfitting, but IAW DoDI 6040.44, the Board must apply only VASRD guidance to its recommendation. The Board must therefore apply separate codes and ratings in its recommendations if compensable ratings for each condition is achieved IAW VASRD §4.71a and §4.124a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each "unbundled" condition was reasonably justified as unfitting in and of itself. Since §4.71a and §4.124a criteria are met for each condition in this case, the Board is pursuing separate fitness and rating evaluations as follows.

Chronic Neck Pain Condition. The Board first considered if the chronic neck pain condition, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. Although the PEB did not individually adjudicate the cervical spondylosis and continued post-operative pain condition, collectively addressed by the PEB as chronic neck pain, each was presented in the MEB evidence as individually medically unacceptable. Additionally, "neck pain" was noted on the permanent profile prepared for consideration by the MEB/PEB with a specific limitation of no helmet wearing. The CI's commander's statement contained the following passage: "Because of her medical profile from degenerative joint disease, she is not able to work in the motor pool." The Board's threshold for separate fitness determinations is "reasonably justified" which is consistent with the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, and remains adherent to the DoDI 6040.44 "fair and equitable" standard. All members agreed that the chronic neck pain, as an isolated condition, would have rendered the CI incapable of continued service within her MOS, and accordingly it merits a separate service rating.

The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Cervical ROM	NARSUM 7.5 Mos. Pre-Sep	PEB requested addendum 4 Mos. Pre-Sep	VA C&P 5 Mos. Post-Sep
Flex (45° Normal)	-	15°	30°
Ext (0-45°)	-	45°	30°
R Lat Flex (0-45°)	-	30°	30°
L Lat Flex (0-45°)	-	30°	30°
R Rotation (0-80°)	40°	40°	60°
L Rotation (0-80°)	30°	40°	60°
COMBINED (340°)	-	210°	240°
Comment	Pos. limitation of flexion & extension; Pos. Spurling's test on right; Right biceps, triceps, wrist extensor, & digital extensor muscle weakness of 4/5; Right deltoid weakness due to pain inhibition; intact pinprick & light touch in upper extremities; DTRs were 2+ and	Motor Power: Flexion right elbow 3+/5; Extension right elbow 4+/5; Flexion right wrist 4+/5; Extension right wrist 3+/5; Right hand grip test-4kg, 6kg, 6kg; No weakness right shoulder; Left hand grip test-32kg, 34kg, 27kg; Pos.	Right shoulder stiffness due to neck pain; Pos. posterior laminectomy scar; Pos. tenderness, soreness & pain to palpation in & around the neck; Pos. pain throughout the range of motion; Pos. decreased sensation over the C6-7 distribution right hand; diminished grip & grasp

	symmetric with no pathologic reflexes; No atrophy upper ext.	radiculopathy	right hand; Reflexes symmetric in both upper extremities.
§4.71a Rating*	-	Severe (30%)	Moderate (20%)
Current §4.71a Rating	-	30%	20%

*IAW the VASRD in effect at the time of separation

The narrative summary (NARSUM) prepared 7 months prior to separation noted that the CI had onset of right shoulder pain in January of2002. In particular, she recalled the onset of pain while doing a military press with "iron picks." Initially, the pain was achy in character, and it gradually progressed to where her right arm would "lock up." She developed shooting right arm pain that radiated down the posterior aspect of her right arm and into her right hand. She also noted associated numbness and paresthesias in a similar pattern. She developed subjective weakness and noted difficulty with simple tasks such as throwing peanuts to squirrels. She tried non-steroidal anti-inflammatory drugs and was referred to PT. She was initially seen in the neurosurgery clinic in June 2002. Magnetic resonance imaging (MRI) showed significant spondylotic disease of the cervical spine with normal spinal cord images. A computed tomography myelogram was done to further elucidate the degree of stenosis. The pertinent physical exam findings are summarized in the chart above. Hospital course revealed that the patient underwent a right C5-6 and C6-7 cervical foraminotomy in October 2002. Postoperatively, she experienced quite a bit of pain and spasm. The CI felt that she had some new numbness into her hands. The CI did not improve over the next several weeks, but by 6 weeks, she had some improvement in her postoperative pain, but the patient still had no improvement as compared to her condition before surgery. Essentially, all of her preoperative pain continued. The CI's right hand and arm were still difficult to use. She tended to drop things. She found it hard to open jars and she found it difficult to salute because she could not raise her right hand. She continued to have biceps weakness, as well as intrinsic hand weakness. The final diagnosis was cervical spondylosis, radicular pain, weakness, right biceps and right intrinsic hand muscles, secondary to radicular pain and continued postoperative pain. The additional information requested by the PEB is summarized in the chart above. At the MEB exam accomplished 6 months prior to separation, the CI simply reported neck surgery. The MEB physical exam noted right brachial and radial reflexes 1+, unequal hand grips and dysesthesias in the right 1st^{t} & 2nd metacarpals.

At the VA Compensation and Pension (C&P) exam performed 5 months after separation, the CI reported a similar history to the one above with the following additional items. She had no specific joint injury to the shoulder, elbow, or wrist, and consequently, no surgeries have been done there. This had all been a neurologic radicular complaint. She had persistent problems with neck and right radicular pain since surgery. With normal daily activity, she had difficulties with repetitive use of the neck, right arm and hand. Medication used at the time was Elavil. The pertinent physical exam findings are summarized in the chart above. Plain film X-ray revealed minimal degenerative arthritic changes of the bodies of C4 to C7, inclusive, with minimal marginal spur formation and narrowing of the disc spaces between C5 and C6, and C6 and C7. The intervertebral foramina were within normal limits. There were no cervical ribs. Impression: Degenerative arthritic changes of the bodies of C4 to C7, inclusive. Another C&P examination performed 27 months after separation contained additional goniometric cervical spine ROM measurements. That exam yielded the following results: flexion: 50 degrees with flexion pain beginning at 40 degrees ends at 50 degrees; extension: 45 degrees; left lateral flexion: 45 degrees; right lateral flexion: 45 degrees; left lateral rotation: 75 degrees and right lateral rotation: 75 degrees.

The Board directs attention to its rating recommendation based on the above evidence. The PEB applied the VASRD code of 8510, paralysis of the upper radicular group, and rated it 20% for a mild incomplete paralysis. That VASRD code applies solely to the neurologic impairment

of that peripheral nerve group and does not take into account the disability caused be the CI's chronic neck pain. As noted above, the chronic neck pain was adjudged to be unfitting by the Board and warrants a separate disability rating IAW VASRD §4.71a. The VASRD in effect at the time of separation utilized the subjective criteria of slight, moderate and severe to rate the limitation of motion in the cervical spine and would have been coded 5290. When older cases have goniometric measurements in evidence, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation (DOS), without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation. Furthermore, the Board policy (discussed above) of reconciling recommendations under the older 5290 rating schedule with current §4.71a based recommendations (when reasonable to do so) was considered. As reflected in the cervical spine ROM chart above, at the time of separation, the CI had a moderate to severe limitation of motion in her cervical spine. Using the corresponding objective rating criteria of the current VASRD, those ROM values would result in a 20% or 30% evaluation. At some point around the DOS, the CI's limitation in cervical motion improved from the severe, 30%, level to the moderate, 20% level. The ROM measurements of each exam were accomplished approximately equidistant on either side of the date of separation with the ROM measurements consistent with the 20% rating level present after separation. Both exams were equally detailed and well documented. In reconciling this difference in ROM measurements, the Board discussed two additional considerations. First, is the concept that as more time passed after CI's surgical procedure, healing and rehabilitation would result in improved motion of her neck. Second, was the presence of another set of cervical spine ROM measurements accomplished 27 months after separation. These measurements were consistent with a "slight" limitation in motion and they support the conclusion that as time passed after surgery, the CI's neck ROM continued to improve. 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 chronic neck pain condition.

Right Arm Radiculopathy Condition. The Board first considered if the right arm radiculopathy condition, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. Although the PEB did not individually adjudicate the radicular pain and weakness, right biceps and right intrinsic hand muscles secondary cervical spondylosis, collectively addressed by the PEB as right arm radiculopathy, each was presented in the MEB evidence as individually medically unacceptable IAW AR 40-501. The evidence present in the service treatment records documented significant functional impairment resulting from the weakness in the CI's right upper extremity. The NARSUM documented that the CI tended to drop things and found it difficult to salute due to right arm weakness. Objective testing on several exams documented significant weakness of the CI's right upper extremity, which is the CI's dominant hand. The Board's threshold for separate fitness determinations is "reasonably justified" which is consistent with the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, and remains adherent to the DoDI 6040.44 "fair and equitable" standard. All members agreed that right arm radiculopathy, as an isolated condition, would have rendered the CI incapable of continued service within her MOS, and accordingly it merits a separate rating.

The data contained in the NARSUM, the PEB requested addendum, the MEB history and exam and the C&P exam documented in the chronic neck pain section above equally applies to the right arm radiculopathy condition discussed below. Additionally, some of the comments contained in the cervical ROM chart above specifically pertain to rating considerations for the right arm radiculopathy condition.

The Board directs attention to its rating recommendation based on the above evidence. The PEB applied the VASRD code of 8510, paralysis of the upper radicular group, and rated it 20% for a mild incomplete paralysis. The VA initially applied the analogous code of 8599-8510 and rated it 20% also for a mild incomplete paralysis of the upper radicular peripheral nerve group. They later changed the code to 8513 and rated it 40% for a moderate paralysis of all radicular groups in the CI's dominant hand with an effective date 21 months after separation. This change in coding was significant in that it now accounted for all the documented physical exam findings related to the CI's radiculopathy. The VASRD in effect at the time of separation differentiated the disability related to peripheral nerve impairment based on three functional and anatomical locations of the muscles affected. The upper radicular group corresponded to shoulder and elbow movement; the middle radicular group corresponded to rotation of the arm, elbow flexion and wrist extension; and the lower radicular group corresponded to the intrinsic hand muscles and some or all flexors of the wrist and fingers. A fourth VASRD code, 8513, encompassed paralysis involving all radicular groups. At the time of separation, the CI had documented objective weakness of the following movements of her right upper extremity: hand grip strength along with flexion and extension of her wrist and elbow. There was no objective evidence of right shoulder weakness. Her deep tendon reflexes were normal. The VA C&P exam documented decreased sensation of the right hand while the NARSUM documented normal sensory function in the upper extremities. It is noteworthy that there was a discrepancy between the MEB addendum prepared for the PEB's adjudication and the likely source document that was prepared by a physical therapist concerning the strength testing of the CI's right arm. The probable source document has a 3+, slightly weaker, designation for elbow flexion and wrist extension as compared to the 4+ designation for the same movements contained in the MEB addendum. This discrepancy could be due to transcription error or because the MEB addendum author actually did the testing themself. Under either circumstance, the fact remains that the CI had objective weakness of those muscle groups. The pattern of muscle weakness documented at the time of separation correlates with incomplete paralysis involving all radicular groups warranting application of VASRD code 8513. Rating incomplete paralysis of all radicular groups requires applying the subjective criteria of mild, moderate and severe along with consideration of the dominant hand. The CI was right hand dominant. While her wrist and elbow weakness was 3+ to 4+ on a five-point scale and in the mild, 20%, rating category, the weakness in her right hand grip strength, approximately 20% of the grip strength in her left non-dominant hand, represented a severe impairment. Additionally, the evidence in the C&P examination presented an improving, less impaired, disability picture after separation at a point equidistant as the MEB addendum was before separation. This improving disability picture tempered the Board's deliberation and resulted in settling on a moderate impairment of all radicular groups of the CI's dominant right upper extremity. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 40% for the right arm radiculopathy 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, the Board unanimously recommends a disability rating of 20%, coded 5290, IAW VASRD §4.71a. In the matter of the right arm radiculopathy condition, the Board unanimously recommends a disability rating of 40%, coded 8513, IAW VASRD §4.124a. 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 her prior medical separation.

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Neck Pain Condition	5290	20%
Right Arm Radiculopathy Condition	8513	40%
	COMBINED	**50%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120629, w/atchs.
Exhibit B. Service Treatment Record.
Exhibit C. Department of Veterans' Affairs Treatment Record.

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Acting Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for xxxxxxxxxxxxxxxxxx, AR20130002966 (PD201201305)

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 50% 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 50% 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

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Deputy Assistant Secretary
(Army Review Boards)