RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900581 BOARD DATE: 20100929

SEPARATION DATE: 20040215

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SUMMARY OF CASE: This covered individual (CI) was Lance Corporal Disbursing Clerk medically separated from the Marine Corps in 2004 after 1 year and 7 months of service. The medical basis for the separation was C1 Fracture with chronic non-union. The CI was referred to the Physical Evaluation Board (PEB), determined unfit for continued Naval service, and separated at 10% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

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CI CONTENTION: The CI states: ‘I had a service-connected fracture of my C-1 vertebrae. Since that time I have had numerous problems with my neck. I have also had numerous mental conditions that doctors believe were created from this injury. These conditions were not properly evaluated to my present condition.’

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RATING COMPARISON:

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| **Service PEB 20030903** | | | | **VA (3.5 Years after Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Stable C1 Fracture with Chronic Non-Union | 5290 | 10% | 20030903 | Residual of Cervical Spine Fracture, C1 | 5235 | 10% | 20070917 | 20070312 |
| Not addressed by DES |  |  |  | Mental Health Condition | 9326 | NSC |  |  |
| Not addressed by DES |  |  |  | 2 other conditions |  | NSC |  |  |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 10%**  **10% from 20070312**  **10% from 20080221** | | | | |

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ANALYSIS SUMMARY:

Stable C1 Fracture with Chronic Non-Union Condition.

On 16 February 02 the CI fell five feet from a deck and landed on the frontal and temporal aspects of his head. He did not present to the Naval hospital until 25 February 02 because he believed the neck pain would improve. On initial evaluation he was noted to have tenderness to palpation along the posterior aspect of C1 and C2. C-spine x-rays and CT showed an ‘anterior C1 fracture’ which was stable and required conservative treatment only. This anatomic finding on imaging studies was thought to possibly be a congenital normal variant. The CI has continued to complain of daily pain with radiation to the both arms at times, worse with strenuous activity. The cervical spine range of motion has remained normal on most evaluations from prior to separation through the VA evaluation in September 2007. Only the VA Examination documents a full goniometric evaluation of motion. The Medical Evaluation Board (MEB) Narrative Summary (NARSUM) examination did note decreased motion as did several clinic treatment notes in the STR. However, specific measurements were not documented.

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| --- | --- | --- | --- | --- | --- |
| Movement  Cervical | Normal ROM | ROM Neurosurgery  20020627 | ROM NARSUM  20030306 | ROM Mil  20031009 | ROM VA  20070917 |
| Flex | 0-45 | Full | Decreased | Full | 0-45 |
| Ext | 0-45 | Full | Decreased | Full | 0-45 |
| R Lat flex | 0-45 |  |  |  | 0-45 |
| L lat flex | 0-45 |  |  |  | 0-45 |
| R rotation | 0-80 | 90 |  |  | 0-80 |
| L rotation | 0-80 | 90 |  |  | 0-80 |
| COMBINED | 340 |  |  |  | 340 |
| Notes: |  | No complaint of radiating pain/numbness; Bilateral Upper Extremities: DTR 2+; motor 5/5 strength; Sensory intact to light touch and prick. |  |  | ROM is normal |

Prior to separation, flexion and extension x-rays showed no instability. With a new complaint of numbness and tingling at times in both upper extremities, electrodiagnostic studies were performed in October 2003. These studies documented no evidence of peripheral neuropathy, nerve entrapment, or cervical radiculopathy. At the same time some decreased sensation to pinprick was noted on both sides of the neck but was not in a dermatomal pattern. The CI had consistently complained of chronic neck pain with limited motion. The PEB rated this condition at 10% by the PEB for Stable C1 Fracture with Chronic Non-Union Condition (VASRD code 5290).

It is noted that, by the 20070917 VA Compensation and Pension (C&P) Examination, neck x-rays were normal with no evidence of past C1 fracture. This finding confirms the initial diagnosis of acute C1 fracture and would likely rule out a congenital normal variant. Range of motion was normal at this evaluation. The VA would subsequently rate this as Residual of Cervical Spine Fracture at C1 (code 5235), also at 10%, based on the VA examination showing a reported history of stiffness, weakness, and spasms.

At the time of separation from service, the 2003 VASRD was in effect. While the PEB and the VA used different VASRD codes to rate this condition both applied a 10% rating. The PEB applied a 10% rating under 5209 Spine, limitation of motion of, cervical for slight limitation of motion of the cervical spine. A higher rating of 20% for moderate limitation of motion of the cervical spine is not warranted. The VA C&P examination documented full range of motion with no pain and no additional limitation of joint function due to pain, weakness, fatigue, lack of endurance, or incoordination after repetitive motion. They rated the condition at 10% under VASRD 5235 even though this code was not in effect until 20040624. The 10% rating appears to have been applied after looking not only at this C&P examination but at all the records pertaining to the CI’s condition. Multiple other documents in the service treatment record (STR) note slight decreased ROM and/or painful motion. The current VASRD’s General Rating Formula for Diseases and Injuries of the Spine has been in effect since 20040624. Utilizing this VASRD would result in the same 10% rating IAW VASRD §4.59. VASRD §4.59 states the intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint.

A rating of 20% using 5235 would require limited forward flexion of the cervical spine of greater than 15 degrees but not more than 30 degrees or muscle spasm or guarding severe enough to result in reversed lordosis. He clearly does not meet those thresholds. Although different codes are used for rating, both codes appear to be accurate and neither offers any advantage to the CI. After careful consideration of the medical evidence provided, the Board unanimously recommends no recharacterization of the PEB coding or rating.

Mental Health Condition. The VA denied service connection for any mental health condition because no mental health condition occurred in or was caused by service. No records related to a mental health condition are provided for Board review. This condition was not mentioned in the Disability Evaluation System (DES) package and is therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Naval Records (BCNR) to consider adding this condition as unfitting.

Other Conditions. The non-service connected conditions of Allergies/Sinus Condition and Grade 2 Right Ankle Sprain were not mentioned in the DES package and are therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Naval Records (BCNR) to consider adding these conditions as unfitting.

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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. After careful consideration of all available information the Board unanimously determined that the CI’s condition of Stable C1 Fracture with Chronic Non-Union is most appropriately rated at 10% under 5290.

The CI had continued pain and a slightly decreased range of motion of the cervical spine after a stable C1 fracture with chronic non-union. This warrants a 10% rating. Although the 2004 VASRD was not in effect until after the CI separated from service, if the condition had been rated using the updated VASRD, the rating would still be 10%. Neither VASRD offers any advantage to the CI.

The Mental Health Condition, Allergies/Sinus Condition, and Grade 2 Right Ankle Sprain, evaluated as not service connected by the VA, were not mentioned 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 of Correction for Naval Records (BCNR) to consider adding these conditions as unfitting.

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RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Stable C1 Fracture with Chronic Non-Union | 5290 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090817, 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 XXXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 15 OCT 10

I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (reference (b)) that LCPL XXXX’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.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)