RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: pd09000114 COMPONENT: active

BOARD DATE: 20090611 SEPARATION DATE: 20080205

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SUMMARY OF CASE: This covered individual (CI) was a regular Navy Senior Chief Petty Officer medically separated from the Navy in 2008 after 16 ½ years of service. The medical basis for the separation was a seizure disorder. CI had two generalized seizures (major) and multiple simple partial seizures (minor). His first major seizure was likely in April 04 when he lost consciousness while driving. His second (last) major seizure was on 24 Jun 06. CI had an abnormal EEG with normal extended videotaped sleep EEG, CT and MRI. He was placed on oral medication that completely controlled his seizures. CI was returned to full duty off of limited duty (LIMDU) by a non-USN provider, without an MEB. When CI’s assignment changed, they noted an MEB was missed and CI met an MEB with NARSUM dated 20070915 and a recommendation to be found fit and returned to duty. The PEB found CI unfit at 20%. CI asked for reconsideration and appealed to a formal PEB and the BCNR. All appeals concurred with a final determination of unfit and separation at 20% for seizures. The BCNR (ruling of 15 Jan 2009) opined that were the CI’s seizures not yet controlled on medication, CI would have been placed on TDRL and re-evaluated with the same final outcome of 20% rating. The VA 40% rating was based on a similar 20% rating for seizures and added 10% each for irritable bowel syndrome, left wrist tendonitis and a hernia repair scar; none of which approached the level of being determined to be unfitting. The CI contends that PEB gave 20% for epilepsy, since MEB/PEB was not conducted in a timely manner, which would have rated him as 40% for seizures. The BCNR ruled that even if CI were placed on temporary duty retirement list (TDRL) at the time of his second major seizure, he was controlled on medication and the 20% rating was correct. VA gave 40% rating. CI discussed LIMDU, release to full duty, yrs of exemplary service, deployments, combat, career, and circumstances in contending for a 40% rating similar to the VA 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 considered that only seizures met the threshold for consideration as unfitting.

The seizure types, timing and characterization as major or minor were clearly agreed upon by the USN, VA and the CI. There was no indication that the CI’s nocturnal seizure was discounted by the USN IAW prior SECNAVINST 1850.4E, section (8) (e). The CI’s first major seizure was April 04 and his second seizure was over 2 years later (20060624). CI stated, and the Board accepted, that the CI had 2-3 minor seizures every 2 weeks until Jun 06. Major and minor seizures are considered together in the VASRD and rating is based on the type (major or minor), frequency, and currency of the seizure(s). The Board did not believe that it was likely that CI had more frequent minor seizures than he contended or that he had more frequent major seizures than contended. CI’s seizures did not reach the next rating level (40%) which required a major seizure within 6 months or 2 in last 1 year; or averaging 5 to 8 minor seizures weekly. The Board accepted the BCNR’s rationale that had the CI’s seizures not been well controlled at any earlier dated PEB, the CI would not have received a higher permanent rating, but either placed on TDRL or continued on duty until stabilization of his condition on medication. CI clearly stabilized and remained seizure-free on medication.

The Board determined that since the CI was stable and seizure-free on medications, the original PEB 20% rating (8914 Epilepsy, psychomotor) was correct. Alternately rating the CI under code 8910, as the VA used, applies the same General Rating Formula for Major and Minor Epileptic Seizures and does not benefit the CI.

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

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090202, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

