RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900194 BOARD DATE: 20100310

SEPARATION DATE: 20051114

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SUMMARY OF CASE: This covered individual (CI) was a Petty Officer First Class (Information Systems), medically separated from the Navy in 2005 after 9 years of service. The medical basis for the separation was Residual Gastrocsoleus Pain. The CI was referred to the Physical Evaluation Board (PEB), found unfit for continued naval service, and separated at 20% 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: “I have other service connected rating elements which are covered via the VA which should be re-evaluated by the PDBR.”

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**RATING COMPARISON:**

|  |  |
| --- | --- |
| **Service PEB** | **VA (2 Mo. Pre- Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Residual Gastrocsoleus Pain (10% each side with bilateral factor ADDED) | 5399-5312-8723 | 20% | 20050815 | Residuals, Status Post Compartment Syndrome Release, Right Calf | 5399-5312 | 10%10% | 2005092120061205 | 20051115 |
| Bilateral Exertional Compartment Syndrome,Surgically Treated | Cat II | na | 20050815 | Residuals, Status Post Compartment Syndrome Release, Left Calf | 5399-5312 | 10%10% | 2005092120061205 | 20051115 |
| Lower leg nerve damage | 8624 | NSC |  |  |
|  |  | **Not in DES** | Torn Anterior Cruciate Ligament, Right Knee | 5257 | 20% | 20050921 | 20051115 |
|  |  | **Not in DES** | Obstructive Sleep Apnea (OSA) | 6847 | 30%50% | 2005092120070625 | 2005111520070506 |
|  |  | **NARSUM** | Pes Planus | 5276 | 10%10% | 2005092120061205 | 20051115 |
|  |  | **Not in DES** | Residuals s/p Fracture 5th DIP, Right Hand | 5320 | 0% | 20050921 | 20051115 |
|  |  | **Not in DES** | Hypertension | 7101 | 0% | 20050921 | 20051115 |
|  |  | **Not in DES** | Benign Cyst, right kidney with history of kidney stones | 7529 | 0% | 20050921 | 20051115 |
|  |  | **In NARSUM** | Scar, Left Lower Leg | 7805 | 0% | 20050921 | 20051115 |
|  |  | Scar, Right Lower Leg | 7805 | 0% | 20050921 | 20051115 |
|  |  | **Not in DES** | Migraines | 8100 | 0% | 20050921 | 20051115 |
|  |  |  |  |  |  |  |  |  |
| **TOTAL Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 60%**   |

ANALYSIS SUMMARY:

Condition 1: Bilateral Leg Pain

The CI had symptomatic bilateral lower extremity compartment syndrome that was treated with bilateral four compartment fasciotomies in 2003. After his surgeries, he had relief of his previous symptoms but developed a new pain in the back of both calves which did not resolve over the two to three years prior to his narrative summary (NARSUM) in 2005. He had constant pain that increased significantly with any activity. He had difficulty performing the duties of his rate. He was unfit for sea duty and could not climb more than 1 to 2 ladders per hour. He could not walk more than a mile. He could not stand more than 15 minutes. He underwent physical therapy, treatment with medications and lost weight but none of this led to any relief and he was referred for a fitness evaluation. An Informal Physical Evaluation Board (IPEB) found him unfit with a rating of 10% for each leg. The CI requested reconsideration and this was done but no changes were made to the rating.

The CI had improvement of his exertional compartment syndrome after four-compartment releases. However after his surgery, he had a residual pain in his calves which was essentially incurable. The pain was most likely the result of division of the bridge between the gastroc and soleus musculature on the usual approach to the deep posterior compartment through a four compartment fasciotomy using two incisions. Because this division cannot be repaired, he had persistent residual pain. He had toughed it out in the service so far but had difficulty performing the duties of his rate. He was unfit for sea duty and could not climb more than 1 to 2 ladders per hour. He could not walk more than a mile. He could not stand more than 15 minutes.

The PEB notes and one outpatient visit documented mild muscle atrophy in the left lower extremity but the NARSUM measured each calf at 39 cm and there was no other evidence of any atrophy.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Ankle ROM** | **DF (20)** | **PF(45)** | **EV** | **IV** | **Motor** | **Sensory** |  |
| ROM Mil20030710 Left | 10 | 30 | 10 | 10 | 5/5 | Intact | Medial scar painful with deeppalpation |
| ROM Mil20030710 Right | 10 | 40 | 10 | 20 | 5/5 | Medial scar painful with deeppalpation |
| ROM Mil20030930 Left | 3 | 25 |  |  | 5/5 |  |  |
| ROM Mil200300930Right | 5 | 25 |  |  | 5/5 |  |
| ROM Mil200301023Left | 10 | 30 |  |  | 5/5 | Intact | Medial scar painful with deeppalpation |
| ROM Mil200301023Right | 5 | 35 |  |  | 5/5 | Medial scar painful with deepPalpation |
| NARSUM 20050607 Left |  | 50passive | 5 | 5 |  | Pinprick intact except hyperesthesia over medial aspect of left ankle distal to incision (this is area of tibial nerve) | FROMSignificant tenderness in mid-calf at level of gastrocsoleus bridge bilaterally; no tenderness over wound area bilaterally |
| NARSUM 20050607 Right |  | 50passive | 5 | 5 |  |

VA:

Using an evaluation completed two months before the time of separation from the Navy, the VA rated this disability as Residuals, Status Post Compartment Syndrome Release, Right and Left Calf at 10% each with a bilateral factor of 1.9 for a total of 20%.

Condition 2 Lower leg nerve damage/hyperesthesia

The CI repeatedly asked VA to apply a rating but they considered it non-service connected (NSC) on the initial rating and again in 2007. Navy exams showed a sensory deficit and hyperesthesia and the PEB included a peripheral nerve code. However, the PEB rated the muscle and nerve condition together using only one code, 5399-5312-8723.

If the sensory deficit (incomplete paralysis) was considered unfitting and affected an entirely different function form the muscle disability, it would be rated separately from the muscle injury code IAW VASRD §4.55(a). The notes from the PEB reconsideration document that the PEB members clearly thought he had a sensory deficit. It is not clear if the PEB opined the sensory deficit was unfitting but did not affect a function different from that affected by the muscle injury or that the sensory deficit was not unfitting.

Prior to his surgeries, the CI had chronically increased pressure in all four compartments: anterior, lateral, deep posterior and superficial posterior and could have sustained nerve damage to more than one nerve from this. He did complain of numbness all along. Many sensory exams were not documented in detail but merely stated sensation intact or the equivalent. If he had mild sensory deficits it could have been missed on those exams. Or it could be more of a paresthesia which would have a normal exam. A paresthesia was documented in the NARSUM in the area of the tibial nerve. On VA exam he had normal sensory exam but no details are documented, it merely says the sensory examination was normal. No Electromyogram (EMG) was done. The VA did not service connect nerve damage because their evaluation showed no evidence this condition existed.

While the sensory deficit and/or paresthesia is documented on multiple Navy exams, there is no evidence it interfered with his ability to perform the duties required of his rank or rating. There are no duty restrictions that can be attributed to this condition.

Condition 3: Pes Planus

No evidence this was unfitting. Multiple entries in service medical record, including enlistment physical document mild, asymptomatic pes planus. No duty restrictions or complaints related to flat feet were documented.

Condition 4: Scars

No evidence these were unfitting. The NARSUM specifically states scars were not tender to palpation. No duty restrictions or complaints related to the scars were documented. The VA assigned a noncompensable evaluation for the bilateral scars which were not considered disabling.

Other Conditions

Not in Disability Evaluation System (DES): Torn Anterior Cruciate Ligament, Right Knee; Obstructive Sleep Apnea (OSA); Residuals s/p Fracture 5th DIP, Right Hand; Hypertension; Benign Cyst, Right Kidney with History of Kidney Stones; Migraines

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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 be rated at a combined 20% with 10% for each leg rated at 10% under 5399-5312 and a bilateral factor of 1.9.

The bilateral lower leg pain the CI experienced after his surgeries is appropriately rated analogous to the corresponding muscle injury VASRD codes: 5312 Group XII. Function: Dorsiflexion (1); extension of toes (2); stabilization of arch (3). Anterior muscles of the leg: (1) Tibialis anterior; (2) extensor digitorum longus; (3) extensor hallucis longus; (4) peroneus tertius. The CI experienced a lowered threshold of fatigue and fatigue pain after his surgeries and these are cardinal signs and symptoms of muscle disability as described in sub-paragraph (c) of VASRD §4.56 Evaluation of muscle disabilities. His disability is considered moderate and a 10% rating is warranted. His disability does not meet the criteria for moderately severe disability of muscles as there is no indication on palpation of loss of deep fascia, muscle substance, or normal firm resistance of muscles.

VASRD §4.55(a) states that a muscle injury rating will not be combined with a peripheral nerve paralysis rating of the same body part, unless the injuries affect entirely different functions. A separate rating could be applied for hyperesthesia (if it was present and unfitting) if this condition did not affect the same function as the muscle injury. However, the Board unanimously determined that this condition was not unfitting and therefore no rating is applied.

The Board unanimously determined that neither Pes Planus nor Bilateral Lower Extremity Scars were unfitting.

The other diagnoses rated by the VA (Torn Anterior Cruciate Ligament, Right Knee; Obstructive Sleep Apnea (OSA); Residuals s/p Fracture 5th DIP, Right Hand; Hypertension; Benign Cyst, Right Kidney with History of Kidney Stones; and Migraines) were not mentioned in the Disability Evaluation System (DES) 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| --- | --- | --- |
| UNFITTING CONDITION | VASRD CODE | RATING |
| Residuals, Status Post Compartment Syndrome Release, Left Calf | 5399-5312 | 10% |
| Residuals, Status Post Compartment Syndrome Release, Right Calf | 5399-5312 | 10% |
| COMBINED (Incorporating BLF 1.9) | 20% |

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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 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 26 April 2010

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

To:

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

Ref: (a) DoDI 6040.44

(b) PDBR ltr of 19 MAR 10

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 23 April 2010, the Assistant Secretary of the Navy (Manpower & Reserve Affairs) took action in your case by accepting the recommendation of the PDBR that no change be made to the characterization of separation or disability rating assigned by the Department of the Navy's Physical Evaluation Board.
3. The Secretary's decision represents final action in your case by the Department of the Navy and is not subject to appeal or further review by the Board for Correction of Naval Records.

 Copy to: PDBR