RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD0900017 BOARD DATE: 20090819

SEPARATION DATE: 20030601

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SUMMARY OF CASE: This covered individual (CI) was a Petty Officer First Class Mineman 1 medically separated from the Navy in 2003 after more than twelve years of service. The medical basis for the separation was Left Ankle Reflex Sympathetic Dystrophy (RSD) Status Post Left Ankle Scope with Modified Brostrom Ligament Reconstruction. He first injured his left ankle in November 1996 when he fell off a ladder/stairs onboard ship and sprained it. He continued to have pain and instability and ultimately had arthroscopic ligament reconstruction surgery in March 2001. However, after the surgery he developed reflex sympathetic dystrophy in the left ankle and distal left lower extremity which did not respond to physical therapy, multiple medications, or nerve blocks. Despite multiple treatment modalities, he continued to have significant pain and dysesthesia which impaired his ability to perform the duties of his rating.

Appropriate therapy failed to alleviate his symptoms and he was referred to the Navy Physical Evaluation Board (PEB). The Informal PEB determined he was unfit for continued military service and he was then separated with a 20% disability for 8799-8720 Left Ankle Reflex Sympathetic Dystrophy Status Post Left Ankle Scope with Modified Brostrom using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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CI CONTENTION: “I have permanent nerve damage & side effects from my condition. When I was in the service I was not seen by someone who could treat my condition. I have had to have a spinal cord stimulator put in for pain. And taking pain medications. I also believe rating was unfair because of conditions my RSD has caused me mental & physical.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Left ankle reflex sympathetic dystrophy status post left ankle scope with modified Brostrom | 8799-8720 | 20 | 20030318 | Reflex sympathetic dystrophy, left ankle, with residual | 5299-5003  8599-8524 | 10  20 | 20030916  20071227 | 20030602  20070717 |
|  |  |  |  | Sleep apnea | 6847 | 50 | 20030916 | 20030602 |
|  |  |  |  | Acid reflux | 7399-7346 | 30 | 20030916 | 20030602 |
|  |  |  |  | Nasal fracture with deviated septum status post rhinoplasty with residuals | 6502 | 0 | 20030916 | 2330602 |
|  |  |  |  | Allergic rhinitis | 6522 | 0 | 20030916 | 20030602 |
|  |  |  |  |  |  |  |  |  |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (incl non-PEB Dxs): 70**% from 20030602 | | | | |

Reflex Sympathetic Dystrophy (RSD)

Navy:

The CI continued to have pain and instability after a left ankle sprain in November 1996 which occurred after falling off a ladder/stairs while onboard a ship. He had arthroscopic reconstruction surgery in March 2001 and while the ligament was successfully repaired, he developed RSD with significant pain and exquisite hypersensitivity to light touch. It was difficult just to wear shoes or socks. Multiple treatments were tried without relief: physical therapy, multiple medications, and nerve blocks. He was seen by neurology and a pain clinic. He was unable to perform shipboard duties, run, or perform any type of watch activities without significant pain. He had physical findings consistent with the diagnosis of RSD: diffuse osteopenia on X-ray throughout left ankle and distal tibia and minor superficial cutaneous changes with erythema. They rated as 8799-8790 Moderate incomplete paralysis of sciatic nerve at 20%.

VA:

Using an evaluation completed three months after the time of separation from the Navy, the Veterans Administration (VA) initially rated this disability as 5299-5003 Reflex Sympathetic Dystrophy, Left Ankle, with Residual at 10% based on painful motion. However, the VA later corrected this mistake of rating as painful motion. They changed the code to 8599-8524 and rated the condition as moderate, incomplete paralysis of the tibial nerve at 20%. No EMG was done initially, but one was done as part of the evaluation when the VASRD code and rating was changed. EMG showed demyelinating damage to multiple nerves in his left lower extremity. The left sural nerve sensory response lost (sural nerve is sensory only). Both the left common peroneal nerve and the left tibial nerve showed marked prolongation of distal latency and slowed conductions.

Analysis:

It is not appropriate to rate RSD as limitation of motion of ankle. This condition is a neurologic problem, not a musculoskeletal problem. Patients with this diagnosis have severe unrelenting electric-type pain and are exquisitely sensitive to even the slightest touch. The CI’s nerves were injured at the level of the ankle--most likely during the ankle arthroscopy. This is an uncommon but known complication of arthroscopy.

While the Navy evaluation did not include an EMG, it noted objective findings consistent with the diagnosis. An EMG would have aided the PEB in its evaluation of this disability but was not clinically indicated because the diagnosis was not in question. The VA did an EMG with the December 2007 Compensation and Pension exam and we can use this exam to show that multiple nerves were more likely than not affected at time of separation as it is unlikely that the nerves had another injury during the intervening time.

The CI had three injured nerves:

1. Common peroneal or external popliteal neuritis (8621)
2. Tibial or internal popliteal (8624)
3. Sural (from branches of 1 and 2)

The common peroneal nerve covers the dorsum of foot and toes, the tibial nerve covers the plantar surface of foot, and the sural nerve covers the lateral part of foot. The CI had symptoms in all three of these areas and this is anatomically and clinical consistent with the objective findings.

The nerves are mapped out to different areas of the lower ankle and foot. While there can be some overlap at the edges of these areas they are distinct areas and multiple areas are affected. The different areas cannot all be covered by just one nerve so it is not appropriate to rate only one nerve—if you did you would be ignoring part of the problem. The VA only rated the tibial nerve (8624) and this ignored the problem in the 1 distribution area of the common peroneal nerve (8621) and the sural nerve. The Navy used sciatic nerve but while this includes all the involved branches, it also includes many nerves that are not affected. Using the named lower branches which are directly affected is more accurate. While there is no rule that prohibits rating more than one peripheral nerve, this CI has a condition, RSD, that involves multiple nerves and it is appropriate to rate the overall condition, not the individual nerve injuries that comprise the condition.

OSA, GERD, Nasal Surgery for deviated septum, fractured hand

Navy:

OSA listed on MEB physical as diagnosis, others in history. Entire exam listed as normal, except rectal was deferred. No mention of these conditions or associated signs or symptoms in the Commander’s letter. No documented duty limitations related to these conditions.

VA: Rated as above.

Analysis:

None of these appear to be unfitting.

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BOARD FINDINGS 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 PDBR 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 concluded by simple majority that the CI’s condition is appropriately rated at a 30% for 8624-8621 Reflex Sympathetic Dystrophy, Left Ankle, rated as Neuritis, Severe Incomplete Paralysis of Sural, Tibial, and Common Peroneal Nerves. This rating is based on the organic changes of diffuse osteopenia on X-ray throughout left ankle and distal tibia, minor superficial cutaneous changes with erythema, and nerve damage documented on EMG and on the level of severity of pain and sensitivity to light touch.

In accordance with VASRD paragraph 4.123 the presence of organic changes allows a rating for neuritis greater than moderate incomplete paralysis (or greater than moderately severe incomplete paralysis for the sciatic nerve). The rating is still limited by the amputation rule (VASRD paragraph 4.68) which limits the combined rating for disabilities of an extremity to the rating for the amputation at the elective level, were the amputation to be performed. In this case, the rating for a disability below the knee may not exceed the 40 percent rating for amputation of the leg below the knee, diagnostic code 5165. This 40 percent rating may be further combined with evaluation for disabilities above the knee but not to exceed the above the knee amputation elective level. The Board’s recommended rating of 30% for severe incomplete paralysis does not violate either rule.

The majority of the Board felt that the level of disability from RSD was accurately described as severe incomplete paralysis. The disability is manifested as the RSD symptoms of constant severe pain and exquisite sensitivity to light touch.

The single voter for dissent (who recommended no recharacterization) elected not to submit a minority opinion. This Board member felt the available evidence supported a moderate incomplete paralysis.

The Board also examined Obstructive Sleep Apnea, Acid Reflux, Nasal Surgery for Deviated Septum, and a History of a Fractured Hand and did not find any of these conditions to be unfitting. The other condition rated by the VA, allergic rhinitis, was not mentioned in any PEB paperwork and could not be considered by the Board.

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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 the CI’s prior medical separation.

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| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| Reflex Sympathetic Dystrophy, Left Ankle, rated as Neuritis, Severe Incomplete Paralysis of Sural, Tibial, and Common Peroneal Nerves | 8624-8621 | 30% |
| Combined | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090121, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

