RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: USMC

CASE NUMBER: PD0900016 BOARD DATE: 20100331

SEPARATION DATE: 20030430

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SUMMARY OF CASE: This covered individual (CI) was a Lance Corporal/Telephone Systems Personal Computer Immediate Repairer medically separated from the Marine Corps in 2003 after 1.5 years of service. The medical basis for the separation was left humerus supracondylar fracture as a result of a motor vehicle accident in 2002. The CI was referred to the Physical Evaluation Board (PEB), determined unfit for continued military service and separated at 20% disability using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

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CI CONTENTION: The CI states: (cut and paste from DD 294 contention). “My military disability rating did not include any evaluation for PTSD, which I was diagnosed with immediately upon filing with the VA. This additional condition, which was overlooked, brought my disability rating to 30% and would have qualified me for retirement. I hoping to correct this oversight.”

“I received an additional 10% rating due to PTSD from the VA, which was added to the 20% I had received from the DOD evaluation. This addition brought my total disability rating to 30%, which would have qualified me for a medical retirement. I'm hoping to correct this oversight.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (6 months after Separation)** | | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Left Humerus Supracondylar Fracture | 5299-5202 | 20% | 20030326 | Left (Non-Dominant) Grade 2 Open Distal Humerus Fracture, Status Post Open Reduction and Internal Fixation; Residual of Motor Vehicle Accident | 5299-5213 | 10 % | 20031006 | 20030501 |
| Left Distal Radius Fracture and Left Ulnar Fracture, Status Post Open Reductions and Internal Fixations; Residual of Motor Vehicle Accident | 5299-5215 | 10 % | 20031006 | 20030501 |
| Both-Bone Forearm Fracture | CAT II |  |  |
| Right Penumothorax Surgically Treated | CAT III |  |  | Pneumothorax, Residual of Motor Vehicle Accident | 6843 | 0% | 20031006 | 20030501 |
|  | MEB H&P  History (Head injury, memory loss or amnesia and period of unconsciousness or concussion) | | | Cognitive Disorder, Residual of Motor Vehicle Accident | 8045-9304 | 10%  10% | 20031002  20090805 | 20030501 |
|  | MEB H&P  History (ORIF 1st metacarpal) | | | Left 1st Metacarpal Fracture, Status Post Closed Reduction; Residual of Motor Vehicle Accident | 5228 | 0% | 20031006 | 20030501 |
| Not Addressed by DES |  | | | Left 5th Metacarpal Fracture, Status Post Open  Reduction and Internal Fixation; Residual of Motor  Vehicle Accident | 5230 | 0% | 20031006 | 20030501 |
|  | MEB H&P Examination | | | Scar, Distal to the Left Elbow; Residual of Motor Vehicle Accident | 7804 | 10% | 20031006 | 20030501 |
|  | MEB H&P Examination | | | Scars; Ulnar Aspect of the Distal Left Forearm, Ulnar  Aspect of the Left Hand Along the 5th Metacarpal, and at the Palmar Aspect of the Left Mid-Wrist; Residuals of Motor Vehicle Accident | 7805 | 0% | 20031006 | 20030501 |
| Not Addressed by DES |  | | | Scar, Posterior Scalp; Residual Of Motor Vehicle  Accident | 7800 | 0% | 20031006 | 20030501 |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **30% from 19960501** | | | | |

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ANALYSIS SUMMARY:

Left Arm

The CI was a seat-belted driver when he was involved in a motor vehicle accident on 14 April 2002. He sustained multiple injuries including a right-sided pneumothorax and left humerus supracondylar fracture, as well as a left both-bone forearm fracture. He was treated at the Trauma Center in Las Vegas, Nevada, where he underwent open reduction and internal fixation of the humerus, as well as the radius and the ulna. In addition, a chest tube was placed. Upon discharge, he was followed up at Naval Hospital Twenty-Nine Palms with serial clinical exams, as wel1 as x-ray follow-up.

The CI did have some residual numbness on the radial aspect of the left thumb. Otherwise, the left upper extremity was neurovascu1arly intact to motor and sensory testing. Range of motion (ROM) examination of the left elbow is documented in the chart below along with the VA ROM examination. He had some residual tenderness to palpation about the distal humerus and mid shaft of the ulna on the narrative summary (NARSUM) examination. Navy X-rays of the humerus and forearm reveal that the fractures had healed in acceptable alignment. There were plates and screws in the humerus, radius and the ulna.

The maximum benefits of outpatient therapy were obtained after physical therapy for range of motion and strengthening of the left upper extremity. At the time of the NARSUM, the CI was unable to carry a pack or more than five pounds with his left upper extremity. He was unable to participate in pushups or pull-ups. He was unable to fire a weapon. In addition, attempts at running exacerbated his left elbow pain and caused occasional swelling.

Using an evaluation completed 6 months after the time of separation from the Marine Corps the Veterans Administration (VA) rated this disability as Left (Non-Dominant) Grade 2 Open Distal Humerus Fracture at 10%, and Left Distal Radius Fracture and Left Ulnar Fracture at 10%.

VA X-ray results of the left arm were read as plates applied to the distal humerus laterally and medial help by numerous screws. Also there is a plate applied to the distal ulna shaft and a T-plate applied to the distal radius. The elbow and wrist joints are essentially normal. Bone position and alignment are normal. X-ray of the left hand was read as no abnormality of the hand. Chest x-ray was read as normal.

|  |  |  |
| --- | --- | --- |
| Movement  Left Elbow | ROM Mil  20021021 (6 months prior to separation) | ROM VA  20031006 (6 months after separation) |
| Flex (0-145) | 140 | 0-145 |
| Ext (0) | 10 (0) |  |
| Supination (85) | 70 | 70 |
| Pronation (80) | 70 | 80 |
| Notes: | Some residual tenderness to palpation about the distal humerus and mid shaft of the ulna as well; right elbow normal ROM |  |
| Left Wrist |  | ROM VA 20031006 |
| Radial Deviation (20) |  | 15 |
| Ulnar Deviation (45) |  | 40 |
| Dorsiflexion (70) |  | 60 |
| Palmar Flexion (80) |  | 70 |

The VA rated 10% each for painful motion at elbow (humerus fracture) and wrist (radius and ulna fractures). Neither joint ROMs were limited enough to meet the minimal compensable level under the corresponding joint rating criteria and both were rated for painful motion IAW VASRD **§**4.59 and cited DeLuca in rationale. Both VA and PEB ratings used analogous codes and combined to 20%. The VA used the 5213 Supination and pronation, impairment of and 5215 Wrist, limitation of motion of codes and the Navy used 5202 Humerus, other impairment of. All rating criteria are from the July 2002 VASRD.

The VA rating method does appear more accurate but 20% is a fair rating and either rating method would be acceptable.

Pneumothorax:

A pneumothorax occurred as a result of the motor vehicle accident (MVA) and was treated surgically. This healed after surgery with no recurrence or complaint of any symptoms. Therefore this condition is not considered unfitting at the time of separation.

Cognitive Disorder:

The CI was in a serious MVA where his two passengers were killed. The MEB Health and Physical (H&P) History documented a history of a head injury, memory loss or amnesia as well as a period of unconsciousness or concussion. Neither was addressed in the H&P or the NARSUM and they was not adjudicated by the PEB.

CI did have residual cognitive impairments as a result of a head injury/concussion sustained in the MVA. However, this does not appear to have interfered with performance of any required duties. He was successfully attending college six months after separation and had a 4.0 grade point average despite his problems concentrating.

Other conditions (Documented in MEB H&P Examination)

Scar, Distal to the Left Elbow, Residual of Motor Vehicle Accident; Left 1st Metacarpal Fracture, Status Post Closed Reduction, Residual of Motor Vehicle Accident; Scars, Ulnar Aspect of the Distal Left Forearm, Ulnar Aspect of the Left Hand Along the 5th Metacarpal, and at the Palmar Aspect of the Left Mid-Wrist, Residuals of Motor Vehicle Accident

No evidence any of these conditions interfered with the performance of required duties.

Conditions not in Disability Evaluation System (DES) package:

Left 5th Metacarpal Fracture, Status Post Open Reduction and Internal Fixation, Residual of Motor Vehicle Accident; Scar, Posterior Scalp, Residual of Motor Vehicle Accident.

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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. After careful consideration of all available information the Board unanimously determined that the CI’s condition is most appropriately rated at 20% for 5299-5202 Left Humerus Supracondylar Fracture.

The CI suffered multiple left arm fractures that were treated surgically with open reduction and internal fixation. The fractures healed in normal alignment but the CI had reduced functional use of his left arm secondary to painful motion, fatigability, and lack of endurance in the left elbow and wrist. The VA applied 10% rating for each joint with painful motion while the Navy applied a single 20% rating for the humerus fracture. The Board determined that both rating methods are appropriate and both provide an accurate rating of the CI’s functional limitation.

The Board also considered the conditions of Pneumothorax; Cognitive Disorder; Scar, Distal to the Left Elbow, Residual of Motor Vehicle Accident; Left 1st Metacarpal Fracture, Status Post Closed Reduction, Residual of Motor Vehicle Accident; Scars, Ulnar Aspect of the Distal Left Forearm, Ulnar Aspect of the Left Hand Along the 5th Metacarpal, and at the Palmar Aspect of the Left Mid-Wrist, Residuals of Motor Vehicle Accident and determined that none were unfitting at the time of separation from service. There was no evidence that these conditions interfered with the performance of the CI’s required duties and no rating is applied.

The other diagnoses rated by the VA (Left 5th Metacarpal Fracture, Status Post Open Reduction and Internal Fixation and Scar, Posterior Scalp) were not mentioned in the Disability Evaluation System package and are therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Military Naval Records (BCNR) to consider adding these conditions as unfitting.

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RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090124, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

MICHAEL F. LoGRANDE

President

Physical Disability Board of Review

**DEPARTMENT OF THE NAVY**

SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS  
 720 KENNON STREET SE STE 309  
 WASHINGTON NAVY YARD DC 20374-5023

IN REPLY REFER TO

1850 CORB:003 26 April 2010

From: Director, Secretary of the Navy Council of Review Boards

To:

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

Ref: (a) DoDI 6040.44

(b) PDBR ltr of 12 Apr 10

1. Pursuant to reference (a), the PDBR reviewed your case and forwarded its recommendation (reference (b)) to the Department of the Navy for appropriate action.
2. On 23 April 2010, the Assistant Secretary of the Navy (Manpower & Reserve Affairs) took action in your case by accepting the recommendation of the PDBR that no change be made to the characterization of separation or disability rating assigned by the Department of the Navy's Physical Evaluation Board.
3. The Secretary's decision represents final action in your case by the Department of the Navy and is not subject to appeal or further review by the Board for Correction of Naval Records.

PDBR