ECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900582 BOARD DATE: 20101029

SEPARATION DATE: 20050915

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SUMMARY OF CASE: This covered individual (CI) was a active duty Sergeant, Mortarman, medically separated from the Marine Corps in 2005 after nine years and five months of service. The medical basis for the separation was Right Tibial Fracture. The CI sustained shrapnel wound to the right lower leg during combat operations in Iraq. Despite surgery, casting, and physical therapy the CI continued to have right lower extremity pain and numbness of the anterior portion of the right ankle. He was unable to run, push off with his right lower extremity, stand for prolonged periods, or carry a fully loaded pack on his back. 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 was rated at 30% from the VA for PTSD.’ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Rating Comparison table located on the next page.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB 20050808** | **VA (1 Month prior to Separation)****All Effective 20050916** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Tibial Fracture  | 5299-5003 | 10% | Scar, s/pGunshot Wound With Fracture, Right Tibia | 7804 | 10% | 20050818 |
| Status Post Gunshot Wound, Right Lower Leg | CAT II |
|  | NARSUMMEB H&P | L4 Sensory Neuropathy, s/p Gunshot Wound With Fracture, Right Tibia | 8620 | 10% | 20050818 |
| PTSD and Depressive Disorder, NOS | MEB NARSUM ADDENDUM | Post Traumatic Stress Disorder (PTSD) | 9411 | 30% | 20050827 |
|  | MEB H&P | Tinnitus | 6260 | 10% | 20050818 |
|  | MEB H&P | Strain, Left 3rd Finger, s/pShrapnel Wound, Left HandWith Residual Scar | 5229 | 0% | 20050818 |
|  | MEB H&P | Scar, s/pShrapnel Wound To Face | 7800 | 0% | 20050818 |
|  | Not in DES | Scar, Dorsal Right Hand | 7802 | 0% | 20050818 |
|  | Not in DES | Scars, Right Arm | 7802 | 0% | 20050818 |
|  | Not in DES | Residuals of Cold Injury, Left Upper Extremity | 5299-7122 | 20% | 20061004 |
|  | Not in DES | Residuals of Cold Injury, Right Upper Extremity | 5299-7122 | 20% | 20061004 |
|  | Not in DES | Residuals of Cold Injury, Left Lower Extremity | 5299-7122 | 20% | 20061004 |
|  | Not in DES | Residuals of Cold Injury, Right Lower Extremity | 5299-7122 | 20% | 20061004 |
|  | Not in DES | Tinea Pedis, Right Foot, ass-ociated with Residuals of Cold Injury, Right Lower Extremity | 7813-7806 | 0% | 20061004 |
|  | Not in DES | Tinea Pedis, Left Foot, associated with Residuals of Cold Injury, Left Lower Extremity | 7813-7806 | 0% | 20061004 |
|  |  | 1 Other Condition |  | NSC |  |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*):****80% from 20050916** **(Bilateral Factor 6.7% for 7122, 7122, 7122, 7122, 8620, 7804)** |

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ANALYSIS SUMMARY:

Right Tibia Fracture Status Post Gunshot Wound, Right Lower Leg. While deployed to Iraq the CI sustained shrapnel wounds that fractured the right lower leg on 20040912, requiring evacuation from theater. Injuries included shrapnel wounds to the right face, the dorsum of his left hand, and right medial calf with an open comminuted tibial fracture. Irrigation and debridement, along with delayed primary closure, was performed at Naval Medical Center, San Diego on 20040921. After surgery the CI continued to have significant pain with prolonged ambulation or attempting to run. A Limited Duty (LIMDU) Board was completed in December 2004 and the CI was placed on LIMDU for 8 months. A follow-up visit on 20050524 noted continued right lower extremity pain with numbness of the right lower leg extending to the anterior ankle region. He was unable to run, push-off with the right lower extremity, or stand for prolonged periods of time. Examination noted all open wounds were healed but there was tenderness to palpation of the medial portion of the right lower leg with a sensory deficit of the anterior portion of the right lower leg. He had full range of motion of the knee and ankle with no motor or other neurologic abnormalities noted. An X-ray noted a healed midshaft tibial fracture. There are differences noted between the service and the VA evaluations of this injury. The Medical Evaluation Board (MEB) NARSUM examination on 20050527 documented a limp whereas the VA examination two months later (20050818) documented normal gait. He did report that he would sometimes limp after prolonged walking. No difficulties with activities of daily living (ADLs) were documented. Consistent findings on both examinations include normal range of motion for the right knee and ankle, numbness of the distal third of the anterior lower leg to the anterior ankle, and complaint of lower leg pain with tenderness at the wound/surgical scar site.

The MEB NARSUM documented the painful scar and the sensory neuropathy, as well as inability to perform certain physical activities. He was unable to run, push off with his right lower extremity, stand for prolonged periods of time, or carry a fully loaded pack on his back. The PEB rating was based on findings such as: swelling, muscle spasm, and painful motion. Although there was no limitation of motion at the compensable level, a 10% rating was warranted for painful motion IAW §4.59 Painful Motion. The intent of the schedule is to recognize painful motion, with joint or periarticular pathology, as productive of disability. The VA rated the right lower leg injury specifically for Painful Scar (code 7804) and Sensory Neuropathy (code 8620) of the Right Lower Leg, Secondary to Gunshot Wound with Fracture of the Tibia. The VA did not find limited or painful motion on examinations. The VA ratings were both 10% for a combined 20% for this injury. Both the Sensory Neuropathy and the Painful Scar of the right lower leg were noted in the NARSUM but not addressed individually by the PEB. The service treatment record (STR) and Disability Evaluation System (DES) File contain no evidence that the scar and sensory deficit interfered with performance of any required duties, supporting these conditions as unfitting. Although there are multiple ways to evaluate this condition, no rating above 10% is warranted and no VASRD code offers any advantage to the CI. The CI has limited range of motion that does not meet the minimal compensable level and a rating of 10% is warranted IAW VASRD §4.59 Painful motion. There is no evidence that this condition either improved or worsened within six months after separation from service. After careful consideration of all available information the Board unanimously determined that the CI’s Right Tibial Fracture, code 5299-5003, is most appropriately rated at 10% and no recharacterization is recommended.

Post Traumatic Stress Disorder (PTSD). The CI served two seven month tours of combat duty in Iraq in 2003 and 2004. On September 12, 2004 he sustained shrapnel wound that fractured the right leg. PTSD Stressors included being wounded with involvement in multiple combat operations and exposure to car bombs and roadside bombs. His life was threatened, and he was frightened. He saw a lot of dead bodies and many friends killed. The CI was diagnosed with PTSD in May 2005 and treatment was initiated four months prior to separation. Being actively involved in the initial treatment of this condition, he was not at a point where he would be referred to the PEB for unfitting PTSD. The MEB Addendum of 20050627 noted that he would normally remain on active duty for additional treatment but his right leg injury will not allow him to continue treatment on active duty. His Commander’s Statement made no mention of PTSD or any mental health conditions. The PEB made no fitness determination for PTSD. Despite therapy and treatment with Lexapro and Seroquel, the CI continued to experience depressed mood, anhedonia, lack of energy and motivation, isolation, nightmares, flashbacks, anxiety, irritability, sleep disturbance, hypervigilance, difficulty concentrating, and was easily startled. Prior to beginning therapy and medication, the CI had been self-medicating with alcohol. He reported that he would drink 8 to 10 beers a night to help with sleep and nightmares. The MEB NARSUM Addendum in June 2005 noted a mildly depressed mood with decreased affect on mental status examination. PTSD and Depressive Disorder, Not Otherwise Specified were both diagnosed. The psychiatrist opined that at the time of this evaluation, the CI was unfit for further Naval service. No Global Assessment of Functioning (GAF) was reported but the military psychiatrist noted the CI’s military and civilian industrial impairments to be moderate. The CI was examined by the VA psychiatrist in August 2005 and the results were essentially the same. The VA mental status examination documented an anxious mood with congruent affect and neurovegetative signs of decreased concentration and decreased energy. The VA C&P examination noted a diagnosis of PTSD with a GAF of 60, indicating moderate symptoms with impaired occupational and social functioning, and continued symptoms despite medication and therapy.

The MEB Addendum of 20050627 (three months before separation) shows manifestation of four out of six descriptors for occupational and social impairment at the 30% level and one of nine descriptors at the 50% level. The VA C&P Examination, on 20050827 (three weeks before separation), documents the same descriptors at the 30% and 50% levels. The GAF was 60. There are no inconsistencies between the two evaluations. The VA rated his PTSD at 30%. There was no comprehensive psychiatric evaluation documenting the status of his PTSD condition following separation and specifically at the six month post-separation snapshot. There is a New Primary Care Note of 20060703 (less than 10 months after separation) that described ongoing symptoms of occasional sleep disturbance due to dreams and hypervigilance. No new manifestations of his PTSD were noted that might indicate worsening of the condition. The note stated that the CI is not currently under treatment for PTSD and that referral for treatment was declined by the CI. There is no evidence his symptoms had resolved and the CI may have discontinued treatment as he recognized no benefit from it. However, the treating physician cleared recommended treatment for this disorder.

The Board carefully considered all evidence for PTSD as an unfitting condition at the time of separation and at the six month window. Since the CI was already on Limited Duty for his leg injury, the records do not reflect his inability to perform his required military duties secondary to PTSD. The NARSUM clearly documents a condition that required two medications and additional evaluation and treatment before a fitness determination would be made. Although there may not be sufficient evidence in the DES File to establish his PTSD as unfitting, it is recognized that, had he remained on Active Duty, the condition likely would have been determined to be unfitting. In this case the PEB process moved ahead quickly related to his right leg injury, not allowing adequate time for evaluation and treatment of his PTSD and proper adjudication by the PEB. This issue of timing was clearly outside of the CI’s control and the Board was cognizant of this issue in its deliberations. After lengthy discussion of all the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommended, by simple majority, that the CI’s PTSD condition was unfitting at the time of separation from service.

Other Conditions: Tinnitus; Strain, Left 3rd Finger, status-post Shrapnel Wound, Left Hand with Residual Scar; and Scar, status-post Shrapnel Wound to Face were all mentioned in the MEB History and Physical. There is no evidence that supports finding any of these conditions unfitting at the time of separation from service. None of these conditions interfered with performance of required duties.

Other Conditions, not in the Disability Evaluation System (DES): Scar, Dorsal Right Hand; Scars, Right Arm; Residuals of Cold Injury, Bilateral Upper and Bilateral Lower Extremities; Tinea Pedis, Bilateral Feet, as secondary to the Residuals of Cold Injury, Bilateral Lower Extremities are not mentioned in the DES package and are therefore outside the scope of the Board.

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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. After careful consideration of all available information the Board unanimously determined that the CI’s Right Tibial Fracture is most appropriately rated at 10% and no recharacterization is recommended. Although there are multiple ways to evaluate this condition, no rating above 10% is warranted and no VASRD code offers any advantage to the CI. The CI has limited range of motion that does not meet the minimal compensable level and a rating of 10% is warranted IAW VASRD §4.59 Painful motion. There is no evidence that this condition either improved or worsened within six months after separation from service.

In the matter of the PTSD condition the Board determined by simple majority that the CI’s PTSD condition was unfitting at the time of separation from service. The Board recommends an initial Temporary Disability Retired List (TDRL) rating of 50%, in retroactive compliance with VASRD §4.129, as DoD directed; and a permanent rating of 30% at six months following separation, IAW VASRD §4.130. Although some elements of the 50% rating criteria in the VASRD General Rating Formula for Mental Disorders were present, the CI’s disability picture more closely approximates the 30% rating. He had continued moderate symptoms of PTSD and depression despite therapy and medication.

The single voter for dissent (who recommended against adding PTSD as an additional unfitting condition) did not elect to submit a minority opinion.

The Board also considered the conditions of: Tinnitus; Strain, Left 3rd Finger, status-post Shrapnel Wound, Left Hand with Residual Scar; and Scar, status-post Shrapnel Wound to Face and unanimously determined that none of these conditions were unfitting at the time of separation from service. None of these conditions interfered with performance of required duties therefore no disability rating is recommended.

The other conditions rated by the VA (Scar, Dorsal Right Hand; Scars, Right Arm; Residuals of Cold Injury, Bilateral Upper and Bilateral Lower Extremities; Tinea Pedis, Bilateral Feet, as secondary to the Residuals of Cold Injury, Bilateral Lower Extremities) were not mentioned in the DES File 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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RECOMMENDATIONS: The Board recommends that the CI’s prior separation be recharacterized to reflect that rather than discharge with severance pay, the CI was placed on the TDRL at 60% for 6 months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then permanently retired by reason of physical disability with a final combined 40% rating as indicated below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| Post-Traumatic Stress Disorder | 9411 | 50% | 30% |
| Right Tibial Fracture | 5299-5003 | 10% | 10% |
| **COMBINED** | **60%** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090924, 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 XXXX, FORMER USMC, XXX XX XXXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 18 Nov 10

1. I have reviewed the subject case pursuant to references (a) and (b). 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 with placement on the Temporary Disability Retired List with a disability rating of 60 percent for the period 15 September thru 15 March 2006.

 b. Final separation from naval service due to physical disability effective 16 March 2006 with a disability rating of 20 percent with entitlement to disability severance pay.

2. 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)