RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900633 BOARD DATE: 20100914

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SUMMARY OF CASE: This covered individual (CI) was a Second Lieutenant Student Naval Aviator medically separated from the Marine Corps in 2004 after one year of service. The medical basis for the separation was Primary Generalized Seizure Disorder. The CI was referred to the Physical Evaluation Board (PEB) and entered the Temporary Disability Retirement List (TDRL) 20040901 with a 40% disability rating. The CI was re-evaluated in February of 2008, and in March 2008 the PEB determined he was unfit with a disability rating of 10%. A PEB Reconsideration was done in April 2008 and the 10% rating was continued. The CI was then separated with a 10% disability for Primary Generalized Seizure Disorder 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: ‘My condition has been diagnosed as a permanent condition by the Dept. of Navy (on active duty), and by multiple civilian neurologists. I had a recent EEG performed, and the neurologist said that I still have abnormal spikes in my EEG. The EEG was performed April 3, 2009. By being diagnosed with epilepsy I was not allowed to perform any duties while I was in the Marine Corps, and it has prevented me from being hired to multiple jobs (even though I am qualified for) while in the civilian world. I was completely healthy when I entered into the Marine Corps (not showing signs of epilepsy), and I passed all medical examinations from the Dept. of Navy before entering into the USMC. Based on medical facts, some contributing factors to epilepsy are sleep deprivation, stress, and bright or flashing lights. All are very common in all branches of the armed forces. Based on this information, this leads me to believe that the diagnosis of epilepsy has some direct correlation of my time served while in the Marine Corps.’

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Primary Generalized Seizure Disorder | 8910 | 10% | 20080410 | Epilepsy | 8911 | 10% | STR | 20040901 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **10% from 20040901** | | | | |

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ANALYSIS SUMMARY: The CI was a 2nd Lt stationed at Quantico basic school for the United States Marine Corps. On 20040306 he had roughly eight drinks over a 5-hour period and went to bed around 3:00 a.m. He arose early the next day and as he was going out to his automobile had a generalized tonic-clonic seizure. He had no premonitory sensations or aura. He was witnessed to have extension of his lower extremities with rigidity, and tonic-clonic movements of his upper extremities lasting, by witness reports, anywhere from 1 to 6 minutes. He did have post-event confusion lasting anywhere from 5 to 15 minutes. He did not have loss of bowel or bladder function but did bite his tongue. Prior to the event he had not experienced any signs or symptoms of a possible infection or meningeal process. He was taken to the emergency room and evaluated for the seizure like activity and then admitted to the hospital for further observation and treatment. The CI underwent a CT of the Brain which was interpreted as normal. He underwent a magnetic resonance imaging (MRI) study of the brain which was interpreted as normal. He was administered an electroencephalogram (EEG) which was determined to be abnormal due to the presence of wave patterns which would be consistent with primary generalized epilepsy and a probable clinical generalized tonic clonic seizure. He was placed on anti-seizure medications and discharged from the hospital. During an initial flight physical and during his hospitalization, the CI denied a history of prematurity, febrile seizures as a child, seizures in general prior to this incident, history of head trauma, or history of central nervous infections to include meningitis or encephalitis. He had no prior loss of consciousness that he was aware of. His Initial Flying Training Physical taken 20021010 offered no previous evidence of seizure activity. At the time of the seizure incident the CI had been physically qualified and aeronautically adapted for duty involving actual control of aircraft as a Student Naval Aviator. The CI was removed from duty to include flying. His commanding officer commented ‘Due to 2nd Lt ----'s diagnosed medical condition of epilepsy; he is physically not qualified to carry out the duties required of a Student Naval Aviator. 2nd Lt ---- is a very bright and competent individual who has shown the desire, commitment and tenacity to be a successful Marine Officer. However, it is not in the best interest of the Marine Corps to keep this officer on active duty. I recommend that this officer be released from his service obligation via a medical discharge.’ On 20040316 the CI’s case met a LIMITED DUTY BOARD which determined the CI be placed on an 8 month Limited Duty Board during which time a workup will be undertaken for his seizure disorder. An addendum to the Limited Duty Board in March of 2004 stated ‘the patient has received a sleep-deprived EEG which showed primary generalized epileptiform activity, which was suggestive, if not highly diagnostic, of a primary generalized seizure disorder.’

A progress note from 20040827 stated CI had a seizure that day but the TDRL evaluation of 20080208 stated his last seizure was June 2004. All subsequent notes from military and civilian providers noted no further seizure activity.

The PEB convened on 20080306 and determined the CI was unfit for continued service and determined he should be removed from TDRL and separated with severance pay at 10% for the diagnosis of Primary Generalized Seizure Disorder VASRD code 8910. The CI requested a reconsideration of the PEB decision. The PEB met on 20080404 and again determined the CI should be separated with severance pay at 10% for the diagnosis of Primary Generalized Seizure Disorder VASRD code 8910. The VA rendered an original rating decision at the time the CI entered the TDRL. The VA initially denied a service connection for epilepsy, seasonal allergies, right flat foot, left flat foot, or molluscum contagiosum. The CI requested a review and on 20080625 the VA granted a service connection for epilepsy. The VA coded the seizure disorder as 8911, Epilepsy and awarded 10% effective 20040901. The VA denied service connection for the lower back condition, left knee condition, right knee condition, left flat foot, right flat foot, or molluscum contagiosum. These determinations were based on the information available in the service treatment record (STR) as the CI did not report for his VA Compensation and Pension (C&P) examination.

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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 seizure disorder is appropriately rated as 8910 Primary Generalized Seizure Disorder at 10% disability IAW the VASRD General Rating Formula for Major and Minor Epileptic Seizures.

A 10% disability rating is warranted based on a confirmed diagnosis of epilepsy with a history of seizures. The VASRD General Rating Formula for Major and Minor Epileptic Seizures in §4.124a Schedule of ratings neurological conditions and convulsive disorders also states that 10% can be awarded if continuous medication is shown to be necessary for control of epilepsy. However, the two rating conditions cannot be combined. A 20% rating requires at least one major seizure in the last two years; or at least two minor seizures in the last six months. Although the CI continued to have abnormal EEG findings, the last seizure noted in the STR occurred in either June or August 2004, more than two years prior to separation from service.

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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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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090928, 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 XXXXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 16 Sep 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 Mr. 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)