RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900635 BOARD DATE: 20101020

SEPARATION DATE: 20080331

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SUMMARY OF CASE: This covered individual (CI) was an active duty Sergeant/E-5 (7051 Aircraft Rescue and Firefighting Specialist) medically separated from the Marine Corps in 2008 after more than six years of service. The medical basis for the separation was Fibromyalgia Syndrome. The CI had numerous clinical visits complaining of overall body pain for 2 to 2-1/2 years. He was evaluated by Mental Health due to a history of panic attacks. The CI was evaluated as an outpatient by the Rheumatology Service and treated with different medications but did not respond adequately to perform within his MOS (occupational specialty) or participate in the physical fitness test. On 20071001 he was given a six month limited duty (LIMDU) and he underwent a Medical Evaluation Board (MEB) on 20071005. An addendum to the Medical Evaluation Board (MEB) from Mental Health stated the CI suffered from a Pain Disorder Associated with Both Psychological Factors and a General Medical Condition (fibromyalgia), and Panic Disorder without Agoraphobia. On 20071120 the Informal Physical Evaluation Board (IPEB) determined the CI unfit for the rigors of military duty due to Fibromyalgia Syndrome and evaluated him at 10%. The IPEB considered the History of Panic Attacks; Pain Disorder Associated with a General Medical Condition, Chronic; Panic Disorder without Agoraphobia; and History of Depressive Disorder with Anxious Mood all Category II as diagnoses related to the Fibromyalgia Syndrome. The CI rebutted the IPEB findings. The Board reconvened on 20090104 and again determined the CI unfit for duty and evaluated him at 10% for the Fibromyalgia Syndrome but added Depressive Disorder with Anxious Mood at 10%. The CI was then separated from service at a 20% combined disability using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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CI CONTENTION: The CI states: ‘’Service member was rated lower by the service than by the VA for the same exact condition. As seen in service member’s medical records and the VA rating letter, service members experiences wide spread pain with associated anxiety, panic, and insomnia that is constant and uncontrolled by medications. By virtue of being constant alone a more appropriate rating for the service member’s unfitting condition would be 40%.” (continued) The service member feels that this was appropriately rated by the VA, however the service rated the service member as having symptoms that are characterized as episodic in nature and a rating of 20%. This characterization of symptoms is not supported by service member’s records, which reflect a constant presence of symptoms. It is the hope of the service member that this inconsistency will be seen and corrected by this review.”

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Rating Comparison table is located on the next page.

RATING COMPARISON:

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| --- | --- |
| **Service FPEB – 20080104** | **VA (4 and 5 Months before Separation) –****All Effective 20080401** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Fibromyalgia Syndrome | 5025 | 10% | Fibromyalgia (Also claimed Panic, Anxiety, Pain Disorder, Insomnia, Headaches, Knee Condition) | 5025 | 40% | 20071128 20071211 |
| Depressive Disorder with Anxious Mood | 9434 | 10% |
| History of Panic Attacks | CAT II |
| Pain Disorder associated with a General Medical Condition, Chronic | CAT II |
| Panic Disorder without Agoraphobia | CAT II |
|  | Not in DES | Degenerative Arthritis, Thoracic Lumbar Spine | 5242 | 10% | 20071128 20071211 |
|  | Not in DES | Bilateral Tinnitus | 6260 | 10% | 20071128 20071211 |

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ANALYSIS SUMMARY:

Fibromyalgia. The CI was a 24 year old active duty USMC firefighter who had been complaining of overall body pain for 2 to 2-1/2 years. According to the patient's history and review of the health record, the pain was located in the upper chest, upper back, neck, lower back, gluteus muscles, and lower extremities and was worsened with sitting for long periods of time. The CI also complained of having poor sleep. The CI gained some partial relief with muscle relaxants but due to their sedative effects he could not take them at work. He had also complained of headaches and depressed mood. The patient was prescribed mood elevators which helped for the chronic headaches as well as his mood. He was referred to a chiropractor but did not gain much benefit. The CI was referred to Rheumatology and was diagnosed as having fibromyalgia. He received appropriate treatment including trigger point injections but did not respond adequately to perform within his MOS or participate in the physical fitness test. The Commander’s Letter stated the Marine was adhering to his treatment regimen, but in all likelihood, he would never be fully capable of performing as an Aircraft Rescue Firefighter. He had been restricted to administrative duties only and missed two hours of work a week for medical appointments. Moreover, it appeared the CI had resigned himself to the idea that he would soon be separated; and that being the case, the commander had no confidence that the CI’s personal fortitude would enable him to conquer the obstacles that had been placed before him.

The MEB narrative summary (NARSUM) completed by a Rheumatologist in October 2007 stated the CI would require indefinite treatment for many years and could suffer acute exacerbations of the underlying disease in an unpredictable fashion. Completeness of recovery was difficult to estimate at that time. The NARSUM listed fibromyalgia syndrome and history of depressive disorder with anxious mood as the diagnoses. The NARSUM did not directly address the frequency of symptoms other than documenting frequent awakening due to restlessness and pain. The pain was located in the upper chest, upper back, neck, lower back, gluteus muscles, lower extremities and was worse with sitting for long periods of time. He described the pain as being more in the muscles rather than in the joints. He denied joint swelling. He denied preceding accidents or trauma. Partial relief of pain with Flexeril and Soma was also reported but the CI was not able to take these medications at work secondary to their sedative effects. The CI continued to have significant symptoms of myofascial pain throughout. X-rays of the cervical, thoracic, and lumbar spine were normal.

The CI was evaluated by VA Internal Medicine on 20071128, approximately five months prior to his separation from service. The CI reported symptoms of aches and pains in multiple different body parts and trigger point tenderness was noted on examination. He also had easy fatigability, headaches, sleep disturbance, stiffness, anxiety and depression. His symptoms were constant and occurred more than two-thirds of the time per year. He indicated that the symptoms were not precipitated by overexertion, emotional stress or environmental stress. He had difficulty with standing, walking and sitting at times. The CI had previously had trigger point injections and massage therapy. He was also given pain medication with “favorable response to all modalities.” He also had insomnia and irritability. While he had to rest at intervals between activities of daily living, he is generally able to perform them. The CI also reported back pain, bilateral knee pain, and headaches. Trigger point tenderness was noted on examination.

The VA granted the CI service connection for the fibromyalgia (also claimed panic, anxiety, pain disorder, insomnia, headaches, knee condition) and he was given an evaluation of 40 percent based on symptoms of easy fatigability, headaches, sleep disturbance, stiffness, anxiety and depression that were reported as constant and occurring more than two thirds of the time per year. For rating purposes, bilateral knee pain was considered to be part of the fibromyalgia condition. The VA rated the back pain separately but considered the other conditions to be part of the CI’s fibromyalgia.

The VASRD criteria for rating fibromyalgia with widespread musculoskeletal pain and tender points are based on the frequency of symptoms and their response to therapy. The following symptoms may or may not be present: associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud’s-like symptoms. A 40% rating requires constant or nearly constant symptoms that are refractory to therapy. A 20% rating is applied for symptoms that are episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but are present more than one third of the time. The CI’s symptoms were most likely present more than two-thirds of the time. They did respond to therapy at least partially but were by no means controlled with medication.

The VA final rule for rating fibromyalgia from 1999 states in part: As the evaluation criteria for fibromyalgia indicate, there may be multi-system complaints in fibromyalgia. If signs and symptoms due to fibromyalgia are present that are not sufficient to warrant the diagnosis of a separate condition, they are evaluated together with the musculoskeletal pain and tender points under the criteria in diagnostic code 5025 to determine the overall evaluation. The maximum schedular evaluation for fibromyalgia in such cases is 40 percent. If, however, a separate disability is diagnosed, e.g., Depressive Disorder with Anxious Mood, that is determined to be secondary to fibromyalgia, the secondary condition can be separately evaluated (see 38 CFR 3.31O (a)), as long as the same signs and symptoms are not used to evaluate both the primary and the secondary condition (see 38 CFR 4.14 (Avoidance of pyramiding)). In such cases, fibromyalgia and its complications may warrant a combined evaluation greater than 40 percent.

Mental Health. The initial Mental Health evaluation on 20071029 noted the CI had shown little progress with his psychiatric treatment course which included Effexor and therapy sessions. He had been seen in the Mental Health Clinic four times. He continued to have moderate to severe symptoms. Symptoms included anxiety with rapid heartbeat, difficulty breathing, with chest pain and discomfort, and persistent anxiety about recurrent attacks; fatigue, decreased appetite, anhedonia as a result of his chronic pain, difficulty sleeping, low motivation and energy, difficulty with memory and concentration, and irritability. On mental status exam his mood was mildly anxious and depressed throughout the session. The examining psychologist opined the CI was unable to perform full duty due to his mental health condition. Continued treatment was recommended. His impairment for military service was considered mild and civilian industrial capacity was also considered mild, depending on the type of work. The psychologist opined the CI would be able to work in a civilian occupation with a mild social and occupational dysfunction. Global Assessment of Functioning (GAF) was assessed at 60.

The IPEB met on 20071120 and separated the CI from the USMC with the diagnosis of Fibromyalgia Syndrome (Coded 5025) and evaluated his disability as 10%. The IPEB considered History of Panic Attacks; Pain Disorder Associated with a General Medical Condition, Chronic; Panic Disorder without Agoraphobia; and History of Depressive Disorder with Anxious Mood as Category II conditions all related to or caused by the Fibromyalgia Syndrome and not separately unfitting. The CI submitted a rebuttal to the IPEB findings and the PEB reconvened 20080107. The Board considered an additional Mental Health Addendum, a personal rebuttal letter from the CI, and a letter from the CI’s immediate supervisor. The supervisor’s letter noted that while the CI had previously been an outstanding performer, the quality of his work had significantly deteriorated after he had been restricted to administrative duties and the CI was visibly stressed on a regular basis. The CI’s letter described the effects of both his fibromyalgia and mental health conditions on his ability to succeed in completing the administrative tasks he was given.

The additional Mental Health Addendum 20071214 was completed by the psychologist who served as the supervisor of the psychologist who provided the initial addendum. This addendum provided new information obtained from a Personality Assessment Inventory (PAI), as well as further assessment and treatment. The results of the PAI were valid and there was no evidence the CI exaggerated or minimized his personal shortcomings or mental health problems. The CI showed marked distress and impairment in functioning due to depressive and anxious moods that also have a number of somatic issues. Mood problems were perceived stressors and poor social support. Relationships were often under stress due to these behaviors and mood and are greatly influenced by anger. His current mental health symptoms included a constant depressed mood that was punctuated with anxiety and panic attacks that were aggravated when he was in area that he could not escape from easily. His pain over the day increased his irritability that then increased his depressed mood due to negative thoughts and worry. This change in mood, which included anxiety and depression, was increased due to feelings of being out of control that typically results in panic attacks. He reported difficulty sleeping and he had difficulty with concentration because of thoughts running through his head which were difficult to stop. He also reported a decrease in energy, excessive nervousness and muscle tension. He also endorsed episodes of heightened anxiety and had to stop his activities due to fears that he could pass out. He also described experiencing shortness of breath, variable chest pains, and increased heart rate, nausea, tremors fear of death, and had symptoms of agoraphobia. Other symptoms included social isolation, marked diminished interest in daily life, insomnia, fatigue, feelings of worthlessness, poor concentration, and suicidal ideation with the thought of running his car into an object but had no suicidal intent. The Service Member had been taking Effexor but had significant side effects and was being considered for another medication.

While the CI had initially been diagnosed with Pain Disorder Associated with a General Medical Condition, Chronic and Panic Disorder without Agoraphobia, the psychologist determined the following diagnoses more accurately described the CI’s mental health condition: Panic Disorder with Agoraphobia, Mood Disorder due to General Medical Condition (Fibromyalgia), Depression, and Sleep Disorder due to Fibromyalgia, Insomnia Type. The impairment for military was considered severe. Civilian industrial capacity was severe for his current capacity, but could be moderate with long term vocational rehabilitation. Concerning occupational and social impairment, the CI had deficiencies in some areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as described above, difficulty in adapting to stressful circumstances (including work or work like settings), and some inability to establish and maintain effective relationships. Continued psychotherapy and treatment would be necessary as well as occupational retraining. This provider clearly thought the CI had serious symptoms and/or was seriously impaired and assigned a GAF of 48-52. The PEB reconvened on 20080104 and evaluated the CI as 10% disabled due to Fibromyalgia Syndrome (5025) and again considered the CI’s mental health condition. The PEB now determined Depressive Disorder with Anxious Mood was separately unfitting and evaluated it at 10%. The other mental health diagnoses were determined to be Category II conditions, related to the Fibromyalgia Syndrome. The CI accepted the reconsidered adjudication of a combined 20%.

The CI underwent a VA General Psychiatry evaluation on 20071211. He complained of a Panic Disorder, Anxiety and Insomnia. The psychiatrist noted abnormal mood and affect on the mental status examination. The CI had depression and anxiety with impaired impulse control. He was impatient with a labile mood. He appeared easily annoyed, even during the exam. The VA Axis I diagnosis was Panic Disorder with Anxiety and a GAF of 60-65 was assigned. However, the panic disorder, anxiety, and insomnia were all rated as part of the 40% Fibromyalgia Syndrome, not as separate conditions. The CI’s symptoms due to this condition appear to be constant and moderate to severe and include depressed mood, anxiety, chronic sleep impairment, impaired impulse control, irritability, social isolation, markedly diminished interest in daily life, feelings of worthlessness, poor concentration, suicidal ideation without intent, decreased appetite, low motivation and energy, and memory loss. There were signs of mental illness noted on examination, notably abnormal mood and affect with impaired impulse control and irritability. While he was generally functioning satisfactorily and capable of performing activities of daily living, he had occupational and social impairment with at least occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks. He also had difficulty establishing and maintaining social relationships. The PEB determination of Depressive Disorder with Anxious Mood as an unfitting condition cannot be overturned by the Board. However, the Board may recommend rating this condition under a different VASRD coding schema.

Other Conditions, not in the Disability Evaluation System (DES)

Degenerative Arthritis, Thoracic Lumbar Spine was evaluated by the VA as a 10% disability. The MEB NARSUM and IPEB considered the low back pain a symptom of the Fibromyalgia Syndrome and did not rate it separately. X-rays of cervical, thoracic, and lumbar spine were normal. There is no evidence at the time of separation that the low back pain represented any rheumatologic or orthopedic condition other than fibromyalgia. No joint abnormality was noted to be present. The other diagnosis rated by the VA, Tinnitus, was not noted in the DES package.

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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 determined by simple majority that the CI’s condition is most appropriately rated at 40% for 5025 Fibromyalgia Syndrome. While the Depressive Disorder can be considered a manifestation of the Fibromyalgia Syndrome, it can also be rated separately as the PEB did. However, the VA included all of the CI’s mental health symptoms in its rating for fibromyalgia. The Board considered both strategies in its deliberations. The VASRD rating criteria for 5025 Fibromyalgia is based on the presence of widespread musculoskeletal complaints and tender points with or without associated symptoms such as the CI’s depression, anxiety, and sleep disturbance. The occupational and social impairment that resulted from the CI’s Depressive Disorder with Anxious Mood is sufficient to warrant a 30% rating separate from the fibromyalgia. Although the CI is generally functioning satisfactorily, with routine behavior, self-care, and conversation normal, he has occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks due to symptoms of depressed mood, anxiety, chronic sleep impairment, impaired impulse control, irritability, social isolation, markedly diminished interest in daily life, feelings of worthlessness, poor concentration, suicidal ideation without intent, decreased appetite, low motivation and energy, and memory loss. He had difficulty maintaining social relationships. He also had overt signs of mental illness on mental status examination including abnormal mood and affect with impaired impulse control and irritability. His mood was labile and memory was mildly to moderately abnormal. Global Assessment of Functioning (GAF) assessments ranged from 48 to 65 from three different providers.

The PEB determination of Depressive Disorder with Anxious Mood as an unfitting condition cannot be overturned by the Board. However, the Board may recommend rating this condition under a different VASRD coding schema such as including these symptoms under the rating for 5025 Fibromyalgia. A 40% rating under 5025 Fibromyalgia is warranted if the totality of the CI’s symptoms, including all of his mental health symptoms, are included. His symptoms were nearly constant and only partially responded to therapy. His symptoms were by no means controlled with medication and a 10% rating does not accurately describe his level of functional impairment. The single voter for dissent recommended rating Fibromyalgia Syndrome 5025 at 20% and Depressive Disorder with Anxious Mood 9434 at 10% for a combined 30% and did not elect to submit a minority opinion. This would also result in a recharacterization to reflect permanent disability retirement.

The other diagnoses rated by the VA (Degenerative Arthritis, thoracic and lumbar spine; and tinnitus) were not mentioned in the DES 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 the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Fibromyalgia Syndrome | 5025 | 40% |
| **COMBINED** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091005.

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, EX-USMC, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 28 Oct 10

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 disposition:

 a. Effective the date of his discharge (31 Mar 2008), placement on the Permanent Disability Retired List with a disability rating of 30 percent.

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 member once those actions are completed.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)