RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD0900278 TDRL DATE: 20050309

BOARD DATE: 20110624 SEPARATION DATE: 20061117

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Active Duty AO3/E-4 (DG 9760 Electrical/Mechanical Equipment Repairman) medically separated from the Navy for seizure disorder. He did not respond adequately to perform within his rating or to meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Seizure disorder was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The Informal PEB (IPEB) adjudicated the seizure disorder condition as unfitting and he was placed on the Temporary Disability Retired List (TDRL) with a rating as reflected in the chart below. He underwent TDRL reevaluation in November 2006 and on 14 November 2006 the IPEB removed him from the TDRL with a permanent rating of 10% with application of SECNAVINST 1850.4E and the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was thus medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: ‘“They removed me from TDRL because of the medication, which was working. They gave me money and told me to go away. I got cheated all the way around”. He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20061005** | | | | ***VA (Prior to & After Separation from TDRL)\* Effective 20081031*** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL - 20050309** | **TDRL** | **Sep.** |  |
| Seizure disorder | 8910 | 40% | 10% | Seizure disorder | 8999-8914 | No rating | STR |
| 10% | VATR\* |
| 10% | 20091005 |
| ↓No Additional MEB/PEB Entries↓ | | | | Not Service Connected X 1 | | | STR |
| **Final Combined: 10%** | | | | **Total Combined: 10%** | | | |

\* VA treatment records

ANALYSIS SUMMARY:

Seizure Disorder: The CI had his first seizure on Active Duty on 5 June 2002. He was started on medication and was referred to Neurology where the diagnosis was suspected epileptic seizure. Limited Duty Boards were completed on 15 July 2002 and 13 February 2003. EEGs were performed in July 2002, March 2003 and August 2003, with no evidence of epileptic activity. He remained seizure free, and the PEB found him fit to continue on active duty on 20 February 2004. On 12 August 2004 he had a second seizure. The narrative summary (NARSUM) documented a normal brain MRI and laboratory studies; however, the EEG showed occasional right sided sharp waves of uncertain significance. Medication was again initiated, and a six month period of limited duty was recommended. The NARSUM examiner recommended referral of the seizure disorder condition to the PEB as unfitting. On 14 February 2005, two weeks before the PEB, he had a third seizure. However, the service treatment record indicated that the CI had stopped his medication of his own accord two months earlier. The PEB found the seizure disorder to be unfitting, coded 8910 (epilepsy, grand mal), and recommended placement on the TDRL with a 40% rating, effective 9 March 2005. The TDRL examination on 1 August 2006, four months before final separation, noted that he was compliant with medication, was seizure free during the TDRL period, and had a normal physical examination with a good prognosis. The PEB found the seizure disorder to be unfitting, code 8910, and recommended separation from the TDRL with a 10% permanent rating.

After separation he continued to receive treatment from the VA, and remained compliant with seizure medication. The VA Rating Decision dated 6 April 2009, 29 months after separation, indicated service connected seizure disorder, coded 8999-8914 (psychomotor epilepsy), with a 10% rating.

The Board reviewed and concurred that the TDRL rating did not exceed 40% IAW VASRD §4.124a. The Board then considered the most appropriate fit with VASRD 4.124a criteria for its permanent rating recommendation. The nature of his seizures were consistent with the VASRD criteria for major seizures as defined in §4.124a. Both the PEB and the VA used codes that refer to the General Rating Formula for Major and Minor Epileptic Seizures and neither code offers a rating advantage to the CI. The evaluation of 10% was assigned due to the established diagnosis of epilepsy and the continuing use of medication. His third seizure that occurred on 14 February 2005, 21 months before separation, was not noted in the DES File for PEB consideration, this was likely due to medication non compliance and according to the VASRD seizures that occur due to medication non compliance are not to be considered in the rating decision. Neither the TDRL examination nor the JDETS Work Card noted that seizure. Since it had been over two years since the seizure in August 2004 a 10% rating was applied. The Board carefully considered all evidence, mindful of VASRD §4.3 (reasonable doubt), and recommends a permanent disability rating of 10% in this case.

Remaining Conditions: Left varicocele was identified in the DES file. It was not clinically active during the MEB period, or the basis for a LIMDU or implicated in the Non-Medical Assessment (NMA). The condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to separation rating. No other conditions were identified in the available documentation, and no other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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 the matter of the seizure disorder the Board unanimously recommends a TDRL rating of 40% and permanent rating of 10% coded 8910. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Seizure disorder | 8910 | 40% | 10% |
| **COMBINED** | **40%** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090225, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USN

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 7 Jul 11

I have reviewed the subject case pursuant to reference (a) and, for the reasons set forth in reference (b), approve the recommendation of the Physical Disability Board of Review Mr. XXXXXX’s records not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

Assistant General Counsel

(Manpower & Reserve Affairs)