RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900537 SEPARATION DATE: 20031230

BOARD DATE: 20110505

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was Sgt (1371, Combat Engineer) medically separated from the Marine Corps in 2003 for Diabetes Mellitus (DM) Type 1. He was started on the appropriate therapy, but did not respond adequately to treatment to perform within his military occupational specialty, was placed on limited duty and underwent a Medical Evaluation Board (MEB). DM was forwarded to the Physical Evaluation Board (PEB) as medicallyunacceptable. The Informal PEB adjudicated the DM condition as a single unfitting condition. The CI was placed on the Temporary Disability Retired List (TDRL) with ratings as reflected in the chart below. In 2007 the PEB judged the DM condition to be permanently unfitting, rated 20% IAW the VA Schedule for Ratings Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB) which upheld the earlier rating, and the CI was then medically separated with a 20% disability rating.

CI CONTENTION: “In 2003 the Marine Corps placed me on TDRL/with 60% [sic] disability rating. During the next 4 years my condition did not improve. I’m still insulin dependent. I still have to limit my activities and I continue to suffer from the effects of diabetes, when the board ruled that my percentage went from 60% down to 20%. I did not agree after appealing and going through a formal board. I had no choice but to accept their findings. I still do not agree with the 20% for a condition that will affect me the rest of my life. There is no cure and I will most likely get worst with time. Please reconsider the finding that now places me at 20%. Thank you for your time and giving me another opportunity to plead my case."

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Initial (TDRL) IPEB – Dated 20031118**  **Final Service FPEB – Dated 20080102** | | | | **VA\* – All Effective Date 20040101** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20031230** |  | **TDRL** | **Sep.** |
| DM | 7913 | 40% | 20% | DM | 7913 | 20% | 20071120 |
| No Additional MEB/PEB Entries | | | | Not Service Connected x 4 | | | STR\*\* |
| **Combined: 20%** | | | | **Combined: 20%** | | | |

\* VA rating based on exam most proximate to date of permanent separation. \*\*Service Treatment Record

ANALYSIS SUMMARY:

Diabetes Condition. The clinical evidence at the time of TDRL and permanent separation was consistent with a 20% rating IAW VASRD §4.120 as determined by the PEB. The CI’s initial VA rating of 20% was based on his service treatment record. A VA rating examination performed one month prior to the FPEB and close to separation also resulted in a 20% rating. The VA examiner recorded that the CI denied a history of diabetic ketoacidosis or hospitalization for uncontrolled diabetes or hypoglycemic reactions. Treatment was diet and long acting insulin each evening. There were no current symptoms, restricted activities, weight instability, or exam findings consistent with complications of DM. The CI’s daily activities were not affected, nor were there any occupational effects due to DM. The CI’s requirement for insulin and restricted diet to control his DM is consistent with the VASRD criteria supporting a 20% rating. None of the criteria for higher ratings are supported by the evidence. There was no evidence of regulation of activities required for the next higher 40% rating. There were no hospitalizations for DM-related problems. Thus none of the 60% or 100% criteria were met either at the time of the initial TDRL rating or at the time of final adjudication. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB adjudication for the DM condition.

Remaining Conditions. Other conditions identified in the Disability Evaluation System (DES) file were lactose intolerance and chronic ring worm. Neither of these conditions were clinically active during the MEB period, was the basis for limited duty, or was implicated in the non-medical assessment. These conditions were reviewed by the action officer and considered by the Board. It was determined that neither could be argued as unfitting and subject to separation rating. Additionally several other non-acute conditions were noted in the VA rating decision proximal to separation as not service connected, but were not documented in the 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.

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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 DM condition, the Board unanimously recommends a separation rating after TDRL of 20% coded 7913 IAW VASRD §4.120. 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.

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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** | **PERMINANT RATING** |
| Diabetes Mellitus | 7913 | 40% | 20% |
| **COMBINED** | **40%** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090912, 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 XXXXXX, FORMER USMC

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 15 Jun 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 PDBR Mr. XXX’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)