RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900508 SEPARATION DATE: 20011210

BOARD DATE: 20110518

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve GySgt/E-7 (3381, Food Service) medically separated for chronic headaches secondary to cervical spasm. His headaches began after a motor vehicle accident (MVA) in 1987, and worsened after a subsequent MVA in 1999. He was treated, but did not respond adequately to perform within his military occupational specialty (MOS) or to meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Cervicalgia, headaches and insomnia were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB found the CI fit for duty. The CI did not accept the IEB findings and requested reconsideration. In July 2001, a Formal PEB (FPEB) found the chronic headache condition unfitting and rated it 10%. Two other conditions (chronic cervical pain and insomnia) were found to be category II (conditions that contribute to the unfitting headache condition). The CI made no further appeal and was then medically separated with a 10% disability rating.

CI’s CONTENTION: “Got 1 rating for several conditions. I should have been rated for each condition separately. I have headaches; migraines; neck pain; can’t sleep; sharp pains in arms and elbows; numbness in fingers and hands; damage nerve in left arm; lost letter in house fire.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Navy FPEB – dated 20010719** | | | **VA (10 mo. After Separation) – All Effective 20020320** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Headaches | 8199-8100 | 10% | Headaches | 8199-8100\* | 10% | 20021024 |
| Chronic Cervical Pain | Category II | | Cervical Strain | 5237\*\* | 20% | 20021024 |
| Insomnia due to Headaches | No VA Entry for Insomnia | | | 20021024 |
| **Combined: 10%** | | | **Combined: 30%** | | | |

\* Initially included with cervical strain under a single code and rating; assigned a separate rating in 2004.

\*\* Initially coded 5323 at 10%, then changed to 5290 at 20%, and finally to 5237 at 20%.

ANALYSIS SUMMARY: As mentioned above, the FPEB found the CI unfit for duty due to chronic headaches, caused by his neck condition (cervical spasm). By policy and precedent, the Board will adjudicate separate codes and ratings for each unfitting condition. The Board elected to first consider the neck condition, since evidence showed that it had caused the head pain.

Neck Condition. The July 2001 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2003. The 2001 standards for rating neck (cervical spine) conditions were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in terms of range of motion (ROM) impairment. When older cases have goniometric measurements in evidence, and when coding for limitation of motion is applicable and advantageous, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and incidental conformity across dates of separation (assuming code applicability as caveated above), without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation.

The CI’s symptoms and limitations at the time of the MEB were primarily related to neck pain from a series of whiplash injuries. The MEB examiner noted that the CI was unable to attend drill because of neck pain. A neurologist had requested restrictions from sit-ups, pull-ups, standing or sitting with the neck in a fixed position or running as this would aggravate the CI’s neck strain and headaches. The CI reported that physical therapy and biofeedback had resulted in marked improvement in his neck pain and headaches. The VA compensation and pension (C&P) examination performed 10 months after separation was the only examination in evidence which included goniometric ROM measurements. The VA examiner recorded normal gait and posture. Cervical spine ROM measurements included 30⁰ of forward flexion and 160⁰ of combined ROM, with pain noted on right rotation. There was no spasm. Motor and sensory examinations were normal. The earlier MEB exam noted mild bilateral cervical spine straightening, with tenderness and mild spasm. Magnetic resonance imaging (MRI) showed disc bulging, which was opined by the neurosurgery consultant to be an incidental finding unrelated to the CI’s symptoms.

The Board must correlate the above clinical data with the 2001 rating schedule. The Board noted that the VA exam was well documented. There was no clinical basis for applying the 5293 code for intervertebral disc syndrome in this case. The Board considered the VA’s initial neck pain rating under the 5290 code (limitation of cervical spine motion). The moderately impaired ROMs documented on the examination would justify a rating of 20% under that code. In 2005, the VA applied the current VASRD §4.71a general rating formula to the 2002 C&P ROM measurements and arrived at the same 20% rating. The Board could find no evidence for an unfitting radiculopathy, which would warrant an additional rating for peripheral nerve impairment. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of the cervical spine condition favors its recommendation as the unfitting condition for separation rating. It is appropriately coded 5290 and meets 2001 VASRD §4.71a criteria for a 20% rating.

Headache Condition. At the time of the MEB (one year prior to separation) the CI’s headache condition was described by the treating neurologist as secondary to neck strain. The headache condition was being medically managed primarily with treatment of the neck spasm with fair to good results. The examiner noted that the CI “is currently employed as a postal worker. He is able to perform this job as long as it does not involve lifting heavy objects above his head.” There was no indication at this time of prostrating episodes. The non-medical assessment (NMA) referenced the CI’s headache condition, but all of the duty restrictions, as noted above, were designed to minimize neck strain. The NMA stated, “I do not believe that [the headache condition] is debilitating but it does preclude him from being able to perform his military duties.” Over the ensuing year leading up to separation the CI’s headache condition worsened as his neck pain worsened. He was prescribed a headache abortive medication with good results. Four months prior to separation the treating physician noted that the CI “is currently using Imitrex and finds it significantly helpful. Occasionally, he has some neck pain, but that is quickly resolved with some physical therapy. He is otherwise fairly satisfied with the amount of headache control that he has, and really has no new complaints.” At the C&P exam 10 months after separation the CI reported that his headaches “occur about three or four times a week and last anywhere from one to four hours.” There was no known aggravant, and pain was relieved by taking over-the-counter preparations or prescribed medications. He reported that he missed about four to eight hours of work per month because of headaches.

The Board first considered the issue of a fitness determination for the headache condition, having de-coupled it from the unfitting cervical pathology. In one sense, the PEB had implied that headache was unfitting, by including it as part of the unfitting condition. During deliberation the Board considered that the headache condition appeared to be inextricably tied to the unfitting neck condition, and that the VA had initially recognized headache as part of the cervical strain condition and not warranting a separate rating. In the treatment record, there was no evidence of the incapacitating episodes required to achieve a minimal compensable rating for headaches IAW VASRD §4.124a. After due deliberation, the Board agreed that the preponderance of evidence with regard to the functional impairment of the headache condition favors its recommendation as an unfitting condition for separation rating. It is appropriately coded 8199-8100 and meets the 2001 VASRD §4.124a criteria for a 0% rating.

Other PEB Conditions. Insomnia due to headache was adjudicated as not unfitting by the PEB. This condition was not profiled or implicated in the NMA. The condition was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory performance of required military duties. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for the insomnia condition.

Remaining Conditions. No other clinically significant 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 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. 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 “chronic headaches secondary to cervical spasm,” the Board unanimously recommends that the headache and cervical spine conditions be separately adjudicated as follows: an unfitting cervical spine condition coded 5290 and rated 20% IAW VASRD §4.71a; and an unfitting headache condition coded 8199-8100 and rated 0% IAW VASRD §4.124a. 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Neck Pain, With Some Limitation of Cervical Motion (Moderate) | 5290 | 20% |
| Cervicogenic Headaches, Analogous to Migraines | 8199-8100 | 0% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090820, 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 26 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 20 percent (increased from 10 percent) effective 10 December 2001.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)