RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900559 SEPARATION DATE: 20050612

BOARD DATE: 20110208 TDRL DATE: 20021212

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Marine O3E/CAPT (0302, Infantry Officer) medically separated from the Marines in 2002 after 12 years 5 months of service. The medical basis for the separation was Recurrent Venous Thrombosis with a Category II clotting disorder (Activated Protein Resistance, Possibly Hereditary). The CI developed left calf swelling attributed to trauma in 2001; likely a deep venous thrombosis [DVT] in retrospect. He had an episode of left arm cellulitis from intravenous treatment of dehydration, and was later re-evaluated for complaints of pleuritic chest pain and shortness of breath (SOB). The CI was air evacuated to Tripler Army Hospital and diagnosed with bilateral pulmonary emboli at the lung bases. The CI was anticoagulated and treated with Coumadin (long-term anticoagulation) for six months on Limited Duty (LIMDU). When the anticoagulant was stopped, the CI developed a left lower extremity (LLE) DVT and was found to have a “Factor V Leiden variation, a genetic abnormality that predisposes to deep venous thrombosis.” The CI did not respond adequately to perform within his military occupational specialty (MOS) and was issued a permanent L-3 profile and underwent a Medical Evaluation Board (MEB). The initial MEB listed Bilateral Pulmonary Emboli (PE) on NAVMED 6100/1, which was changed to Recurrent Venous Thrombosis and Activated Protein C Resistance, Possibly Hereditary prior to forwarding to the Informal Physical Evaluation Board (IPEB). The IPEB found Recurrent Venous Thrombosis unfitting at 40% with possible application of SECNAVIST 1850.4E and/or DODI 1332.39, with a Category II clotting disorder (“Activated Protein Resistance, Possibly Hereditary related to diagnosis #1”) and the CI was placed onto the Temporary Disability Retired List (TDRL). On final TDRL re-evaluation, the CI had LLE Postphlebitic syndrome and was otherwise well controlled on “lifelong therapeutic anticoagulation.” The IPEB (20041220) adjudicated Recurrent Venous thrombosis as unfitting rated 10%; with possible application of SECNAVIST 1850.4E and/or DODI 1332.39 which were in effect at the time. The IPEB adjudicated the Activated Protein C Resistance, Possibly Hereditary as Category II. The CI appealed for continuation on TDRL at 40%. The Formal PEB (FPEB) adjudicated the same diagnoses as the IPEB, discussed the CI’s Category II diagnosis, and indicated a combined total disability rating of 20% using VA code 7120. The CI was therefore removed from TDRL and separated with a 20% disability. The CI made an appeal to the Board for Correction of Naval Records (BCNR) on 20061023 and was denied.

CI CONTENTION: No CI contention was on application, DD Form 294, 200909113. The CI did list his VA rated conditions of 10% and higher as per the rating chart below. Contention for their addition to separation rating is implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB - 20050308** | | | | | **VA (2.5 yrs Prior to TDRL Removal) – All 20021213** | | | |
| **Condition** | **Code** | | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL - 20021212** | **TDRL** | **Sep.** |  |
| Recurrent Venous Thrombosis | 7120 | | 40% | 20% | Deep Venous Thrombosis, L/Lower Extremity | 7121 | 10% | 20020930 |
| Activated Protein C Resistance Possibly Hereditary | | Category II | | | Bilateral Base Pulmonary Emboli Secondary to Deep Venous Thrombosis | 6817 | 60% | 20020930 |
| ↓No Additional MEB/PEB Entries↓ | | | | | Thrombophlebitis cellulitis, L Arm … Lipomas | 7819 | 0% | 20020930 |
| R & L Knee degen, L Hip, R shoulder, Cervical & Lumbar spine EACH | | 6x 10% | 20020930 |
| Left Eye … | 6025 | 10% | 20020930 |
| Tinnitus | 6260 | 10% | 20020930 |
| Deviated Septum … | 6502 | 0% | 20020930 |
| **TOTAL Combined: 20%** | | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 90%** | | | |

ANALYSIS SUMMARY: The potential that the CI had not improved over the course of his TDRL period can be both supported and questioned by various interpretations. The Board takes the position that subjective improvement or worsening should not influence its coding and rating recommendation at the time of separation. It is recognized, in fact, that PEB’s across the services sometimes apply an overly generous initial rating in order to meet the requirement of 30% disability for placement on TDRL. This is in the member’s best interest at the time and does not mean that a final lower rating is unfair, even if the applicant does not perceive any improvement. The sole basis for the Board’s recommendation is the optimal VA Schedule for Rating Disabilities (VASRD) rating for disability at separation and final TDRL adjudication. The exams from the military and VA examiners were essentially equivalent. The deliberations for rating(s) for this case focused principally on the application of alternative VASRD coding rather than differences in probative value of any exam. The major disparity in coding between the FPEB and the VA was the VA’s use of code 6817 (for pulmonary embolism) which was directly linked to the CI’s unfitting “Recurrent DVTs” and requirement for chronic/life-long anticoagulant therapy. The PEB reliance on the rescinded DoDI 1332.39 (E2.4. Anticoagulation Prophylaxis or Treatment) and SECNAVINST 1850.4E (E9 and para 9004) for rating Deep Venous Thrombosis and anticoagulation appeared operant in this case, and the conditions were adjudicated independently of that policy and regulation by the Board.

Recurrent Venous Thrombosis with Coagulopathy. The CI had an initial left leg DVT with recurrent DVTs including Bilateral Base Pulmonary Emboli Secondary to Deep Venous Thrombosis, a hereditary coagulopathy and requirement for life-long anticoagulation. The initial entry for TDRL with a VA code 7120 (Varicose veins) at 40% for recurrent DVTs was clearly not per VASRD 40% criteria of “Persistent edema and stasis pigmentation or eczema, with or without intermittent ulceration”, but likely a non-stated analogous coding to allow for placement into TDRL. The coding at exit from TDRL also was not IAW the VASRD; given the exam and diagnosis for the left leg condition at the end of the TDRL period it would most appropriately be coded as Post-phlebitic Syndrome, 7121 at 10%. However, at separation from TDRL, the FPEB provided a rationale that was not IAW the VASRD in effect at the time, but appeared to consider the CI’s recurrent DVTs, hereditary coagulopathy and chronic requirement for anticoagulation to arrive at a rating coding higher than the informal PEB’s 10%. The FPEB indicated that the 2003 VA rating documents (see table above) were in evidence and the FPEB stated:

*(that the Recurrent Venous Thrombosis) “…limits the member's activities which interfere with the adequate performance of required military duties.” “Therefore, diagnosis 1 (Recurrent Venous Thrombosis) is most appropriately rated under VA code 7120 (Varicose veins) at 20%.” “Diagnosis 2 (Activated Protein C Resistance Possibly Hereditary) is considered Category II and is related to diagnosis 1. The condition is genetically inherited but the length of service (LOS) greater than 8 years voids the existed prior to service (EPTS) rule. The above ratings combine for a total disability rating of 20%.”*

VA code 7120 (Varicose veins) criteria for 20% is “Persistent edema, incompletely relieved by elevation of extremity, with or without beginning stasis pigmentation or eczema” is contradicted by the exam findings of “… Revealed normal distal pulses. There were a few venous varicosities affecting the left lower extremity. There was no cyanosis or edema. No cords were palpable. Deep tendon reflexes were 1 to 2+ and equal throughout. No apparent tenderness to pressure. There were no trophic skin changes or evidence of stasis dermatitis.” Diagnosis was “Postphlebitic syndrome, left lower extremity.” The VA (near entry into TDRL) used essentially the same exams and history as the military and rated the CI’s DVT-related conditions as 7121 (Left Lower Extremity Deep Venous Thrombosis) at 10%, and 6817 (Bilateral Base Pulmonary Emboli Secondary to Deep Venous Thrombosis) at 60%. The 6817 (Pulmonary Vascular Disease) criteria for 60% are: “Chronic pulmonary thromboembolism requiring anticoagulant therapy, or …”. The Board discussed the latitude for analogous coding for 6817 and noted that the VA used that coding. The interpretation and latitude for using this coding with this case was discussed with the VA central rating office staff and the AF Board for Correction of Military Records (AFBCMR) Medical Advisor. The VA endorsed the prior coding as correct and acceptable; the AF noted ongoing disagreement about similar cases among PEB-level medical adjudicators, and indicated that it was an area of judgment for specific cases. Regarding the recurrent DVTs including Bilateral Base Pulmonary Emboli, the CI’s coagulopathy and required life-long anticoagulant therapy for DVT and pulmonary emboli risks in this case, the Board deliberated in depth concerning the FPEB’s and the VA’s non-standard VASRD coding determinations and rationales. The CI’s condition was clearly worse than coding only IAW 7121 Post-Phlebitic Syndrome. The Board could not fully support the use of 6817 at 60% for the CI’s significant bilateral pulmonary emboli given the absence of repeated episodes of pulmonary emboli. The Board also considered that the significant pulmonary emboli and requiring chronic anticoagulant therapy and the underlying coagulopathy could not be completely omitted from the rating consideration. The Board considered using (analogous) coding as the PEB did, to raise the evaluation to provide a higher level rating to more clearly represent the complete disability picture of the CI’s conditions. The Board looked at the FPEB coding in which they used the coding of 7120 (in an analogous manner), and agreed that this rating scheme could be used. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board agreed upon Recurrent Venous Thrombosis with Activated Protein C Resistance and Bilateral Base Pulmonary Emboli Requiring Anticoagulant Therapy for separation rating as: 7199-7120 rated at 40% IAW VASRD §4.104 and §4.96 for entry into TDRL and for final rating at the end of the TDRL period.

Thrombophlebitis cellulitis, Left/Upper Extremity w/Multiple Lipomas: The Board reviewed the CI’s history of Left Upper Extremity Thrombophlebitis Cellulitis, manifested by the clot in the CI’s arm at an IV site before his pulmonary thromboembolism in 2001. The condition completely resolved with appropriate symptomatic treatment. There is no evidence in the Service Treatment Record (STR) or non-medical assessment that this condition prevented him from accomplishing his duties. It may very well be related to his underlying genetic clotting disorder, but does not warrant additional disability coding under VASRD. All evidence considered there is not reasonable doubt in the CI’s favor supporting addition of the left arm condition as an unfitting condition for separation rating.

Other Conditions: (Left Knee, Right/Knee, Left Hip, Right Shoulder, Cervical Spine, Lumbar Strain, Left Eye, Tinnitus, And Deviated Nasal Septum): The right and left knee degenerative changes and Right Shoulder Tendonitis with Impingement conditions were noted in the Disability Evaluation System (DES) package. Neither the LIMDU, NMA, nor NARSUMs identified any conditions other than the CI’s left leg, pulmonary emboli, and abnormal clotting, and venous thrombosis conditions. No link to fitness can be drawn for these conditions. All evidence considered there is not reasonable doubt in the CI’s favor supporting addition of the left knee, right knee or right shoulder conditions as unfitting conditions for separation rating. The Left Hip Tendonitis, Cervical Spine Strain, Lumbar Strain, Left Eye Hyperlacrimation and Tinnitus were rated at 10% by the VA, but were not mentioned in the DES package. 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. As discussed above, PEB reliance on DoDI 1332.39 for rating Recurrent Deep Venous Thrombosis related to Activated Protein C Resistance Possibly Hereditary [APCR] was likely operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the CI’s recurrent DVTs including Bilateral Base Pulmonary Emboli Secondary to Deep Venous Thrombosis, hereditary coagulopathy and chronic requirement for anticoagulation, the Board in a 2:1 vote, with one Board member electing not to write a minority opinion, recommends that it be analogously coded for separation rating as: 7199-7120 rated at 40% IAW VASRD §4.96 and with consideration of §4.100 for final rating at the end of the TDRL period. In the matter of the Right Knee, Left Knee and Right Shoulder conditions, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. 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 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.

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Recurrent Venous Thrombosis with Activated Protein C Resistance and Bilateral Base Pulmonary Emboli Requiring Anticoagulant Therapy | 7199-7120 | 40% | 40% |
| **COMBINED** | **40%** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090913, 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

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Ref: (a) PDBR ltr of 22 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 40 percent (increased from 20 percent) with placement on the Permanent Disability Retired List effective 12 December 2002.

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)