RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: Marine corps

CASE NUMBER: PD0900368 SEPARATION DATE: 20041130

BOARD DATE: 20110512

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Capt/0-3 (7566, Helicopter Pilot), medically separated for laceration of his right flexor pollicis longus tendon*.* The CI’s right hand was injured by shrapnel in June 2003. Despite multiple surgeries and intensive occupational therapy he was unable to perform within his Military Occupational Specialty (MOS). At his Medical Evaluation Board (MEB), three conditions (laceration of tendon, volar plate incompetence of the metacarpophalangeal joint, and atrophy of musculature) were determined to be medically unacceptable IAW SECNAVINST 1850.4E. The CI was referred to the Physical Evaluation Board (PEB) and was found unfit for continued military service due to laceration of the flexor pollicis longus tendon. The other two conditions (muscle atrophy and volar plate incompetence) were adjudicated as Category II (related to the unfitting condition). The CI accepted the PEB findings, and was separated at 20% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Navy and DoD regulations.

CI’s CONTENTION (20090520): The CI states, “VA rated 50% within 45 days of PEB.”

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Navy IPEB – dated 20040913** | | | **VA (six wks. Pre-Separation) – All Effective Date 20041201** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Laceration of Tendon | 5299-5003 | 20% | Shrapnel Wound, Right Hand | 5307 | 40% | 20041018 |
| Atrophy of Musculature | Category II | |
| Volar Plate Incompetence | Category II | |
| ↓No Additional MEB Entries↓ | | | Shrapnel Wounds of Left Leg | 5314 | 10% | 20041018 |
| **Final Combined: 20%** | | | **Total Combined: 50%** | | | |

ANALYSIS SUMMARY:

Right Hand Condition. The CI was involved in a training accident on 22 June 2003 while on temporary duty to Africa. A bomb was accidently dropped near his position and he was hit with shrapnel in the right hand, left thigh and left shoulder. He was seen at a Combat Support Hospital where his wounds were irrigated and his right hand fracture was pinned. He was then evacuated to Landstuhl Regional Medical Center for additional care. His right hand injury included an open comminuted fracture of his second metacarpal, and a severed flexor tendon of his thumb. He underwent open reduction/internal fixation (ORIF) of his metacarpal fracture, and removal of multiple shell fragments. Because of the damage from the injury, the CI had a right thumb interphalangeal (IP) joint fusion on 16 October 2003. In spite of treatment, it was felt that the CI would not regain the strength and dexterity which is required for his MOS, so an MEB was initiated. The MEB orthopedic exam on 5 August 2004 (fifteen weeks prior to separation) showed evidence of muscle atrophy (first dorsal interosseous and some of the thenar musculature). The CI had good thumb motion, including opposition to the fifth metacarpal head. There was significant volar plate incompetence of the metacarpophalangeal (MCP) joint that occurred mainly with an attempt at pinch. Overall grip strength was decreased in his right hand and pinch strength was markedly decreased. The examiner felt that the CI was incapable of safely flying a helicopter, due to the severity of the injury. A VA Compensation and Pension (C&P) exam was performed on 18 October 2004, six weeks prior to separation. At this exam the CI reported trouble with certain pinch maneuvers such as turning jar lids or buttoning his shirt. The exam revealed considerable atrophy in the thenar and hypothenar eminences of the hand. He had good motion of the thumb, except for the fused IP joint.

The PEB and the VA chose different coding options for the right hand condition. The PEB used code 5299-5003 (analogous to degenerative arthritis). The VA coded it 5307 (Group VII muscle injury). The Board carefully reviewed all of the evidentiary information available. The Board felt that the VA’s coding choice was more accurate and more appropriate for the CI’s residual deficits from the shrapnel injury. The Board then deliberated with regard to the severity of the muscle injury. IAW VASRD §4.56(a)**,** an open comminuted fracturewith muscle or tendon damage will berated as a severe injury of the muscle group involved, unless evidence establishes that the muscledamage is minimal. The CI’s muscle damage was clearly not minimal. As a result of the shrapnel injury, he had significant muscle atrophy, persistent weakness, and loss of dexterity in his dominant hand. Therefore, the Board determined that the open comminuted fracture of the second metacarpal with tendon laceration and significant muscle damage meets the criteria of VASRD §4.56(a). Following considerable discussion and due deliberation, the Board unanimously recommends a permanent disability separation rating of 40% for the right hand condition.

Remaining Conditions. Shrapnel wounds of the left leg, and several other conditions were also documented in the Disability Evaluation System (DES) file. None of these conditions were clinically significant during the MEB/PEB period, none carried profiles, and none were implicated in the commander’s statement. These conditions were all reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. 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 right hand condition (coded 5307), the Board unanimously recommends a permanent rating of 40% at separation, IAW VASRD §4.56 and §4.73. In the matter of the left leg shrapnel wounds, or any other conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION:

The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Shrapnel Injury, Right Hand | 5307 | 40% |
| **COMBINED** | **40%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090520, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USMC, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 1 Jul 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (reference (b).

2. The subject member’s official records are to be corrected to reflect the following disposition:

a. Separation from the Naval service due to physical disability rated at 40 percent (increased from (20 percent) with transfer to the Permanent Disability Retired List effective 30 November 2004.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid disability separation pay if warranted, and notification to the subject member once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)