RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900112 BOARD DATE: 20100304

SEPARATION DATE: 20051028

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SUMMARY OF CASE: This covered individual (CI) was an NCO (Information Systems Analyst) medically separated from the Army in 2005 after 5 years of service. The medical basis for the separation was recurrent episodes of non-specific alterations in consciousness. She developed syncopal-like episodes associated with heat and exertion beginning in Basic Training and continuing to her first duty station. These were treated with hydration and no specific evaluation was pursued. During a subsequent deployment to Korea, she developed a different type of recurrent episodes. Clinical notes described apparent loss of consciousness (LOC) associated with shivering-like activity and limb movements atypical for seizure with atypical eye opening and eyelid motion. She described amnesia for the events. She was eventually transferred to Walter-Reed Army Medical Center (WRAMC) and spent the remainder of her service time in medical hold undergoing a prolonged evaluation. During the medical evaluation board (MEB) period her episodes evolved into staring spells of a few minutes duration. Witnesses stated she was verbally unresponsive but did not exhibit LOC or motor activity. She would quickly regain normal function but had no recall of the events by history. She underwent sequential electroencephalographs without demonstration of a seizure disorder. Two were normal and one demonstrated ‘non-specific, non-epileptiform abnormalities’. A brain magnetic resonance imaging (MRI) and cardiovascular evaluation were normal. Her neurologist at WRAMC rendered a diagnosis of nonepileptic seizures. Since these episodes were unpredictable and occurring several times a week, she was barred from many essential military activities. She was placed on a permanent P3 profile and the condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. A left wrist condition and psychiatric diagnosis of adjustment disorder were forwarded as medically acceptable conditions on the DA Form 3847. The CI was found unfit only for the nonepileptic seizures and was medically separated with a disability rating of 0%.

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CI CONTENTION: The CI states: ‘Issue has not resolved and original diagnosis of cranial nerve injury by naval physician was disregarded and put to lesser epilepsy by Army Physicians...I was a patient at Walter Reed Army Medical Center from 2002 until 2005 as part of Medical Holding Company when I was advised it was in my best interest to accept my diagnosis and separate.’ She does not make specific contentions regarding rating or other unfitting conditions.

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RATING COMPARISON:

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| **Service PEB** | **VA (9 Mo. after Separation) – All Effective 20051029** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Recurrent spells, likely non-epileptic seizures… | 8999-8911 | 0% | 20050901 | Epilepsy | 8999-8910 | 10% | 20060725 |
| Recurrent Left Wrist Strain | Not Unfitting | 20050901 | Left Wrist Tendinitis | 5009-5024 | 10% | 20060725 |
| Adjustment Disorder | Not Unfitting | 20050901 | No VA Code or Rating | 20060725 |
| No Additional DA 3947 Entries. | No Additional VA Codes or Ratings | 20060725 |
| **TOTAL Combined: 0%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 20%**   |

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ANALYSIS SUMMARY:

Nonepileptic Seizure Condition. The precise etiology of the CI’s seizure disorder remained undefined, although the neurologist’s addendum and the action officer’s review of the case is most consistent with the psychogenic category of nonepileptic seizures. A history of childhood sexual abuse was noted in the record and heightens suspicion in that regard. The CI contends that ‘cranial nerve injury’ was diagnosed by a Navy physician (a good deal of her care was at National Naval Medical Center (NNMC), Bethesda instead of WRAMC). This was not apparent in any of the clinical entries in evidence or consistent with the overall clinical picture. The precise etiology of the condition, however, does not affect rating under the Veterans Administration Schedule for Rating Disabilites (VASRD) §4.124a general rating formula for major and minor seizures. The different coding choice by the PEB and the VA also did not affect rating. The rationale for the PEB’s 0% rating was not elaborated in the DA Form 199, but the language includes the negative neurologic findings and absence of medication use. The DA Form 199 characterization of the episodes was ‘alteration of arousal without tonic or clonic activity’. Since it adjudicated a 0% rating, the PEB logically implied that these episodes were not considered to be ratable seizures. This produces a conflict with its coding, however. If the episodes were not seizures, then analogous coding for petit mal seizures is incongruent. §4.124a does not provide for a 0% rating or for a definition of non-ratable seizures. If conversion reaction, somatoform disorder or other psychiatric cause was assumed, then the psychiatric diagnosis should have been confirmed and rated IAW §4.130. The psychiatric diagnosis of adjustment disorder, discussed below, would not account for seizure-like episodes. If covert malingering was suspected, then it should have been confronted and pursued administratively. By defaulting to seizure coding, the PEB should have logically defaulted to seizure counting as provided in the narrative summary (NARSUM). If it was concluded that the concurrent episodes did not qualify even as minor seizures, just the history of seizures provides for a 10% rating under the general formula for rating seizures. This was the decision arrived at by the VA. The VA neurologist did not opine that there were active seizures at the time of the exam, describing only two minute episodes of ‘loss of time’. He noted that the CI was not under treatment for epilepsy and did not quantify the frequency of the events which were manifest at that time. The VA therefore rated 10% for history of seizures from the service records.

The Board agrees that the most appropriate coding for this case is 8999-8911 and takes the position, as stated above, that the etiology of the CI’s seizure disorder is moot. Whether the events at the time of separation were epileptic or nonepileptic seizures, they met the criteria for minor seizures as defined in §4.124a, i.e., ‘a brief interruption in consciousness or conscious control associated with staring or...’ Since the VA examiner did not classify the events as seizures or quantify them, the entries in the service treatment record (STR) are the only reliable source for the Board’s rating recommendation. The Board attempted to obtain information from the CI’s home health provider after discharge, but was informed she was under the care of her family and no provider notes were obtainable. The only quantified entries in the STR are the NARSUM, noting ‘2 to 3 times a week’, and an outpatient note over a year prior to separation stating ‘<1 per month’. The neurology addendum stated ‘several times per week’ and, like the NARSUM, was dated three months prior to separation. The Board defers to the NARSUM entry as the most reliable and confers reasonable doubt to the CI as counting all of the events as equivalent to minor seizures. This easily meets the §4.124a threshold of at least two minor seizures in the last six months for a 20% rating, but not for the next higher rating of 40% which requires ‘at least 5-8 minor seizures weekly’. The Board deliberated if the middle ground between the ratings should defer to the higher rating, but decided that the frequency was closer to the 20% threshold than the 40% one. It was noted that reasonable doubt had already been conferred in arriving at the frequency and characterizing the nature of the events. All evidence considered, the Board recommends a separation rating of 20% for the nonepileptic seizure condition.

Other DA Form 3947 Conditions (Left Wrist, Adjustment Disorder). The NARSUM addressed a left wrist condition from a previous injury, diagnosed as tenosynovitis. It characterized it as ‘not a problem except with overuse’ and judged it to be within AR 40-501 standards. It had not required surgery and was not under treatment at the time of separation. It was not mentioned in the Commander’s statement, although that document was devoid of any useful information relevant to fitness recommendations. The physical profile was U2 and did not impose any military occupational specialty (MOS)-critical limitations referable to the wrist. The psychiatric diagnosis of adjustment disorder was evidenced in a brief memorandum from psychiatry to the PEB which stated, ‘This diagnosis does not warrant an addendum, as it is not a medical board-able condition.’ Although the action officer believes that the CI would have benefitted from more aggressive psychiatric evaluation and intervention, there is nothing in evidence supporting a recommendation that she was unfit on a psychiatric basis. She was not under active psychiatric care, on no psychiatric medications and carried no psychiatric profile. The VA did not determine that there was any ratable psychiatric disorder. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudications for the left wrist condition or adjustment disorder.

Other Conditions. There were no additional medical conditions identified in the Disability Evaluation System (DES) packet or STR which are relevant for Board consideration as potentially unfitting. The CI went through two uncomplicated pregnancies and there were some minor episodic care entries. Other than vision correction and trouble sleeping, all positive responses by the CI on her MEB physical were referable to the history related above. The VA did not code for any other conditions. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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. 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 nonepileptic seizure condition, the Board unanimously recommends a rating of 20% coded 8999-8911 IAW VASRD §4.124a. In the matter of the left wrist condition and adjustment disorder, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. The Board unanimously agrees that there were no other conditions in evidence relevant for consideration as additionally unfitting.

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RECOMMENDATION: Board recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Nonepileptic Seizure Condition | 8999-8911 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090102, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

