RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900564 SEPARATION DATE: 20050825

BOARD DATE: 20110216

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty E-5/SGT (1833, Assault Amphibious Vehicle Crewman) medically separated from the Marine Corps in 2005 after more than seven years of total service. The medical basis for the separation was neuropathic pain and retained bullet in the right pelvis. He did not respond to treatment adequately to perform the duties of his military occupational specialty or participate in a physical fitness test. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). The retained bullet in the right pelvis and neuropathic pain, particularly with exercise, were addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB). Additional conditions supported in the Disability Evaluation System (DES) packet are discussed below but were not adjudicated by the informal PEB (IPEB). The IPEB adjudicated the neuropathic pain condition as unfitting, rated 0% with application of DoDI 1332.39 (E2.A1.5). The retained bullet in the right pelvis condition was determined to be a related Category II condition. The CI made no appeals and was medically separated with a 0% disability rating.

CI CONTENTION: The CI states: “The rating should be changed due to the fact that the nerve damage was rated at zero when it was clear that the condition would have affects for many years if not the rest of my life. I went through many tests which showed that I had severe nerve damage in my right leg and lower back from the bullet and since the bullet is still inside could cause more damage later due to the fact it can and will move over time. I still have to deal with pain on a regular basis but have no choice but to deal with due to the fact I cannot take narcotic pain killers because I have to drive a lot for my work. So I usually take Ibuprofen to make the pain bearable so that I can continue to work. I do not know if you will compare my VA records and ratings to my records while on active duty but I will list some of the problems which were not addressed but clearly overlooked, I have problems with my shoulders which were not addressed, the only real condition that was addressed was the nerve damage and it was a great enough disability to be medically discharged but not to be rated higher than Zero. I have also been diagnosed with PTSD. I received a rating from the V.A for PTSD. I was asked some questions about dreams and things of that nature. They were just overlooked. The doctor actually said it’s normal and ok and not to worry too much about it. My physical when being discharged was not very thorough. The doctor did not really take anything I said into consideration, also have issues with hearing which were overlooked. I have constant ringing in both ears I believe my medical records will show my hearing loss over the years while on active duty. Also I have had extreme problems with short term memory loss forgetting the smallest of things and it has gotten progressively worse, this is something that I have never had a problem with before. I also have problems sleeping I do not sleep through the entire night I wake up constantly and different times of the night completely soaked in sweat and I have no idea why.”

\*\* Rating Comparison Table is located on the next page.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050627** | | | **VA (1 Month Prior to Separation)**  **Effective 20050901 Except as Noted** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Neuropathic Pain Particularly with Exercise | 8729 | 0% | Neuropathic Pain Right Lower Extremity | 8526 | 10% | 20050713 |
| Retained Bullet in the Right Pelvis | Cat II | | Status Post Gun Shot Wound of the Left Lower Side, with Retained Bullet Fragment in the Right Pelvis and Scarring | 5316 | 10% | 20050713 |
| Scars, Abdomen, from Surgical Procedure to Repair the Gun Shot Wound Injuries  \*Effective 20071201 | 7804 | 10%  0%\* | 20050713  20070427 |
| NARSUM | | | Resection of the Transverse Colon Associated with Status Post Gunshot Wound | 7329 | 10% | 20050713 |
| MEB H&P | | | Liver Repair (Secondary to Gun Shot Wound) | 7311-7345 | 0% | 20050713 |
| MEB H&P | | | Incompletely Healed Shoulder Dislocation | 5201-5024 | 10% | 20050713 |
| MEB H&P | | | Bilateral Hearing Loss | NSC | | |
| No additional DES entries | | | Bilateral Tinnitus | 6260 | 10% | 20050722 |
| Lumbar Spine Strain | 5237-5024 | 10% | 20050713 |
| Bilateral Pes Planus | 5276 | 0% | 20050713 |
| Anxiety Disorder, claimed as nightmares  \*Effective 20050901 to 20070139 | 9413 | 0%\* | 20050727 |
| Posttraumatic Stress Disorder  \*Effective 20070129 | 9411 | 30%\* | 20070427 |
| **TOTAL Combined: 0%** | | | **TOTAL Combined:**  **50% from 20050901 with Bilateral Factor 2.7%**  **60% from 20070129 with Bilateral Factor 2.7%** | | | |

ANALYSIS SUMMARY:

Neuropathic Pain Right Lower Extremity (Particularly with Exercise) Condition. The NARSUM of May 12, 2005 noted that the CI sustained a gunshot wound to the left abdomen during the battle of Fallujah. He was taken to a forward resuscitative surgical team where he underwent an emergency exploratory laparotomy and repair of lacerations to his transverse colon and jejunum as well as ligation of bleeding mesenteric blood vessels. He was medevaced to Landstuhl, Bethesda and then to Naval Hospital, Camp Lejeune (NHCL) with an open abdominal wound. He subsequently underwent an uneventful, delayed primary closure of the open abdominal wound. During the initial postoperative period and then again following convalescent leave, he complained of pain and sensitivity to light touch over his right anterior thigh. He underwent a computed tomography (CT) scan on January 9, 2005 which revealed the presence of a bullet which appeared to be lodged in the iliopsoas muscle, near the right iliac wing. He subsequently underwent a neurologic workup at NHCL, as well as a consultation with Neurology at Portsmouth Naval Hospital. Electrodiagnostic studies were performed which were normal; however, the patient continued to have pain and paresthesias in the right lower extremity which are worsened with even mild physical activity. A surgical opinion was obtained from UNC Chapel Hill on April 21, 2005 to evaluate the possibility of removing the bullet fragment in the right pelvis. It was determined that the potential risks outweighed the benefits and no surgery was performed. The NARSUM examination was remarkable only for soft, nontender, non-distended abdomen with a well-healed wound and neurologic exam which was grossly intact except for paresthesias with light touch along the anterior thigh from the inguinal ligament to the knee. Otherwise, no abnormalities were noted. The final diagnoses were retained bullet in the right pelvis and neuropathic pain, particularly with exercise. The NARSUM found that the CI was currently, and in the foreseeable future, unable to successfully perform his military duties and complete the Physical Fitness Test. It was recommended, since his medical condition at the time precluded him from continuation on active duty, that he be referred to the PEB for further evaluation and disposition.

The MEB history and physical examination performed on May 5, 2005 documented normal upper and lower extremity examinations except for the paresthesias with sensitivity to light touch of the anterior right thigh. Abdominal examination revealed a well-healed surgical scar with no tenderness, masses, or distention. Diagnoses were retained bullet in the right pelvis and neuropathic pain/paresthesias of the right thigh. The Commander’s statement noted that, “Sergeant Mullen is a productive member of this command to the extent that his medical condition will allow him to perform. I would like to see this Marine finish his contract and/or reenlist, should he so desire, upon a speedy return to full duty. He will continue to be gainfully employed until that time. I do not recommend retention if the extent of his injury worsens or if he will be unable to conform to physical fitness standards expected of all Marines.”

The VA Compensation and Pension (C&P) Examination on July 13, 2005 (one month before separation) documented retention of motor function with flexion, extension, adduction and abduction of the lower legs, feet, and thighs with strength of 5/5 in all quadrants. The right and left lower extremity deep tendon reflexes were 3+. There was hypersensitivity to slight pressure with pain in the entirety of the right anterior thigh from the bullet wound injury. The changes were noted with light touch, pinprick, and ability to determine sharp from dull. Vibratory sensation was reduced on the right lower leg and right knee compared to the left side, and there is hyperesthesia of the right thigh associated with the injury to the sensory channel of the sciatic nerve.

The IPEB adjudicated the neuropathic pain condition as unfitting, rated 0%, code 8729; with application of DoDI 1332.39 (E2.A1.5). The retained bullet in the right pelvis condition was determined to be a related Category II condition. The CI obviously suffered some degree of impairment from this condition, as evidenced by the necessity of medical separation from active duty. A 0% rating seems incongruous in that regard. The neuropathic pain condition was coded 8729 (neuralgia of external cutaneous nerve of the thigh) implying a painful condition of the nerve. This condition was both painful and caused paresthesia of the nerve which would be best described as neuritis (code 8629); however, the rating is unaffected by the code. The VASRD states that when the nerve injury is wholly sensory (pain and paresthesia), without motor deficits, the rating should be for mild or, at most, moderate degree. The rating for mild to moderate impairment of the external cutaneous nerve of the thigh is 0%.

The VA rated this as code 8526 for mild incomplete paralysis of the anterior crural nerve (femoral nerve) which is a 10% rating. The femoral nerve is comprised of segments from the L2, L3, and L4 nerve roots and provides innervation to the psoas and iliacus muscles and penetrates the psoas muscle prior to exiting the pelvic area into the thigh. The CI complained primarily of sensory nerve symptoms (pain and paresthesia) involving the anterior right thigh. Sensory innervation of the anterior thigh is from the L1, L2, andL3 nerve roots via the Femoral Nerve or the lateral femoral cutaneous nerve which is near the femoral nerve in the pelvis but exits the pelvis laterally, separate from the femoral nerve. His clinical presentation clearly indicates that there was femoral nerve damage as the bullet fragment traversed the pelvis lodging in the iliopsoas muscle. There might also have been some involvement of the lateral femoral cutaneous nerve; however, the clinical descriptions of the location of his sensory loss are not detailed enough to show this with certainty. All examinations demonstrated normal motor function for the lower extremity and the hip flexors indicating that his nerve damage was primarily sensory in nature. The record also noted some sensory symptoms involving the lower leg. These symptoms are likely related to the saphenous nerve which also originates from the femoral nerve. The VA examiner noted that there was nerve damage to the Sciatic Nerve. This is unlikely since the sciatic nerve originates from the L4, L5, S1, S2, and S3 nerve roots and does not provide sensory innervation to the anterior thigh. The neuropathic pain condition appears to be accurately coded by the VA for involvement of the anterior crural (femoral) nerve. The VA utilized code 8526 for paralysis of the nerve. A more appropriate code would be 8626 for neuritis (causing pain and paresthesias) of that nerve. The VASRD states that when the nerve injury is wholly sensory (pain and paresthesia), without motor deficits, the rating should be for mild or, at most, moderate degree of paralysis. The VASRD rating for mild impairment of the femoral nerve is 10% and moderate impairment is 20%. The VA rating of 10% does provide evidence in support of a rating at that level.

The Board carefully considered all evidence related to the neuropathic pain condition, whether the condition represented a mild or moderate impairment, and unanimously recommends a change in VASRD code to 8626 (anterior crural (femoral) nerve neuritis) with a final permanent impairment rating of 10%.

Retained Bullet in the Right Pelvis. A CT scan on January 19, 2005 revealed the presence of a bullet fragment which appeared to be lodged in the iliopsoas muscle, near the right iliac wing. The IPEB adjudicated the retained bullet in the right pelvis as a Category II condition related to the unfitting neuropathic pain condition. The VA assigned a 10 percent evaluation due to findings of a retained foreign body which was considered a moderate muscle disability. The military and VA examinations do not document any muscle or motor impairment related to the gunshot wound or the retained bullet fragment. The CI’s unfitting symptoms were related to the neuropathic pain resulting from the injury, thus the retained bullet in the right pelvis condition was a related condition which was appropriately adjudicated by the PEB as a Category II condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness determination for the retained bullet in the right pelvis condition.

Scars, Abdomen, from Surgical Procedure to Repair the Gun Shot Wound Injuries. The MEB exam documented the abdomen to be soft and non-tender with a well-healed surgical scar. The VA assigned an evaluation of 10 percent from September 1, 2005. The 10% was granted for a superficial scar that was painful on examination. It is noted that a subsequent VA rating decision on August 28, 2007 would decrease this rating to 0%. The Board finds no evidence that the scars, abdomen, from surgical procedure to repair the gunshot wound injuries condition interfered with performance of required duties or was unfitting at the time of separation from service. The Board, therefore, has no reasonable basis for recommending this as an additional unfitting condition for separation rating.

Resection of the Transverse Colon. Following his injury during the battle of Fallujah, the CI underwent an emergency exploratory laparotomy with repair of a grade 3 laceration to his transverse colon as well as four grade three lacerations of the jejunum. Segmental resection with primary anastomosis was performed on both the transverse colon and jejunum. He was subsequently medevaced to Landstuhl, Bethesda and then to NHCL where he underwent an uneventful, delayed primary closure of his open abdominal wound. The NARSUM documented a soft, nontender, non-distended abdomen with a well-healed surgical scar. The MEB exam documented that, following the bowel resection, he was stable with no sequelae other than those associated with the retained bullet fragment in the pelvis. No abdominal pain or bowel control problems were noted. The operative report on November 19, 2004 noted that “the patient preoperatively had resumed normal digestion and elimination postop from his exploratory laparotomy and repair of bowel injuries.” The VA C&P exam noted, “He does report irregular bowel activity with sudden impulse to defecate, which must be answered quickly or he will soil his clothes. He has right lower and middle abdominal pain with this.” No similar complaints are noted in the service treatment records or DES file. The Board finds no evidence that the resection of the transverse colon condition interfered with performance of duties or was unfitting at the time of separation from service. The Board, therefore, has no reasonable basis for recommending this as an additional unfitting condition for separation rating.

Liver Repair. The VA C&P examination on July 13, 2005 noted that the Iiver repair was due to serious bleeding during the injury. The VA rated this condition at 0% since there was no evidence of residual complications. The operative report at the time of his injury does not document a specific liver injury or damage to the portal vein or hepatic artery. The records provided show no evidence of liver damage or routine monitoring of liver function following his injury. The MEB history and physical examination mentioned liver damage as a result of the gunshot wound. The Board finds no evidence for liver damage or repair and has no reasonable basis for recommending this as an additional unfitting condition for separation rating.

Shoulder Dislocation, Incompletely Healed. The service treatment records do document an injury to the right shoulder in August 2003 related to a fight with a burglar in his house. The treatment note on August 30, 2003 documented some tenderness to palpation with full range of motion and a diagnosis of right shoulder strain. Follow-up on October 7, 2003 showed continuing pain with only minor tenderness and full motion. X-rays were obtained, which were normal, and physical therapy was ordered. The therapist felt that he had a rotator cuff strain status post subluxation injury. An appropriate rehabilitation protocol was recommended and no further documentation is noted for this condition. The MEB examination documented a normal upper extremity examination. It does note a fractured left clavicle at age 16 that healed without complications. At that time no mention is made, by either the examiner or the CI, of symptoms of shoulder pain or limitation. The VA C&P examination on July 13, 2005 noted that he has a torn rotator cuff with ongoing symptoms that flare two to three times weekly. The diagnosis was incompletely healed right shoulder dislocation. The VA would assign an evaluation of 10% from September 1, 2005. A 10% evaluation was assigned for painful or limited motion of a major joint. A higher evaluation of 20% was not warranted since arm motion was not limited at the shoulder level. The Board finds no evidence that the shoulder dislocation, incompletely healed condition interfered with performance of required duties or was unfitting at the time of separation from service. The Board, therefore, has no reasonable basis for recommending this as an additional unfitting condition for separation rating.

Bilateral Hearing Loss. This condition was mentioned in the MEB history and physical but was not adjudicated by the PEB. The Puretone threshold average of 15dB on the left and 7.5dB on the right was documented. The VA determined criteria were not met for defective hearing and determined this condition was not service connected. The service treatment record documented no limitations attributable to this condition, and it did not interfere with performance of any required duties. The Board, therefore, has no reasonable basis for recommending this as an additional unfitting condition for separation rating.

Conditions not in the DES File. The following conditions were not mentioned in the DES file and therefore are outside of the scope of the Board: bilateral tinnitus, lumbar strain condition, bilateral pes planus, anxiety disorder, and Posttraumatic Stress Disorder. 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.

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 the neuropathic pain right lower extremity (particularly with exercise) condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the neuropathic pain right lower extremity (particularly with exercise) condition, the Board unanimously recommends a rating of 10%, coded 8626, IAW VASRD §4.124a. In the matter of the retained bullet in the right pelvis condition, the Board unanimously recommends no change in the PEB adjudication as a related Category II condition that is not separately unfitting. The manifestations of the retained bullet are primarily neuropathic pain and paresthesias that are rated with that condition. In the matter of the scars, abdomen, from surgical procedure to repair the gunshot wound injuries, resection of the transverse colon, liver repair, shoulder dislocation, incompletely healed, and hearing loss conditions the Board unanimously determined that it cannot recommend any findings of unfit for additional rating at separation. In the matter of the bilateral tinnitus, lumbar strain condition, bilateral pes planus, anxiety disorder (claimed as nightmares), and PTSD, the Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for these conditions which were not considered by the DES.

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** |
| Neuropathic Pain Right Lower Extremity (Particularly with Exercise) | 8626 | 10% |
| Retained Bullet in the Right Pelvis | Cat II | |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090915, 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 8 Mar 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (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 10 percent (increased from 0 percent) effective 25 August 2005.

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

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)