RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900543 SEPARATION DATE: 20080715

BOARD DATE: 20110121

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a USMC Cpl/E-4 (0331, Machine Gunner) medically separated in July 2008. The medical basis for separation was Right Achilles Tendinosis, and Traumatic Brain Injury (TBI). The CI developed problems with his right Achilles tendon while he was in Iraq (2006). At his Medical Evaluation Board (MEB), it was determined that the CI had reached maximum improvement with regard to the Achilles Tendinosis, and would not return to full, unrestricted duty. Thus, he was referred to an Informal Physical Evaluation Board (IPEB). The IPEB considered the case, and found him unfit for continued military service due to Chronic Achilles Tendinosis. Furthermore, it was determined to have Existed Prior to Service (EPTS), was not considered service aggravated, and therefore was not compensable. Five other conditions (Mood disorder, Insomnia, TBI, Headache, and Changes in Memory) were all considered Category III (not separately unfitting and not contributing to the unfitting condition). The CI disagreed with the IPEB findings and demanded a formal hearing. The Formal PEB (FPEB) found him unfit due to Chronic Right Achilles Tendinosis (rated at 10%) and unfit due to TBI (rated at 10%). Mood Disorder, Headache, Insomnia and Changes in Memory were all determined to be Category II (not separately unfitting, but related to TBI). The CI accepted the FPEB findings, and was separated at 20% using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Navy and DoD regulations.

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CI’s CONTENTION: “Post-traumatic stress disorder was never evaluated in the original PEB. The VA rated me at 30% for PTSD. I also had surgery on my right knee upon discharge. My lower back still bothers me when I walk long distances or carry heavy objects. My memory has affected me greatly in college and is affecting my grades poorly. My ankle still affects me. I cannot run or jump like I used to.”

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//////Rating Comparison Chart follows//////

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Navy FPEB (20080415)** | | | | | **VA (5 mo. before & 7 mo. after Separation)** | | | | | | |
| **Condition** | | **Code** | **Rating** | **Date** | **Condition** | | **Code** | | **Rating** | **Exam** | **Effective** |
| Right Achilles Tendinosis | | 5284 | 10% | 20080415 | Right Achilles Tendinosis | 5271- 5003 | | | 10% | 20080207 | 20080716 |
| Traumatic Brain Injury | 9045- 9304 | | 10% | 20080415 | TBI, with Headaches | 8045- 8100 | | | 10% | 20080207 | 20080716 |
| Mood Disorder | | Cat II |  | 20080415 | (no VA entry for Mood d/o) |  | | |  |  |  |
| Headaches | | Cat II |  | 20080415 | Cognitive Disorder (mild),  with Sleep Disorder (NOS) | 8045- 9304 | | | 10% | 20080131 | 20080716 |
| Insomnia | | Cat II |  | 20080415 |
| Changes in Memory | | Cat II |  | 20080415 |
| **No PEB Entry** | |  | | | **PTSD** | 9411 | | | 30% | 20090305 | 20080716 |
| No PEB Entry | |  | | | Low Back Pain | 5243- 5237 | | | 20% | 20080207 | 20080716 |
| No PEB Entry | |  | | | Patellofemoral Syndrome, Right knee | 5260- 5024 | | | 10% | 20080207 | 20080716 |
| No PEB Entry | |  | | | Patellofemoral Syndrome, Left knee | 5260- 5024 | | | 10% | 20080207 | 20080716 |
| No PEB Entry | |  | | | Tinnitus | 6260 | | | 10% | 20080204 | 20080716 |
| No PEB Entry | |  | | | Contact Dermatitis | 7806 | | | 10% | 20080207 | 20080716 |
| No PEB Entry | |  | | | 3 other Lower Extremity conditions, each rated 0% | | | | 0% | 20080207 | 20080716 |
|  | |  | | | NSC x 3 | | |  |  |  |  |
| **TOTAL Combined: 20%** | | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **60% from 20080716**  **70% from 20080716** | | | | | | |

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ANALYSIS SUMMARY:

Right Achilles Tendinosis. The CI had congenital right clubfoot treated with surgery and cast correction during childhood. The surgery included Achilles tendon releases. Subsequently he was able to participate fully in sports, and required no footwear modifications. His history of surgically corrected right clubfoot did not preclude him from completing Marine Corps basic training, or fulfilling the duties of his MOS. He had no difficulties until 2006 (while deployed to Iraq) when he noticed a lump on the back of his heel that became painful with long patrols. After returning to the U.S. he was seen by Orthopedics at Camp LeJeune, and diagnosed with Achilles tendinosis. He was treated with physical therapy but failed to improve. In September 2007, the CI was evaluated by a foot and ankle specialist (Dr. P.) who advised against further surgery. It was determined that the CI had reached maximum medical improvement and would not be able to return to full, unrestricted duty. As noted above, the CI underwent MEB/PEB, and the Right Achilles Tendinosis (coded 5284) was rated at 10% disability. On 7 Feb 08, he was evaluated by Dr. B. for his VA Compensation and Pension (C&P) examination. At that exam, Dr. B. found some loss of right ankle motion with pain, fatigue, weakness and lack of endurance. Right ankle dorsiflexion was 15⁰ (normal is 20⁰), and right ankle plantar flexion was 40⁰ (normal is 45⁰). Radiographs showed mild arthritis of the tibio-talar joint and possible fusion of the subtalar joint. The VA decided that the Right Achilles Tendinosis, with Degenerative Joint Disease (coded 5271-5003) should be rated at 10%.

The Physical Disability Board of Review (PDBR) examined all of the evidentiary information available. At the time of separation from service, the CI was suffering from pain and loss of motion in the right lower extremity. The Board noted that the Navy PEB and the VA chose different coding options for the Right Achilles/Right Ankle condition. IAW VASRD §4.71a, either of these coding options could be applied to this case. However, whether it is coded 5284 (Foot injury, moderate) or 5271-5003 (Ankle, limited motion, moderate; with DJD) the rating is the same. Using either coding option, the Right Achilles/Right Ankle condition qualifies for a 10% rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating determination for the Chronic Right Achilles Tendinosis.

Traumatic Brain Injury (TBI). The CI sustained two blast injuries while in Iraq. The first occurred in October 2006, resulting in a brief loss of consciousness (LOC) and a short period of confusion. The second occurred in November 2006, causing tinnitus but no LOC. In April 2007, the CI sought treatment for headaches, memory loss, sleep disturbance, irritability, and balance problems. He stated that the symptoms began shortly after his blast exposures. Magnetic Resonance Imaging (MRI) of the brain was normal. Neuropsychological (NP) testing in June 2007 confirmed mild deficits in verbal fluency, problem solving, coordination, fine motor speed, and cognitive flexibility. He was treated with medication, vestibular rehabilitation, and cognitive rehabilitation. By September 2007 the CI reported improved balance and sleep, but still had memory difficulties. A Neurology evaluation in November 2007 (by Dr. J.) found that in spite of his improvement, the symptoms were still severe enough to hinder his ability to be a Marine. Dr. J. diagnosed TBI, Headaches (with mixed features including migraine), Insomnia, Mood disorder, and Changes in memory. As noted above, the FPEB rated Traumatic Brain Injury at 10%, and listed four other conditions (Mood disorder, Insomnia, Headaches and Changes in memory) as Category II (related to the TBI). In early 2008, the CI underwent the VA Compensation and Pension (C&P) examination process. Based on that evaluation, the VA assigned a rating of 10% for Traumatic Brain Injury with Headaches (coded 8045-8100), 10% for Cognitive Disorder with Sleep Disorder (coded 8045-9304), and 10% for Tinnitus (coded 6260).

Once again, the Physical Disability Board of Review (PDBR) examined all of the evidentiary information available. The Board’s rating recommendation for 8045, Traumatic Brain Injury (TBI), is directly impacted in this case by the following policy (established by firm precedent and prior legal opinion). As an implied extension of the DoDI 6040.44 and NDAA 2008 mandates, the Board will comply with applicable VA disability rating policy changes issued via 'FAST' or Training Letters effective at the time of separation. The VA Training Letter, TL07-05 dated 31 August 2007, specifically addressed the need for a more comprehensive rating approach to TBI pending the promulgation of the current VASRD rating formula, FL08-36 effective 23 October 2008. The VA Training Letter TL07-05 provided for rating TBI by combining separate ratings from each component of the symptom complex. In this case that entails separate ratings for Dementia due to head trauma (coded 8045-9304), Headaches (coded 8045-8100), and Tinnitus (coded 8045-6260). In effect, this renders each condition as separately unfitting for purposes of the Service combined disability rating.

The Training Letter (TL07-05) recommends rating mental impairment from TBI as Dementia due to Head Trauma (diagnostic code 9304). The Training Letter goes on to state that “if the cluster of symptoms, including cognitive impairment, is encompassed by the mental disorder, evaluation under the General Rating Formula for Mental Disorders” is appropriate. The Board determined that the CI’s symptoms which are in this symptom cluster include mood disorder (irritability), sleep disorder (insomnia), memory loss, and the documented cognitive deficits. In considering the occupational and social impairment, per the General Rating Formula for Mental Disorders, the Board directed its attention to the VA C&P psychiatric evaluation (by Dr. R.) on 31 January 2008. Dr. R. specifically noted that “Psychiatric symptoms are mild or transient but cause occupational and social impairment with decrease in work efficiency and occupational tasks only during periods of significant stress.” This description of impairment correlates very closely with the 10% disability rating in the General Rating Formula for Mental Disorders (IAW VASRD §4.130). As for the CI’s head pain, the Board determined that his headaches did not reach the level of “prostrating attacks” under diagnostic code 8100 (IAW VASRD §4.124a), and therefore the headaches qualify for a rating of 0% (non-compensable). With regard to Tinnitus, the Board determined that the CI’s Tinnitus would be appropriately rated 10% under diagnostic code 6260 (IAW VASRD §4.87).

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously agrees on 10% for Dementia due to Head Trauma, 10% for Tinnitus, and 0% for Headaches.

Post-traumatic Stress Disorder. PTSD is mentioned in the June 2007 neuropsychological testing by Dr. T. The CI told her that he had been diagnosed and treated for PTSD in 2007 by Ms. S. at One Source. CI reported that he had learned coping skills and was “doing better, no more bad dreams, panic attacks or freezing.” During his visits to neurology in July 2007, there is no mention of PTSD. Division Psychiatry noted in November 2007 that the CI’s “symptoms seem short of PTSD criteria at this time as patient is coping well.” In December 2007, a clinical psychologist at Division Psychiatry noted that the CI “continued to not meet the diagnostic criteria for PTSD.” At that time, CI had a Global Assessment of Functioning (GAF) of 70 and was drinking alcohol excessively. Neither the informal PEB nor the formal PEB mentioned PTSD in their findings. During a VA Psychiatric C&P exam (January 2008) Dr. R. stated that the “claimant does not seem to have post-traumatic stress disorder at this time. He denies hyper-vigilance, nightmares, intrusive memories or flashbacks. He has a little bit of startle reaction. He did experience a number of traumatic events and may develop post traumatic stress disorder at a later date.” At a VA evaluation for TBI (3 mos. post separation), Dr. L. stated “It is also quite likely that all of his symptoms are related to the post concussion syndrome or traumatic brain injury.” The Board noted that the CI seemed to function well with members of his unit. He clearly was able to maintain social and work relationships. The Commander’s Statement specifically states that he had good potential for continued service, in spite of his mental condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of PTSD as an unfitting condition for separation rating.

History of Other Conditions in the Disability Evaluation System (DES) package. Back pain, Left and Right knee pain (Bilateral patellofemoral syndrome), Left tibial stress fracture, and Left foot sesamoid fracture were also discussed and considered by the Board. There is no clearly documented evidence that any of these conditions caused a significant adverse effect on the performance of required military duties. These other conditions are all judged by the Board to be not unfitting at the time of separation from service, and are not relevant for disability rating. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

History of Other Conditions (not documented in DES file). Contact dermatitis and Hammertoe of the right fourth toe were also noted by the Board. There is no evidence that these conditions were a matter of record in the DES package. Therefore, Contact dermatitis and Hammertoe are judged to be outside the scope of this Board.

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. As discussed above, some Board recommendations in this case are IAW application of VA TL 07-05 (31 Aug 2007), with regard to rating under VASRD code 8045, prior to the VASRD revision for TBI in October 2008.

In the matter of the Right Achilles Tendinosis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication.

In the matter of the Traumatic Brain Injury, the Board unanimously recommends a rating of 10% for Dementia due to Brain Trauma (coded 8045-9304), 10% for Tinnitus (coded 8045-6260), and 0% for Headaches (coded 8045-8100).

In the matter of the PTSD, Back pain, Bilateral knee pain, Tibial stress fracture, Left Foot Fracture, 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.

Contact Dermatitis and Hammertoe, rated by the VA, were not a matter of record in the Disability Evaluation System (DES) package and are therefore outside the scope of the Board. The CI retains the right to request his service Board for Correction of Naval Records (BCNR) to consider adding these conditions as unfitting.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Achilles Tendinosis | 5284 | 10% |
| TBI – Dementia Due to Brain Trauma | 8045-9304 | 10% |
| TBI – Recurrent Tinnitus | 8045-6260 | 10% |
| TBI – Headaches with Mixed Features, including Migraine | 8045-8100 | 0% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090903, 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 XXXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) PDBR ltr of 14 Feb 11

(b) DoDI 6040.44

1. I have reviewed reference (a) pursuant to 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 30 percent (increased from 20 percent) with placement on the Permanent Disability Retired List effective 15 July 2008.

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

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)