RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900493 SEPARATION DATE: 20040930

BOARD DATE: 20110322

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSgt (0311, Marksmanship Instructor), medically separated from the Marine Corps in September 2004. The medical basis for separation was migraine headaches and fibromyalgia. His medical problems began in 1998 when he started having irritable bowel symptoms (IBS) following a series of Anthrax injections. He was treated, but did not respond adequately to perform within his military occupational specialty (MOS) or meet physical fitness standards. He requested a Medical Evaluation Board (MEB). Spastic IBS, internal hemorrhoids, and diverticulosis were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable conditions. The PEB found the CI fit for duty. He then requested reconsideration, and the second PEB found migraine headaches and fibromyalgia unfitting, rated 10% each IAW with the Veterans Administration Schedule for Rating Disabilities (VASRD). Five other conditions, as identified in the rating chart below, were adjudicated by the PEB as Category III (conditions that are not separately unfitting and do not contribute to the unfitting conditions.) The CI accepted the findings of the second PEB, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “Rating higher by VA (80%) within 12 months for same disabilities the Marine Corps found to be only 20% disabling. Review rating that IBS is not disqualifying for service when VA rated 30% disabling within 12 months of discharge.” He additionally lists all of his VA conditions and ratings as per the rating chart below.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service (Reconsideration)PEB – Dated 20040809** | | | **VA (5 Mo. after Separation) – All Effective 20041001** | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | | **Code** | **Rating** | **Exam** |
| Migraine Headaches | 8100 | 10% | Migraine Headaches | | 8100 | 30% | 20050218 |
| Fibromyalgia | 5025 | 10% | Chronic Fatigue w/Fibromyalgia | | 6354 | 20% | 20050218 |
| Diverticulosis | Cat III | | IBS with Diverticular Disease | 7399-7319 | | 30% | 20050218 |
| Spastic IBS |
| Internal Hemorrhoids | Hemorrhoids | | 7336 | 0% | 20050218 |
| Epididymitis | Chronic Epididymitis | 7599-7523 | | 0% | 20050218 |
| Mild Sleep Apnea | Sleep Apnea | | 6847 | 0% | 20050218 |
| ↓No Additional MEB Entries↓ | | | Anxiety Disorder | | 9413 | 30% | 20050216 |
| Tinnitus | | 6260 | 10% | 20050216 |
| 5 x 0% / 7 x Not Service Connected | | | | 20050218 |
| **TOTAL Combined: 20%** | | | **TOTAL Combined: 80%** | | | | |

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ANALYSIS SUMMARY:

Fibromyalgia. Following the PEB’s initial finding of fit for duty, the CI was evaluated at the Walter Reed Regional Vaccine Healthcare Center. His list of symptoms included IBS, bloody stools, abdominal pain, nausea, light-headedness, headaches with tunnel vision, nosebleeds, hearing loss, chest pain, low back pain, anxiety, and difficulty sleeping. The examiner opined that, “Collectively, these symptoms have been associated with moderate functional impairment.” A rheumatologist opined these symptoms are “very consistent with fibromyalgia.” In correspondence to the PEB, the CI pointed out he had “graduated 2nd out of 580 recruits while attending recruit training. During my six and half year career I have been meritoriously promoted twice, and have received numerous…awards.” He also noted that due to his symptoms he had “gone from running a ‘perfect’ physical fitness test to not even being able to play with my son without pain and discomfort.” A memo from the Vaccine Health Center to the PEB echoed the CI’s assessment of his condition, stating, “clinical symptoms have profoundly impacted his personal life and have significantly impaired his ability to work.” The PEB and VA chose different coding options for the condition. The PEB’s 5025 code is consistent with the rheumatologist’s diagnosis of fibromyalgia, and the 10% rating reflects the PEB’s judgment that the CI’s symptoms required continuous medication. The VA chose to use code 6354 (chronic fatigue syndrome), and the 20% rating reflects their judgment that the CI’s symptoms were “nearly constant and restrict routine daily activities by less than 25 percent of the pre-illness level or which wax and wane, resulting in periods of incapacitation of at least two but less than four weeks total duration per year.” The Board considered both coding approaches, and agreed that the 5025 code was consistent with the formal diagnosis and more accurately encompassed the constellation of symptoms. The Board readily agreed that the CI’s symptoms were not controlled by medication and therefore the 10% rating was exceeded. Deliberation focused on the 20% rating ([symptoms] that are episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion but that are present more than one-third of the time) versus 40% ([symptoms] that are constant, or nearly so, and refractory to therapy.) The Board considered that the CI continued to function as a marksmanship instructor within the confines of his limited duty restriction. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a separation rating of 20% for the fibromyalgia condition.

Migraine Headaches. The commander’s assessment, written 13 months prior to separation, does not support lost duty time due to headaches. At the time of the CI’s request to the PEB for reconsideration (seven months prior to separation) he reported daily headaches with tunnel vision, dizziness and flushing that had worsened over the previous six to eight months. These headache episodes escalated about once per week to become bitemporal throbbing headaches with nausea and sensory phobia. The neurologist diagnosed transformed migraine with chronic daily headache and analgesic rebound, and prescribed migraine prophylaxis medications. At the VA Compensation and Pension (C&P) exam five months after separation, the CI described headaches that were “more of a sharp-dull, no pulsation,” occurring two to three times a week. The Board considered the history of the CI’s headache condition and attempted to determine how incapacitating the headaches were at the time of separation from service. There is a paucity of evidence for the characteristic prostrating attacks that are crucial to the VASRD rating under the 8100 code. Without prostrating attacks, migraine headaches (under code 8100) are essentially noncompensable. Moreover, the Board notes that head pain is very common for fibromyalgia sufferers. If one considers that the CI’s headaches could be subsumed by the fibromyalgia rating above, then they would provide additional weight and validity for increasing the rating for fibromyalgia (which the Board is recommending). The Board is aware that headache symptoms cannot be used to justify two separate disability ratings, because this would constitute “pyramiding” which is not permitted by VASRD rules. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends by majority decision (2:1 vote) a separation rating of 0% for the migraine headaches.

Other PEB Conditions. Other PEB conditions (adjudicated as not unfitting) were diverticulosis, IBS, hemorrhoids, epididymitis, and mild sleep apnea. The Board notes the CI’s contention that his IBS should be found separately unfitting. However, the IBS symptoms are subsumed by the fibromyalgia rating above, and indeed are necessary to support the recommended rating for fibromyalgia. A separate rating for IBS (if deemed an additionally unfitting condition) would therefore constitute “pyramiding” which is not permitted by VASRD rules. None of the other conditions were implicated in the commander’s statement. Diverticulosis and internal hemorrhoids were listed on the original MEB as medically unacceptable without explanation. All of these conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. No other conditions were noted in the narrative summary, or found elsewhere in the Disability Evaluation System (DES) file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board thus has no basis for recommending any additional unfitting conditions for separation rating.

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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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the fibromyalgia condition, the Board unanimously recommends a rating of 20% coded 5025 IAW VASRD §4.71a. In the matter of the migraine headaches, the Board by a vote of 2:1 recommends a rating of 0% (coded 8100) IAW VASRD §4.124a. The single voter for dissent (who recommended a 10% rating for the migraine condition) did not elect to submit a minority opinion. In the matter of the diverticulosis, IBS, hemorrhoids, epididymitis, sleep apnea, or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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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** |
| Fibromyalgia | 5025 | 20% |
| Migraine Headaches | 8100 | 0% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090816, 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 USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 4 Apr 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. XXXXX’s Physical Evaluation Board records be corrected to reflect a 20 percent disability rating under VASRD Code 5025 (FYBROMYALGIA) without recharacterization of his discharge.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)