RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: USMC

CASE NUMBER: PD0900157 BOARD DATE: 20100407

SEPARATION DATE: 20061002

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SUMMARY OF CASE: This covered individual (CI) was a Gunnery Sergeant/Rifleman medically separated from the Marine Corps in 2006 after 6 years 10 months of active service. The medical basis for the separation was Persistent, Chronic Deep Venous Thrombosis (DVT). The CI was referred to the Physical Evaluation Board (PEB), found unfit for continued military service and separated at 10% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

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CI CONTENTION: The CI states: “Findings of the Physical Evaluation Board (10%) were extremely below those of the VA (70%), received little or no help from command, and was offered poor advise by the civilian who processed my PEB. I was told that if I did not accept the decision of the PEB or appealed I would be discharged with 0%. I was advised by all of my doctors that I should be medically retired as my condition was obviously a high percentage.”

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RATING COMPARISON:

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| --- | --- |
| Service PEB | VA (4 months after Separation) |
| **Unfitting Conditions** | Code | Rating | Date | Condition | Code | Rating | Exam | Effective |
| Deep Venous Thrombosis, Persistent, Chronic | 7199-7121 | 10% | 20060817 | Deep Venous Thrombosis, Persistent, Chronic | 7121 | 10% | 20070123 | 20061003 |
| Pulmonary Embolism | Category II: Conditions that contribute to the unfitting condition(s): | Pulmonary Embolism, Recurrent | 6899-6817 | 60%60% | 2007012520090108 | 20061003 |
| Plantar Fasciitis | Category III: Conditions that are not separately unfitting and do not contribute to the unfitting condition(s): | Right, Plantar Fasciitis/Heel Spur | 5299-5284 | 10% | 20070122 | 20061003 |
| Mechanical Lower Back Pain | Chronic Lumbosacral Sprain Claimed As Mechanical LowBack | 5237 | 10% | 20070213 | 20061003 |
| TOTAL Combined: 10% | TOTAL Combined (*Includes Non-PEB Conditions*): 70% from 20061003 |

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ANALYSIS SUMMARY:

Chronic, Persistent Deep Venous Thrombosis/Recurrent Pulmonary Embolism/Hypercoagulable State requiring chronic use of anticoagulants: The CI served in the U.S. Marine Corps between 1987 and 1991 on active duty. He was in the Reserves between 1991 until his discharge in October 2006, but during that period of time he had three active mobilizations.

The CI developed right plantar fasciitis late in 2003 during a deployment to the Gulf. His plantar fasciitis symptoms did not respond to ice, nonsteroidal anti-inflammatory medications or modified duty so he was casted with a short leg cast. During the period when he was casted, he developed a deep venous thrombosis or blood clot in his calf and seven subsequent pulmonary emboli or blood clots to his lungs that were thought to be due to his deep vein thrombosis.

The patient then underwent six months of Coumadin therapy for this condition and was cleared for full duty. He redeployed to Iraq in December 2005 and in April 2006, while still deployed to Iraq he awoke with chest pain and shortness of breath. Workup at that time revealed another pulmonary emboli and a persistent deep venous thrombosis. At that time, was MEDEVACed to Landstuhl. Doppler ultrasound revealed a deep venous thrombosis of the right proximal tibial vein extending to the right distal popliteal vein and no thrombosis in the right common femoral vein. CT angiography revealed a filling defect consistent with a pulmonary embolus. A chest CT five days later also revealed a third order pulmonary embolus in the medial segment of the right lower lobe.

The CI was restarted on Coumadin and required continual lifelong use. The use of medication placed the patient at serious risk of severe bleeding with any trauma and necessitated that he have regular monitoring of his international normalized ratio (INR) which is a measurement of how quickly his blood will clot. He also must wear support stockings. His limitations at the time of separation included no deployment, no contact sports or activities that place him at risk of bleeding or head injury. Additionally, he was not able to continue his civilian job as a police officer on patrol, but was later employed with the police but at a desk job.

Edema of the right leg was noted on multiple examinations in the service treatment record. The VA Compensation and Pension (C&P) evaluation done January 2007 (four months after separation) documented obvious edema of the right leg compared to the left leg. He had 2+ pulses, easily palpable, and normal hair pattern. The right ankle measured 28 cm as compared to 26 on the left. The right calf was 50 cm as opposed to 47 on the left. The same evaluation noted that the CI was experiencing shortness of breath and was unable to do his normal activity levels because of the multiple pulmonary emboli.

VA treatment records revealed that in January 2009, the CI was admitted for another pulmonary embolism. Apparently he stopped taking his Coumadin and continued to have occasional cramps in his right calf off and on, up to two times per week, not related to exercise and an occasional sharp chest off and on that lasted several seconds; several times a day. This had not changed since C&P exam of January 2007. However, he noted dyspnea on climbing 2 to 3 flights of stairs and this had slightly worsened since that exam. He was admitted to the VA Boston with recurrent DVT and pulmonary embolus.

Analysis

The Navy obviously applied DoDI 1332.39 which was in effect at the time the CI separated but has since been rescinded. The DoDI has some internal inconsistencies as to the minimum rating for incidence of a thrombophlebitis or emboli within the past year. Section E2.4 states this warrants at least a 10% rating but section E2.A1.3.2.6 states this warrants a minimum 30% rating. Higher ratings are based on residuals to emboli or thrombophlebitis. The analogous code referred to in the latter section, 7120, does not have a 30% rating; it has 0%, 10%, 20%, 40% 60%, and 100% ratings as does 7121. In the Alphabetical Listing of Analogous Codes, June 25, 2004 Hypercoagulable state (hereditary) is to be analogized to 7121.

The Navy and the VA used code 7121 for chronic persistent Deep Venous Thrombosis. The Navy used it analogously; VA used it as a separate code. It appears the Navy used this code to rate the hypercoagulable state requiring anticoagulant therapy as instructed by DoDI 1332.39. The VA rated the DVTs at 10% for swelling in the right leg compared to the left leg and the need to wear support stockings. The VA applied a separate rating of 60% for recurrent pulmonary embolism (PE) requiring anticoagulant therapy.

The CI had persistent and chronic DVTs as well as recurrent pulmonary embolism and both occurred within one year of separation. He had two separate documented episodes of DVTs and PEs, one in May 2004 and one in April 2006. The CI needs lifelong Coumadin to prevent the recurrence of both conditions. The lifelong need for Coumadin makes the CI unfit and all of his duty restrictions were related to the use of this medication. He does not have any residuals from the PEs and has only minor residuals from the DVTs, mainly edema.

The CI’s limitations include no deployment, no contact sports or activities that place him at risk of bleeding or head injury. These are to prevent bleeding because he is on the Coumadin. There are no restrictions directly attributable to chronic persistent DVT alone or to recurrent PE alone. Either condition alone would require Coumadin use.

Back Pain

There is no evidence that this condition interfered with the performance of any required duties. No duty restrictions or accommodations are attributed to this condition.

Plantar Fasciitis

There is no evidence that this condition interfered with the performance of any required duties. No duty restrictions or accommodations are attributed to this condition.

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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. In rating this condition, the Navy PEB utilized DoDI 1332.39. This instruction was in effect at the time of separation but has since been rescinded. The Board adjudicated this condition independently of that instruction and applied the VASRD in effect at the time of separation from service. After careful consideration of all available information the Board unanimously determined that the CI’s condition is most appropriately rated at 60% for 6817 Recurrent Pulmonary Thromboembolism requiring Anticoagulant Therapy.

The CI had chronic DVTs and PEs. He requires lifelong anticoagulant therapy and this made him unfit for continued service. This warrants a 60% rating IAW the VASRD.

The Board also considered Plantar Fasciitis and Low Back Pain and unanimously determined that neither condition was unfitting at the time of separation form service and therefore no rating is applied.

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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 his prior medical separation.

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| UNFITTING CONDITION | VASRD CODE | RATING |
| Recurrent Pulmonary Thromboembolism requiring Anticoagulant Therapy | 6817 | 60% |
| COMBINED | 60% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090127, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

**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 1 June 2010

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

To:

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

Ref: (a) 0001 6040.44

(b) PDBR ltr of 15 Apr 2010

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 28 May 2010, the Assistant Secretary of the Navy (Manpower & Reserve Affairs) took final action in your case by accepting the recommendation of the PDBR. Your records will be corrected to reflect your placement on the Permanent Disability Retired List with a disability rating of 60 percent effective the date of your discharge (2 October 2006).

4. The Secretary's decision has been forwarded to the Deputy Commandant of the Marine Corps (Manpower & Reserve Affairs), who will make the appropriate changes to your military records and notify you once they have been completed.

 Copy to: PDBR