RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900587 BOARD DATE: 20101215

SEPARATION DATE: 20080331

SUMMARY OF CASE: This covered individual (CI) was a Corporal (Amphibious Assault Vehicle (AAV) Crewchief, 1833) medically separated from the Marine Corps in 2008 after over 3 years of service. The medical basis for the separation was Traumatic Brain injury (TBI). The CI was referred to the Navy Physical Evaluation Board (PEB), determined unfit continued service, and separated at 10% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

CI CONTENTION: The CI states: “At the time of my evaluation, TBI was a new injury that was being evaluated by the board. I feel that the severity of my TBI and all of the symptoms were not taken into consideration. Furthermore, my diagnosis of PTSD was not evaluated by the DOD.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB**  | **VA (<1 Month Pre-Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Traumatic Brain injury with Cognitive, Mood, Sleep and Vestibular Changes | 8045-9304 | 10% | 20080115 | Cognitive Disorder Not Specified, Due to Traumatic Brain Injury | 9327 | 30% | 20080318 | 20080401 |
| Vertigo | 6204 | 30% | 20080318 | 20080401 |
| Headaches | Related Category 2 Diagnosis(CAT 2) | Migraines with Photophobia | 8100 | 0% | 20080318 | 20080401 |
| Cognitive Disorder, NOS | CAT 2 |  |
| Post-Concussive Syndrome | CAT 2 |
|  | NARSUM | Tinnitus | 6260 | 10% | 20080227 | 20080401 |
|  | Not in DES | Bilateral Cataracts with Bilateral Vitreous Floaters | 6099-6027 | 0% | 20080211 | 20080401 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*):** **60% from 20080401**  |

ANALYSIS SUMMARY:

Traumatic Brain Injury (TBI). The CI was injured in an IED (explosive device) blast in Karamah, Iraq on 20 June 2007. He was the driver of his vehicle suffering loss of consciousness for up to 2 hours and had 24 hours of post-traumatic Amnesia. He also suffered minor facial lacerations from shrapnel. He was initially medevaced via Balad and Germany arriving at Naval Medical Center San Diego (NMCSD) 8 days after the injury. Care was provided through the Neurology Department and the Vestibular Balance Center at Naval Medical Center San Diego (NMCSD) and at the Brain Injury Day Program at Scripps Encinitas. He improved significantly after first evaluated, but he still had persistent symptoms at separation. These included; migraine headaches, light sensitivity, irritability, tinnitus, cognitive difficulties including impairment of memory, attention and executive functioning, mood changes, vestibular disturbance with dizziness, and sleep disturbance.

VA Training Letter, TL 07-05, Evaluating Residuals of Traumatic Brain Injury, dated 20070831 was in effect at the time the CI separated from service and therefore the Board will consider separate ratings for each symptom or condition attributed to TBI. This training letter provides information on evaluating TBI under current regulations and permits separate ratings for each symptom or condition attributed to TBI. Any Disability Evaluation System (DES) eligible condition which is a direct sequela of TBI may be coded and rated as an unfitting condition. The CI has four manifestations of TBI eligible for separate consideration; Cognitive Disorder, Vertigo and Vestibular Changes, Migraine Headaches, and Tinnitus. VA Fast Letter 08-36, Final Rule: Schedule for Rating Disabilities; Evaluation of Residuals of Traumatic Brain Injury (TBI), dated 20081023, forms the basis for the current TBI rating criteria however, since the CI separated on 20080331, it cannot be used in this case.

 -- Cognitive Disorder, Not Specified (Due to TBI). Service treatment records clearly demonstrate the onset of cognitive dysfunction and some degree of occupational and social impairment following the IED blast injury on 20 June 2007. The CI’s Commander stated he was not able to perform the duties of an AAV Crewchief or his rank due to cognitive disorder, headaches, and sleep problems. The VA Training Letter, TL 07-05, states that even mild cognitive dysfunction can have serious effects on occupational functioning and affect the veteran's ability to handle pain and other symptoms of TBI.

Neuropsychological Testing on 20070731 showed objective evidence of mild impairment of memory, mild to moderate impairment of attention, and variable findings for executive functioning from mild impairment to high average. The Neuropsychological Report to the Medical Evaluation Board (MEB) on 20071220 stated that “at this point in time, it is our opinion that the patient is not suitable for continued military service due to cognitive impairments resulting from a combat injury.” The neuropsychologist noted a Global Assessment of Functioning (GAF) of 60, indicating moderate symptoms. Treatment records also document deficits in verbal expression, difficulty retaining detailed reading information, decreased multitasking ability, sleep disturbance, and multiple behavioral symptoms. VA Compensation and Pension (C&P) examinations noted mildly dysphoric mood with persistent vigilance, mood swings, anxiety, depression, and irritability as well as classic symptoms of PTSD including hypervigilance, increased arousal, recurrent thoughts, nightmares, avoidance and sleep disturbance. Irritability and anger symptoms were severe enough to result in verbal and physical altercations. Most of these behavioral symptoms are also described in the service treatment record (STR). The VA granted service connection for cognitive disorder not specified, secondary to traumatic brain injury (claimed as organic mental disorder, code 9327) with a rating of 30%. This rating was based on moderate linguistic-cognitive impairment with deficits noted in verbal expression, sustained and divided attention, memory, and the behavioral symptoms described above. A clinical treatment note from 20071219 noted Ambien, Pamelor, and Zomig as active medications.

Considering the General Rating Formula for Mental Disorders, the CI’s condition meets some of the rating criteria of the 50% rating, including impairment of short-term memory and disturbances of mood. He was generally functioning satisfactorily with routine behavior, self-care, and conversation normal, thus the 30% rating more closely approximates his level of functional impairment. The CI had depressed mood, anxiety, chronic sleep impairment, and mild to moderate memory loss, manifesting four of the six descriptors for occupational and social impairment at the 30% level. When all the symptoms are considered together the CI’s condition best supports the 30% rating criteria. After careful consideration of all medical evidence and in compliance with VA Training Letter, TL 07-05, effective 20070731, this condition is considered separately as a residual of TBI (Code 8045-9304, Cognitive Disorder Due to TBI) and is rated at 30%.

 -- Vestibular Dysfunction Condition (Due to TBI). Vestibular dysfunction had been described as another immediate sequela of the CI’s TBI. Following his injury he had significant complaints of dizziness with abnormal gait. This did improve with a Vestibular-Balance Test Report of 20070702 (one month after injury) showing all tests to be normal with no duty limitations related to vestibular/balance function. The narrative summary (NARSUM) dated 20071130 noted a history of balance and coordination problems which had improved but were still abnormal. The CI still complained of dizziness which was documented in the NARSUM, the VA Neurologic C&P examination, and the MEB history and examination. His gait was normal on the MEB Examination. Multiple treatment notes in the STR documented ongoing dizziness, especially with exercise and with headaches. The VA C&P Examination noted that these symptoms occurred on a daily basis. More likely than not, these symptoms are due to autonomic dysfunction resulting from TBI.

The VA examination in February 2008 noted severe difficulty walking initially after the injury. This gradually improved over time. At the time of this exam he was able to walk unassisted with a relatively narrow gait and has had no falls. However, he continued to have a “swaying” imbalance sensation when his eyes were closed and an intermittent feeling of aural fullness that exacerbated his imbalance symptoms. This examination noted a narrow based gait. The Romberg Test was significant for some swaying, and the stepping Fukuda was notable for rotation of 30 degrees to the left after 10 seconds with stepping in place. The examiner also reported a subjective complaint of diplopia (double vision) on right far lateral gaze with 1-3 beats of end-gaze nystagmus to the right and left, which fatigued rapidly. The VA examiner diagnosed Traumatic Brain Injury with residual symptoms of vestibular dysfunction and disequilibrium. The VA would rate this as Vertigo (code 6204) granting a 30% rating.

The Board carefully considered all evidence related to his vestibular function, particularly issues related to his gait. In compliance with VA Training Letter, TL 07-05, effective 20070731, this condition is rated separately as residual of TBI (Code 8045-6204, Vertigo/Vestibular Changes Due to TBI) and is granted 10% for occasional dizziness. A 30% rating requires dizziness with staggering or abnormal gait. An abnormal gait was initially present but resolved after rehabilitation.

 -- Migraine Headache Condition (Due to TBI). The CI’s Commander stated he was not able to perform the duties of an AAV Crewchief or his rank due to cognitive disorder, headaches, and sleep problems. His migraine headaches with photophobia were another sequela of TBI which manifested after his injury. The MEB NARSUM described his headaches as occurring daily, never completely going away, and ranged in pain severity from 5/10 to 7/10. The pain was described as bilateral and throbbing, worsened by both physical and mental effort. Multiple medications had been tried for his headaches and he continued to require treatment. At the time of the NARSUM evaluation 20071130, the CI was taking Midrin and the provider added Pamelor. The Neuropsychological Addendum to the NARSUM 20071220 and a treatment note from 20071219 both noted Zomig as an active medication. There were no prostrating attacks described in the treatment records or the DES package. The VA rated this condition at 0%, noting that the CI appeared to be able to function with medication and had no prostrating attacks. The PEB determined that the migraine headaches condition were a Category II condition.

After careful consideration of all available information, the Board decided unanimously that in compliance with VA Training Letter TL 07-05, effective 20070731, this condition is rated separately as residual of TBI (code 8045-8100, Headaches Due to TBI). Since there was no evidence of prostrating attacks a 0% rating is applied.

 -- Tinnitus (Due to TBI). Tinnitus is noted in the DES package as a residual of TBI and is rated by the VA at 10%. Although there was no evidence the condition prevented the CI from performing the required duties of his rank and MOS, and the condition would not usually be considered an unfitting condition; under VA Training Letter, TL 07-05, effective 20070731, this condition must be rated separately as residual of TBI, (code 88045-6260, Tinnitus Due to TBI). The only disability rating that can be applied for Tinnitus is 10%. After lengthy discussion of how to appropriately apply the requirements of TL 07-05 for this condition it was unanimously decided that Tinnitus should be rated as a residual of TBI at 10%.

Other Conditions:

Post-Traumatic Stress Disorder (PTSD). CI has contended that his diagnosis of PTSD was not evaluated by the DOD. A contention for its inclusion in the separation rating is therefore implied.

Multiple treatment notes included report of symptoms of PTSD but PTSD was never diagnosed by the Navy prior to separation from service. The NARSUM and Neuropsychological Addendum both describe some symptoms of PTSD. The Neuropsychological Addendum stated that his symptoms consistent with PTSD were not enough to meet the diagnostic criteria. The neuropsychological testing completed in August 2007 included a Personality Assessment Inventory (PAI) and the CI’s response pattern indicated a valid profile which was not elevated across any clinical scales, suggesting he was not significantly troubled by emotional issues. The follow-up interview in December 2007 reported the CI had not been interested in formal treatment; instead he talked with his chaplain and his wife and denied any interference in his everyday functioning.

The VA C&P Evaluation of PTSD was performed on 20080312, nineteen days before separation, with the VA psychiatrist noting that the CI met the diagnostic criteria for PTSD. Symptoms included: irritability and outbursts of anger, sleep disturbance with dreams, mood changes, and avoidance of stimuli associated with trauma that had been present since his TBI event. The VA noted a GAF of 75 related to PTSD only, noting that he had symptoms of PTSD but they did not seem to bother him much. Furthermore, the VA psychiatrist noted that the CI’s PTSD symptoms, by themselves, did not require continuous medication and were not severe enough to interfere with occupational and social functioning. The initial VA Rating Decision of 20080617 did not rate PTSD separately but included all functional and behavioral impairments due to mental illness under the rating for Cognitive Disorder, Not Specified, Due to TBI Condition, which was service connected and rated at 30%.

It is not possible to determine whether the CI’s behavioral symptoms described above were due to TBI or PTSD and the behavioral symptoms are appropriately considered together, under one rating. All mental health conditions are rated together IAW the VASRD General Rating Formula for Mental Disorders and include all functional limitations caused by any mental disorder. The predominant diagnosis determines which VASRD code is used. In this case, TBI with cognitive disorder is the predominant diagnosis. VA TL 07-05 states symptoms of cognitive impairment and mental disorders such as depression and PTSD often overlap. In such cases, a single evaluation taking into account both conditions may be the most appropriate way to evaluate them. The VA considered all behavioral symptoms and their resulting functional impairment when determining their 30% rating for cognitive disorder.

After lengthy deliberation, considering the merits of Including PTSD as a separate condition and whether it was unfitting at separation, the Board unanimously agrees that the PTSD symptoms are appropriately considered under the predominant diagnosis of TBI with Cognitive Disorder. Therefore no disability rating is applied for PTSD as a separately unfitting condition.

Other Conditions Not in the DES: Bilateral Cataracts with Bilateral Vitreous Floaters, rated by the VA, was not mentioned in the Disability Evaluation System package and is therefore outside the scope of the Board. The CI retains the right to request his service Board for Correction for Naval Records (BCNR) to consider adding this condition as unfitting.

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’s recommendations for rating TBI and residuals of TBI are IAW application of VA TL 07-05, 31 August 2007, Evaluating Residuals of Traumatic Brain Injury (TBI) which was in effect at the time of separation from service. The current TBI rating criteria as described in VA Fast Letter 08-36, 24 October 2008, was not in effect at the time of the CI’s separation and therefore it is not applied. After careful consideration of all available information, the Board unanimously determined that the CI’s TBI condition is appropriately rated at a combined 40% with 30% for Cognitive Disorder due to TBI, 10% for Vestibular Changes due to TBI, 10% for Tinnitus due to TBI, and 0% for Headaches due to TBI. If the current TBI rating criteria had been applied, a 40% rating would be warranted, based on objective evidence of mild impairment of memory, attention, concentration, or executive functions, resulting in mild functional impairment. In this case application of the VA TL 07-05 provided a final rating that is consistent with the current rating criteria.

The CI suffered a Traumatic Brain Injury in June 2007 when his vehicle was hit by an IED in Iraq. He received appropriate care and rehabilitation and his symptoms improved a great deal. However, he continued to have residual problems that made him unfit for Naval service and would likely cause problems in almost any civilian job. Residuals of TBI not only vary greatly in severity but are also very wide-ranging, because they include potentially every facet of bodily activities and functions. The CI had mild to moderate cognitive problems, vestibular disequilibrium/dizziness, and headaches as well as many behavioral symptoms as a result of his TBI and was not able to perform the required duties of his rank and duty position. VA Training Letter 07-05 20070831 recommends separate ratings for each symptom or condition attributed to TBI. Any DES eligible condition which is a direct sequela of TBI may be coded and rated as an unfitting condition. The CI’s Commander stated the CI was not able to perform at the level expected for his rank or duty position because of his cognitive disorder, headaches, and sleep problems.

The CI’s Cognitive Disorder due to TBI condition met some of the rating criteria of the 50% rating of the VASRD General Rating Formula for Mental Disorders. This includes impairment of short-term memory and disturbances of mood. However he was generally functioning satisfactorily with routine behavior, self-care, and conversation normal and the 30% rating more closely approximates his level of functional impairment. The CI had depressed mood, anxiety, chronic sleep impairment, and mild to moderate memory loss. While the CI was not diagnosed as having PTSD by any Navy provider, a VA psychiatrist stated he met the diagnostic criteria on an exam performed prior to separation from service. The CI had multiple behavioral symptoms which could be attributed to either TBI or PTSD or both and it is not possible to separate them. These behavioral symptoms are therefore considered together under the predominant condition, Cognitive Disorder due to TBI and rated IAW the VASRD General Rating Formula for Mental Disorders. VA TL 0705 states symptoms of cognitive impairment and mental disorders such as depression and PTSD often overlap. In such cases, a single evaluation taking into account both conditions may be the most appropriate way to evaluate them. When all the symptoms are considered together the CI meets the 30% rating criteria.

A 10% disability rating for Vestibular Changes is based on occasional dizziness due to peripheral vestibular disorder. In addition to a “swaying” imbalance sensation when his eyes were closed and an intermittent feeling of aural fullness that exacerbated his imbalance symptoms the CI also had objective findings consistent with a vestibular disequilibrium on examination. These included a Romberg that was significant for some swaying, the stepping Fukuda showed rotation approximately 30 degrees to the left after ten seconds with stepping in place, and some nystagmus which rapidly fatigued. The CI also had dizziness with exertion and postural changes and this autonomic dysfunction is also a sequela of TBI.

In the matter of the Tinnitus Due to TBI condition, the Board found that this condition should be considered separately, IAW application of VA TL 07-05, as residual of TBI (code 8045-6260, Tinnitus Due to TBI). The Board unanimously determined that, although there was no evidence the condition prevented the CI from performing the required duties of his rank and MOS, the requirements of TL 07-05 mandate that the condition be included as a residual of TBI with a rating of 10%. The final combined disability rating is not increased with the addition of this rating.

In the matter of the Migraine Headache Condition (Due to TBI), the Board found that while the CI had frequent and severe headaches with photophobia as a result of his TBI, there is no evidence of any prostrating attacks and a rating greater than 0% is not warranted.

The Board also considered Post-Traumatic Stress Disorder condition and unanimously determined that this condition was not separately unfitting and therefore no disability rating is applied. The Board does note that many of the symptoms which could be attributed to PTSD could also be attributed to TBI and it is not possible to determine which condition lead to these symptoms. TBI was determined to be the predominant diagnosis thus these symptoms were included in the rating of Cognitive Disorder due to TBI using the VASRD General Rating Formula for Mental Disorder. Similar rationale was used by the VA with no separate rating applied for PTSD. The other diagnosis rated by the VA (Bilateral Cataracts with Bilateral Vitreous Floaters) 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 for Correction of Naval Records (BCNR) to consider adding this condition 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, with a final combined 40% rating, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Cognitive Disorder due to Traumatic Brain Injury | 8045-9304 | 30% |
| Vertigo/Vestibular Changes due to Traumatic Brain Injury | 8045-6204 | 10% |
| Tinnitus due to Traumatic Brain Injury | 8045-6260 | 10% |
| Headaches due to Traumatic Brain Injury | 8045-8100 | 0% |
| **COMBINED** | **40%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090923, 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

1. I have reviewed the subject case pursuant to reference (a). The subject member’s official records are to be corrected to reflect the following retroactive disposition:

 a. Final separation from naval service due to physical disability effective March 31, 2008 with a disability rating of 40 percent and placement on the Permanent Disability Retired List.

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)