RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900642 SEPARATION DATE: 20060115

BOARD DATE: 20101201

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SUMMARY OF CASE: This covered individual (CI) was a right handed Corporal/E4 (Rifleman/0311) medically separated from the Marines in 2006 after 7 years 2 months of service. The medical basis for the separation was Radial and Ulnar Nerve Palsy of the Right Upper Extremity (right forearm nerve damage-RUE), Right Shoulder Posterior Subluxation (shoulder dislocation), and Left Open Thumb Metacarpal Fracture. The CI was deployed to Operation Iraqi Freedom from 20050302 to 20050411. During his deployment, the CI was hit by shrapnel from a rocket injuring his right forearm (ulna) and left thumb with open fractures. In the field his injuries were treated with irrigation, debridements and preliminary stabilization. The CI was medically evacuated to Germany in Apr 2005 and had a right ulnar fracture internal fixation and left thumb fixation repair. He had non-healing of his right ulna (non-union) and underwent a bone graft. The right arm had a radial nerve injury (Right Upper Extremity (RUE) palsy). The CI had severe right shoulder pain with posterior subluxation (dislocation) that was attributed to pain management of his right arm and prior right shoulder surgery (20001024) that combined into a re-injury of the right shoulder. The CI underwent multiple orthopedic procedures, various Physical Therapy treatments and medication therapy without full recovery of his conditions. The CI was never placed on limited duty (LIMDU), but he was not able to perform his military duty and was referred to the Medical Evaluation Board (MEB). The MEB indicated that the CI had received appropriate surgical and non-surgical treatment, but that he was still unfit to return to full active duty. The MEB listed Closed Posterior Dislocation of Humerus; Pain in Soft Tissues of Limb; and Lesion of Ulnar Nerve as diagnoses on the NAVMED Form 6100/1. The informal Physical Evaluation Board (PEB) adjudicated the Radial and Ulnar Nerve Palsy of the RUE as unfitting rated 20%, Right Shoulder Posterior Subluxation as unfitting rated 0%, and Left open Thumb Metacarpal Fracture as unfitting rated 0%; with possible application of SECNAVIST 1850.4E and/or DoDI 1332.39. The PEB adjudicated the Right Open Ulna (forearm) fracture as Category III (“Conditions that are not separately unfitting and do not contribute to the unfitting condition(s)”). The CI did not appeal and was thus medically separated at 20% combined disability.

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CI CONTENTION: The CI states: “New updated information in the Veteran Administration (VA) system, and submitted in form of attachments.” The CI attached a letter to the PDBR specifying conditions of: Right shoulder, right forearm, right hip, bilateral ankles, left shoulder, left thumb and PTSD as remaining or increasingly producing disability.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB-Dated 20051117** | | | | **VA (1 Mo. Pre-Separation) – Effective 20060116** | | | |
| **Condition** | | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Radial and Ulnar Nerve Palsy of the Right Upper Extremity | | 8514 | 20% | Right Ulnar Neuropathy … s/p ORIF R. Ulnar Fx & scar | 8516 | 10% | 20051207 |
| R. Open Ulnar Fx | | CAT III | |  |  |  |  |
| R. Shoulder Posterior Subluxation | 5299-5003 | | 0% | Right Shoulder … & Scar …. | 5201 | 20% | 20051207 |
| Left Open Thumb Metacarpal Fx | | 5228 | 0% | S/P Left Thumb Fx … | 5224 | 0% | 20051207 |
| ↓No Additional MEB Entries↓ | | | | PTSD | 9411 | 50% | 20051207 |
| Lumbar Strain | 5237 | 10%\* | 20051207 |
| Tinnitus | 6260 | 10% | 20051207 |
| Scar, S/P Right Hip Bone Graft | 7804 | 10% | 20051207 |
| R. Leg Nerve … 2° Graft Scar | 8629 | 10% | 2007 VA Rx |
| Left Ankle Sprain | 5271 | NSC | |
| Right Ankle Sprain | 5271 |
| Bilateral Hearing … | 6100 |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 80%** | | | |

\*Lumbar strain rating increased to 20% effective 20080722

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ANALYSIS SUMMARY: It is noted that the CI’s contention included a worsening of his conditions.

The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for conditions which worsened over time. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration. A ‘crystal ball’ requirement is not imposed on the service PEB’s by the Board; and, the 12 month window specified in DoDI 6040.44 is appropriate for rating comparisons, but not for new developments or increased disability after separation.

RUE Nerve Palsy: The PEB rated the CI’s RUE as 8514 [Musculospiral Nerve (Radial Nerve) at 20% for Right Radial neuropathy. The Board focused on the level of and severity of the CI’s unfitting RUE (Major) nerve injury for disability rating. The CI had multiple electrical studies (EMG/NCV) demonstrating abnormalities in the radial and ulnar nerves. The CI’s symptoms included numbness and tingling sensation, constant pain, and weakness of the RUE. The CI had difficulty with pushing, pulling and lifting. He lost approximately one month from work due to this condition. The military exam was four months prior to separation and included multiple orthopedic surgeons’ evaluations as well as electrodiagnostic testing. Electrical studies were showing improvement of the CI‘s radial nerve “consistent with axonal regeneration and sprouting. Recovery of normal electrical activity is approximately 75%.” The VA evaluation accomplished one month prior to separation and found only ulnar neuropathy without radial neuropathy; no electrical study was performed. The VA coding and rating (8516, Ulnar, Mild 10%) differed from the military (8514, Radial, Mild, 20%) due to the lower level of nerve (Ulnar versus Radial) indicated for rating, but both ratings were at the “Mild” level. The VA exam may have demonstrated further healing of the CI’s radial nerve as it was three months following the military exam. The CI’s primary disability was sensory and pain (Neuralgia) rather than partial paralysis and the tenets of Veterans Administration Schedule for Rating Disabilities (VASRD) §4.123 Neuritis and VASRD §4.124 Neuralgia for limiting the rating severity as a “maximum equal to moderate incomplete paralysis" was considered. The Board also considered the general guidance of VASRD §4.124a and the Disease of The Peripheral Nerves caveat that “When the involvement is wholly sensory, the rating should be mild, or at most, the moderate degree. The CI’s disability was predominately due to the radial nerve, but there were objective findings of ulnar nerve abnormalities attributable to his shrapnel wounds. The CI’s disability was best coded using Musculospiral Nerve (Radial Nerve) as either 8514 (palsy) or 8714 (neuralgia). Using either coding, the disability picture for the RUE nerve condition was closer to “Mild” (20%) than to “Moderate” (30%). There was the possibility that the CI’s condition had improved in the interval from MEB to separation and that the VA rating was possibly correct at separation. However, under DoDI 6040.44 and established policy, the Board does not decrease the unfitting rating percentages of service PEB’s without substantial evidence or unusual circumstances. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating adjudication for the RUE nerve condition rating of 8514 at 20%.

Right Shoulder Injury: The PEB unfitting determination for the Right Shoulder Posterior Subluxation was coded analogously to arthritis (5299-5003) at 0%. The PEB worksheet indicated right shoulder laxity without neurologic compromise, but did not evaluate range of motion (ROM) or painful motion. The CI had surgery to his right shoulder and abnormal Magnetic Resonance Imaging (MRI) as well as a major complaint of pain and painful motion documented in the records. There was no military goniometric ROM for the shoulder. The VA exam was prior to separation and formal active ROM testing indicated abduction 90⁰ (normal 180⁰), flexion 100⁰, and listed all other axis of motion with all movements with pain. There was also mild instability, mild incoordination with repetition, mild laxity of the joint, and “4/5[R?]” which is interpreted as possible right shoulder weakness. The PEB worksheet indicated that the “shoulder may need stabilization.” The VA rated the Right Shoulder Posterior Subluxation as 5201 (Arm, limitation of motion of) at 20% (limited at shoulder level). The Board deliberated between a rating of 5201 at 10% with application of §4.59 (painful motion), or accepting the VA exam’s significant pain-limited abduction for a 20% rating. The CI had repeat surgeries on his right shoulder for impingement syndrome and labral tear 14 months (20070329) and over 3 years (20090408) after separation. The measurement of ROM reflecting pain with motion is dependent on the examinee’s reported pain with scant ability by the examiner to objectively confirm it. The VA rating examination was subject to possible invalid influence in that regard. The Board examined the CI’s disability and deliberated if the VA exam was consistent with the CI’s disability picture in the remainder of the record. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 5201 at 20% for the Right Shoulder condition.

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| Right Shoulder | Separation Date: 20060116 |
| Goniometric ROM | VA C&P - 20051207 |
| Flexion 0-180⁰ normal | 100⁰ |
| Abduction 0-180⁰ normal | 90⁰ |
| §4.71a Rating | 20% |
| Comments | ROM limited by pain; mild instability; mild incoordination |

Left Thumb Injury: The PEB rated this condition as 5228 [VASRD Thumb, limitation of motion] at 0%. The NARSUM noted that the CI had a segmental defect in the extensor pollicus brevis tendon that was approximately 1 cm in length. The CI had thumb extension at only “4/5” due to the injury to the tendon, and pain. The MEB examination (20050929) documented that the CI had traumatic arthritis in the left thumb. The PEB worksheet noted the thumb was healing with likely development of arthritis. On the VA pre-separation evaluation (20051207), three months after the PEB, the C&P examiner documented that “the distance between the tip of the thumb to the base of the little finger” was 4.5 cm. The evaluator noted “He is able to pick up a piece of paper but has difficulty tearing it with the left hand. He is able to push and pull. He has difficulty twisting and probing.” The VA rated the Left Open Thumb Metacarpal Fracture as 5224 [Thumb, ankylosis of] at 0%. The 5224 coding has only “favorable” and “unfavorable” criteria, and was not predominate to the 5228 coding. Anatomically and physiologically, the shortening of the extensor tendon correlates with a limitation of flexion as noted in the VA exam. The 10% criteria for 5228 specifies: “a gap of one to two inches (2.5 to 5.1 cm) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers.” The Board sought additional rating guidance from the VA with confirmation of the 5228 gap measurement technique. The examiner’s language for gap measurement differed using “tip of the thumb” (versus “the thumb pad) and “base of the little finger“ (versus “the fingers”) was not adjudged significant enough to decrease the measured 4.5 cm gap below the VASRD 5228 gap of 2.5 cm required for the 10% criteria. After due deliberation, considering all evidence and mindful of VASRD§4.3 (Reasonable Doubt), the Board recommends a separation rating of 5228 at 10% for the Left Open Thumb Metacarpal Fracture.

Right Ulna Injury: The PEB found the Right Open Ulna Fracture as a Category III condition (Not separately unfitting). The Compensation and Pension (C&P) exam 20051207 stated that the CI had constant pain in the right ulnar area and the CI had difficulty lifting and carrying anything heavy. However, the CI was still recovering from his open reduction and internal fixation to repair the fracture. The pre-separation VA exam documented that there was no residual disability and the CI had full hand function and no deformity, swelling, effusion or crepitus. After a review of all findings, the Board therefore has no reasonable basis for recommending the right Open Ulna fracture as an unfitting condition for separation rating.

PTSD: This condition was mentioned in the MEB history, but was not discussed in the NARSUM. The PEB worksheet specifically addressed “mild PTSD” and did not consider it to be unfitting, although no distinct PEB adjudication for PTSD was indicated on the PEB form. There was a VA exam for PTSD after the PEB date, but one month prior to separation. There was a two year history of symptoms with anger, anxiety, disturbance of motivation and mood predominant. Global assessment of functioning (GAF) was assessed in the range of mild symptoms (GAF=65). The diagnosis of Traumatic Brain Injury (TBI) was never made nor did the CI ever claim this diagnosis. He did have mild deficits in memory, abstract thinking and following complex command. Given the duration of continuous PTSD symptoms and the acute stresses associated with separation it was likely that any baseline symptoms would be exacerbated by “significant stress.” The VA PTSD reevaluation was at greater than two years post separation and indicated full employment, school attendance and a fiancé; with a GAF of 55, and a continued VA rating of 50%. Any contribution or overlap from PTSD associated with increased perception of pain from the CI’s physical conditions was considered under the CI’s unfitting conditions noted above. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of PTSD as an unfitting condition for separation rating.

Other DES Mentioned Conditions: Lumbar Strain; Residual Tender Scar from Right Hip Bone Graft; Left and Right Ankle; and Bilateral Hearing Loss conditions were mentioned in the DES package. Lumbar strain and bilateral ankle conditions were chronic and stable conditions. Hearing loss did not interfere with understanding commands, and the hip scar was noted to be healing well. There was no documentation stating that any of these conditions interfered with the CI’s duties. The Board, therefore, has no reasonable basis recommending any of these as additional unfitting conditions for separation rating.

Other Conditions: Tinnitus and Right Leg Nerve condition secondary to Graft Scar were not mentioned in the DES package. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Tinnitus, right leg nerve condition, and any contended conditions not covered above remain eligible for Board for Correction of Naval Records (BCNR) consideration. The Board, therefore, has no reasonable basis recommending any additional unfitting conditions for separation rating.

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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. In the matter of Radial and Ulnar Nerve Palsy of the RUE condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication of 8541 at 20%. In the matter of the Right Shoulder Subluxation condition, the Board unanimously recommends a rating of 20% coded 5201 IAW VASRD §4.71a. In the matter of Left Open Thumb Metacarpal Fracture condition, the Board unanimously recommends a rating of 10% coded 5228. In the matter of the, Right Open Ulna Fracture condition or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any finding of unfit for additional rating at separation. In the matter of the Post-Traumatic Stress Disorder, Lumbar Strain, Tinnitus, Residual Tender Scar, S/P Right Hip Bone Graft, Left Ankle Sprain, Right Ankle Sprain, and Bilateral Hearing Loss conditions, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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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, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Radial and Ulnar Palsy of the Right Upper Extremity | | 8514 | 20% |
| Right Shoulder Posterior Subluxation | | 5201 | 20% |
| Left Open Thumb Metacarpal Fracture | | 5228 | 10% |
| **COMBINED (Incorporating BLF)** | | **50%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091025, 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

(b) PDBR ltr dtd 13 Dec 10

1. I have reviewed the subject case pursuant to reference (a). As recommended by reference (b), the subject member’s official records are to be corrected to reflect the following disposition:

a. Effective the date of discharge (16 Jan 2006), placement on the Permanent Disability Retired List with a disability rating of 50 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 subject member once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)