RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900398 BOARD DATE: 20100113

SEPARATION DATE: 20080306 (20040612 enter TDRL)

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SUMMARY OF CASE: This covered individual (CI) was a Lieutenant Commander (Combat Systems) medically separated from the Navy in 2004 after 12 years of service. The medical basis for the separation was Type 1 Diabetes.

Appropriate therapy failed to alleviate his symptoms and he was referred to the Navy Physical Evaluation Board (PEB). In May 2001, the Informal PEB determined he was unfit for continued military service and he was recommended to the temporary disability retirement list (TDRL) at 40%, however, he appealed and was approved for permanent limited duty through June 2004. He met a second Informal PEB in April 2004, which determined he was unfit for continued military service and placed him on the TDRL at 40% disability. After re-evaluation in August 2007, a third Informal PEB followed by a Formal PEB (Nov 2007) determined the CI should be separated at 20% disability for Type 1 Diabetes using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations. CI petition for relief to the Secretary of the Navy Council of Review Board, but the relief was denied in January 2008.

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CI CONTENTION:

Reference CI’s Supplement Statement summarized as:

“…respectfully request the Board:

a. Re-characterize my separation to retirement for disability;

b. Award back pay to the date of my separation; and

c. Modify my combined disability rating to 40%, consistent with my Department of Veterans Affairs (VA) rating based upon the following diagnosed conditions:

i. Diabetes mellitus type I;

ii. Dupuytren's contracture with mild degenerative joint disease, bilateral hands;

iii. Mild degenerative joint disease, lumbar spine; and

iv. Mild degenerative joint disease, left hip.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service** | | | | **VA** (2 Mo. after Separation) | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Type 1 Diabetic with Positive Anti-Insulin Antibodies | 7913 | 20% | 20070810 | Diabetes Mellitus Type 1 | 7913 | 20% | **20040824** | **20040613** |
| 40% | 20040423 (entered TDRL 20040612) |
| 40% | 20010529 (TDRL, but appealed & placed on Permanent Limited Duty) |
|  |  |  | Not in NARSUM, , PEB paperwork; In H&P for retirement physical prior to entering TDRL in 2004 | Dupuytren's Contracture with Mild Degenerative Joint Disease,  Bilateral Hands | 5003 | 10% | **20040824** | **20040613** |
|  |  |  | Not mentioned in DES package | Ganglion Cyst, Right 5th Finger | 7819-5237 | 10% | **20040824** | **20040613** |
|  |  |  | Not mentioned in DES package | Mild Degenerative Joint Disease, Lumbar Spine | 5003-5237 | 10% | **20040824** | **20040613** |
|  |  |  | Not mentioned in DES package | Mild Degenerative Joint Disease, Left Hip | 5099-5252 | 10% | **20040824** | **20040613** |
| History of surgery in initial MEB H&P |  |  | Not mentioned in DES package | Scars, Status Post Bilateral Inguinal Hernia Repair | 7805 | 0% | **20040824** | **20040613** |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **50% from 20040613** | | | | |

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ANALYSIS SUMMARY:

Diabetes Mellitus:

The CI was first diagnosed with diabetes in 2001. His condition required insulin and he eventually was treated with an insulin pump. Service and VA records document moderate control of blood sugars with hemoglobin A1C of 8.5 in early 2006.

After an initial medical board in 2001 the CI approved for permanent limited duty for three years. A medical board completed in 2004 resulted in placement on the Temporary Disability Retired List (TDRL) with a rating of 40% for 7913. There is no evidence of regulation of activities as defined by the VASRD at this time and the rationale for this rating is unclear. At TDRL reevaluation in 2007, the CI’s condition was unchanged and there was still no evidence of regulation of activities or any other issue that would have warranted a rating greater than 20%. The PEB determined the CI was unfit and rated his condition at 20% under VASRD 7913. The CI appealed this lower rating percentage and the Formal PEB upheld the rating decision of the Informal PEB. The CI also submitted a petition for relief to the Naval Council in early 2008 stating his condition had not improved and there was insufficient rationale for lowering the rating percentage. The Naval Council opined the lower rating was a result of a correction of an error made by the PEB in their original determination, not a result of improvement in the CI’s condition. The Council determined the CI was able to participate in all normal living activities provided that his insulin levels and diet were well controlled and appropriately adjusted. If his activities had been restricted despite optimal control of insulin/diet, then he would have met the criteria for the 40 percent rating. The VA also rated the CI’s diabetes at 20% after an evaluation in 2004 and documented out that regulation of activities as defined by the VASRD was not required.

Regulation of activities is defined as healthcare provider prescription or recommendation that the diabetic avoid strenuous occupational or recreational activities. There is no evidence of this in any available records.

There is no evidence of any episodes of ketoacidosis, but the CI did have some episodes of mild hypoglycemia. There is no record of any hospitalizations or the need to avoid strenuous occupational and recreational activities. Twice a month visits to a diabetic health care provider were not required and there was no evidence of any diabetes related complications such as diabetic retinopathy. The VA examiner stated that this condition did not affect the CI’s occupation, employability, or activities of daily living.

Dupuytren's Contracture with Mild Degenerative Joint Disease, Bilateral Hands:

MEB/IPEB/FPEB paperwork: The diagnosis was listed on a 20040503 History and Physical done for retirement. The date of IPEB that placed him on TDRL is 20040423, a few weeks prior to retirement physical. However, the period of Permanent LIMDU was through 20040613 and he did not sign the waiver of FPEB until 20040513 (after this retirement physical) and he actually entered TDRL 20040612 according to his DD 214. So the PEB could have adjudicated the fitness of the Dupuytren’s contracture but it did not. An evaluation by orthopedics on February 2004 documented the diagnosis and the extent of this condition. He essentially had full range of motion of both hands. The long and ring finger on the left hand did not achieve hyperextension, but had otherwise unrestricted motion. There was no restriction of motion on the left non-dominant hand. He had nodularity of the palmar fascia across the distal palmar crease that was not painful to direct palpation. There is no evidence that this condition interfered with the CI’s ability to perform any tasks required of his rank or position.

There is insufficient evidence to consider this condition as unfitting and therefore no disability rating is recommended.

Mild Degenerative Joint Disease, Lumbar Spine Condition; Mild Degenerative Joint Disease of the Left Hip; Ganglion Cyst, Right 5th Finger/ Scars; Scars, Status Post Bilateral Inguinal Hernia Repair

MEB/IPEB/FPEB paperwork: Not mentioned and no fitness adjudication. On H&P Item 13e-Rupture/hernia: CI marked “Yes”. No mention of any issues concerning surgery or scars.

These conditions are outside the scope of this Board.

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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 concluded that the CI’s condition is appropriately rated at 20% under VASRD 7913 Type I Diabetes with Positive Anti-Insulin Antibodies.

There is no evidence that regulation of activities as defined by the VASRD was required. The definition of regulation of activities as elaborated in the 100% rating criteria for 7913 Diabetes Mellitus is applied whenever the term is present in any of the other rating percentage criteria. Regulation of activities is defined as avoidance of strenuous occupational and recreational activities. This is considered to exist when a healthcare provider prescribes this avoidance. There is no evidence that any provider recommended the CI avoid any strenuous activities.

In the matter of the Dupuytren’s Contracture, the Board unanimously agrees by that it cannot recommend finding this condition unfit and therefore does not provide a rating recommendation. While the VA rates all service connected conditions, the military services only rate conditions considered to be unfitting for military service at the time of separation.

The other conditions rated by the VA (Ganglion Cyst, Right 5th Finger; Mild Degenerative Joint Disease, Lumbar Spine; Mild Degenerative Joint Disease, Left Hip; and Scars, Status Post Bilateral Inguinal Hernia Repair) 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090527, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 21 Jan 10

I have reviewed the subject case pursuant to reference (a) and approve the Physical Disability Board of Review recommendation as contained in reference (b). The PDBR has recommended that no change in either the characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board be initiated.

Principal Deputy Assistant Secretary of the Navy (Manpower & Reserve Affairs)