RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900170 BOARD DATE: 20100811

SEPARATION DATE: 20030315

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SUMMARY OF CASE: This covered individual (CI) was an active duty Staff Sergeant (0369, Infantry SNCO) medically separated from the Marine Corps in 2003 after more than 17 years of service. The medical basis for the separation was Heat Injury. He was not able to perform all the required duties of his military occupational specialty (MOS) or participate in the Physical Fitness Test (PFT), and underwent a Medical Evaluation Board (MEB). His case was referred to the Physical Evaluation Board (PEB) and the PEB determined he was unfit for continued Naval service due to his three serious heat injuries. He was then separated with a disability rating of 0% determined by 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: ‘I was discharged for Heatstroke/Seizures. I received a 0% rating and found unfit for duty. I served 18 years in the military and felt that they should have let me complete the last two years to retire. I feel that the 0% rating should have been higher. I had marine in my unit who served less then seven years getting 30% retirement for a knee injury. I feel that my condition was more life treating. The code that they place on my PEB was for thyroids. From my understanding they did not have a way to rate an heatstroke or seizure. (Heat injuries x3, least two qualify as heatstroke (9920) VA diagnostic code 7999-7900). The heat injury was to cause for finding me unfit for duty. They also listed that the disability my be permanent. Which I have had other episodes over the past few years. I have been reading articles where military members are being kept on duty with missing limbs. I feel that I was unjust in giving a chance to retire with full benefits. I have been told not to drive by my doctor at the VA due to my condition and I have also been give Levetiracetam 500 MG tablets to help with the seizures.’

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20021029** | | | **VA (4 Months Prior to Separation) – All Effective 20030316** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Heat Injuries X 3 Least Two Qualify as Heatstroke | 7999-7900 | 0% | Residuals, Status Post Heatstroke X Three | 8911 | 0% | 20021118 |
| Status Post C5/6, C6/7 Discectomies with Fusion | Category III: Conditions that are not separately unfitting and do not contribute to the unfitting condition(s) | | Residuals, Postoperative Cervical Discectomy and Fusion at C5-C6 and C6-C7, Cervical Disc Disease with Radiculopathy (Claimed as Neck Condition) | 5293-5290 | 10% | 20021118 |
|  | MEB H&P | | Residuals, Lumbar Spine Strain | 5292 | 10% | 20021118 |
|  | Not in DES | | Residuals, Right Shoulder Strain | 5203 | 10% | 20021118 |
|  | Not in DES | | Residuals, Left Shoulder Strain | 5203 | 10% | 20021118 |
|  | Not in DES | | Residuals, Left Ankle Sprain | 5271 | 10% | 20021118 |
|  | MEB H&P | | Right, Patellofemoral Syndrome | 5299-5019 | 10% | 20011118 |
|  | MEB H&P | | Residuals, Right Little Finger Sprain | 5230 | 0% | 20011118 |
|  | MEB H&P | | Residuals, Left Little Finger Sprain | 5230 | 0% | 20011118 |
|  | Not in DES | | Left, Middle Finger Fracture | 5229 | 0% | 20011118 |
|  | Not in DES | | Right, Foot Bunion with Hallux Valgus at the First Metatarsophalangeal Joint | 5280 | 0% | 20011118 |
|  | Not In DES | | Left, Foot Bunion with Hallux Valgus at the First Metatarsophalangeal Joint | 5280 | 0% | 20011118 |
| **TOTAL Combined: 0%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 50%** | | | |

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ANALYSIS SUMMARY:

The Navy MEB narrative summary (NARSUM) was unavailable for review. Neither the Navy nor the CI was able to provide a copy. However, other Disability Evaluation System (DES) documents were available as well as multiple service treatment record (STR) progress notes and the hospital discharge summary from July 2000. VA rating decisions, Compensation and Pension (C&P) exams, and treatment records were also available.

Heat Stroke

The CI had three episodes of heat injury (July 2000, April 2001, and April 2002) and at least two were designated as Heat Stroke. The first two episodes included loss of consciousness and convulsions in July 2000 and April 2001 and the CI was evaluated by neurology. In July 2000 the CI’s Corpsman witnessed him collapse and develop generalized tonic clonic movements of all extremities which lasted for approximately two minutes. The CI appeared confused and had a headache after he regained consciousness. He had been hiking in full gear in 90-95 degree heat at Camp Lejeune, NC. He had previously been exercising in similar heat for the previous one to two weeks without any difficulties. This heat injury, more likely than not, caused the CI to be more susceptible to heat injuries in the future. He had two more incidents while on active duty and had heat intolerance after he separated from service. He was limited in his outdoor activities to include yard work and playing with his children. He was limited to approximately 25 to 30 minutes maximum before he would begin to feel dizzy and overheated. He also noted that he would overheat easily doing general tasks around the house. There is no evidence of any cardiac, neurologic or cognitive residual problems related to heat injury. There is no also evidence of liver or kidney problems related to heat injury.

As part of the cardiac work-up a treadmill stress test was done 20010820 and the results were normal. The CI achieved 12.9 METs and exercised for 9 minutes and 55 seconds. He also had a normal echocardiogram, electroencephalogram (EEG), head CT scan, and magnetic resonance imaging (MRI) as well as multiple normal neurologic and mental status examinations. No abnormal hepatic or renal blood tests were in evidence. Multiple examinations and tests performed by the VA before and after separation from service also failed to show any residual problems due to heat injury except for heat intolerance. He did develop a seizure disorder five years after he separated from service. A VA C&P examiner determined this condition was due to an aneurysm, not to his history of heat strokes.

The Navy PEB determined the CI was unfit for continued Naval service due to the three heat injuries and resultant heat intolerance and inability to engage in strenuous activities in the field or deployed environments. There is no VASRD code for heat exhaustion and the PEB rated this condition analogous to 7900 Hyperthyroidism. This analogous code is included in the Army Physical Disability Agency’s list of analogous codes and is used to rate this condition. The VA used 8911 Epilepsy, petit mal to rate the condition and this also seems reasonable. However, the VA determined a rating of 0% and an argument could be made for a 10% rating. The 10% criteria for Petit mal seizures is a confirmed diagnosis of epilepsy with a history of seizures. The 20% criteria require at least two minor seizures in the last six months. If each heat injury were considered equivalent to a minor seizure, the CI would meet the 10% criteria because he had no episodes of heat injury in the six months prior to separation. If any residual conditions were present they could also be rated but there is no evidence any were present at the time of separation from service.

C5/6, C6/7 Discectomies with Fusion

The CI initially had neck pain with pain radiating into the left shoulder and arm. An MRI showed a left sided C5-6 herniated disc and a more centralized C6-7 herniated disc. On 20020117 the CI underwent C5-6 and C6-7 anterior cervical discectomies and interbody fusion. At his VA C&P exam in November 2002 the CI reported that the pain that had extended down his arm had resolved, but he then had pain in his neck, which radiates laterally into the shoulders and radiates down his back as well. The physical examination documented slightly decreased range of motion (ROM) of the cervical spine. The VA rated this at 10% for painful motion.

There is no evidence this condition was unfitting at the time of separation from service. There is no evidence of any duty restrictions or interference with ability to perform required duties due to this condition. Also, only the heat injuries were referred to in the Commander’s letter of 20020802.

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| --- | --- | --- | --- | --- |
|  | Separation Date: 20030315 | | | |
| Cervical Spine  ROM | PT 20011227 | MEB H&P 20020701 | Neurosurgery  January 2002  (Pre-op) | VA C&P - 20021118 |
| Flexion  0-45⁰ normal | 60 | Reduced fwd flexion/ext | 60 | 0-45 |
| Combined  340⁰ normal |  |  |  | 170⁰ |
| §4.71a Rating |  |  |  | 10% |
| Comments |  |  |  | The range of motion of the cervical spine is additionally limited by pain, but not by fatigue, weakness, lack of endurance, or incoordination. |

Other Conditions

Residuals, Lumbar Spine Strain; Right, Patellofemoral Syndrome; Residuals, Right Little Finger Sprain; and Residuals, Left Little Finger Sprain. There is no evidence these conditions were unfitting at the time of separation from service. There is no evidence of any duty restrictions or interference with ability to perform required duties due to any of these conditions. Also, only the heat injuries were referred to in the Commander’s letter of 20020802.

Other Conditions Not in the DES

Residuals, Right Shoulder Strain; Residuals, Left Shoulder Strain; Residuals, Left Ankle Sprain; Left, Middle Finger Fracture; Right, Foot Bunion with Hallux Valgus at the First Metatarsophalangeal Joint; and Left, Foot Bunion with Hallux Valgus at the First Metatarsophalangeal Joint

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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 as 8911 Residuals, Status Post Heatstroke X Three at 10% disability. The CI had three serious heat injuries and became heat intolerant. He will always have increased susceptibility to heat injuries. However, he did not have any residual cardiac, neurologic, liver, kidney, or cognitive problems due to this condition. As there is no VASRD code for heat injury, an analogous code must be used. The CI had loss of consciousness and seizure-like activity and 8911 Epilepsy, petit mal is the code that most closely resembles his condition. He had no episodes of heat injury in the six months prior to his separation from service and therefore a 10% rating is warranted.

The Board also considered the following conditions and unanimously determined that none were unfitting at the time of separation from service and therefore no disability rating is applied: Residuals, Postoperative Cervical Discectomy and Fusion at C5-C6 and C6-C7, Cervical Disc Disease with Radiculopathy; Residuals, Lumbar Spine Strain; Right, Patellofemoral Syndrome; Residuals, Right Little Finger Sprain; and Residuals, Left Little Finger Sprain. None of these conditions interfered with performance of required duties and no duty restrictions can be attributed to them. Only conditions that cause a servicemember to be unfit for continued Naval service are eligible to be rated.

The other diagnoses rated by the VA (Residuals, Right Shoulder Strain; Residuals, Left Shoulder Strain; Residuals, Left Ankle Sprain; Left, Middle Finger Fracture; Right, Foot Bunion with Hallux Valgus at the First Metatarsophalangeal Joint; and Left, Foot Bunion with Hallux Valgus at the First Metatarsophalangeal Joint) 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 Naval Records (BCNR) to consider adding these conditions as unfitting.

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

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Residuals, Status Post Heatstroke X Three | 8911 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090217, 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 REPER TO

1850 CORB:003 10 Sep 2010

From: Director, Secretary of the Navy Council of Review Board~

To:

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

Ref: (a) DoDI 6040.44

(b) PDBR ltr of 19 Aug 2010

**1.** Pursuant to reference (a), the PDBR reviewed your case and forwarded its recommendation (reference (b)) to the Department of the Navy lor appropriate action.

2. On 9 September 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 separation from {he naval service with a disability rating of 10 percent effective 15 March 2003.

**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