RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900650 BOARD DATE: 20100914

SEPARATION DATE: 20080929

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SUMMARY OF CASE: This covered individual (CI) was LCPL/E-3, 5811/Military Policeman, medically separated from the Marines in 2008 after 1 year, 5 months of service. The medical basis for the separation was Chronic Refractory Bilateral Orchialgia and Panic Disorder with Agoraphobia. The Navy Physical Evaluation Board (PEB) determined both conditions were unfitting for continued Naval service. The PEB also determined that the Panic Disorder with Agoraphobia was a preexisting condition and was not aggravated by service. The CI was separated at 10% disability for the orchialgia using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

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CI CONTENTION: The CI states: “I was rated 10% unfit by Marine Corps (PDBR) 0n 18 July 2008. I believe my disability warrants disability retirement”.

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RATING COMPARISON:

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| --- | --- |
| **Service PEB**  | **VA (2 Months Prior to Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Chronic Refractory Bilateral Orchialgia | 8730 | 10% | 20080718 | Chronic Refractory Bilateral Orchialgia | 7525 | 10% | 20080804 | 20080930 |
| Panic Disorder with Agoraphobia | EPTS | 20080718 | Generalized Anxiety Disorder and Panic Disorder | 94129400 | 30% | 20080805 | 20080930 |
|  |  | Not in DES | Bilateral Shin Splints | 5099-5021 | 10% | 20080804 | 20080930 |
|  |  | MEB H&P | Left Shoulder Strain | 5299-5024 | 10% | 20080804 | 20080930 |
|  |  | MEB H&P | Lumbar Strain | 5237 | 10% | 20080804 | 20080930 |
|  |  | Not in DES | Left Plantar Warts With Subcutaneous Nodule On Right Mid-Shin | 7899-7806 | 10% | 20080804 | 20080930 |
|  |  |  | Right Knee Condition | 5260 | NSC |  |  |
|  |  |  | Left Knee Condition | 5260 | NSC |  |  |
|  |  |  | Pulmonary Condition | 6699-6602 | NSC |  |  |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*):** **60% from 20080930**  |

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ANALYSIS SUMMARY:

The CI entered the Marine Corps in April 2007. After boot camp and training he was stationed at Camp Pendleton. The CI injured his scrotum during training when he was going through an obstacle course. The NARSUM from Urology documents that the CI was first seen in February 2008 for a several month history of left testicular pain. He received extensive urologic evaluation with no correctable cause of his pain found. This included two scrotal ultrasounds showing benign tunica vaginalis cysts. He was also tried on antibiotics, scrotal support, nonsteroidal anti-inflammatories, tricyclic anti-depressants, and cord blocks without improvement. He was referred with to a chronic pain specialist who treated him on Neurontin and Trazodone, without improvement. Although the PEB and the VA used different VASRD codes to rate this condition, both determined a 10% disability rating. A higher rating is not warranted under either code and neither code offers any advantage to the CI.

An Addendum to the Medical Evaluation Board Narrative Summary (NARSUM) 20080611 noted a history of panic attacks since age 16 with an increase in frequency and severity of panic attacks over the previous couple of months. The NARSUM addendum documented the CI’s panic attacks occurred about once daily. The CI did report some mild feeling of sadness and depression as well as worrying about a lot of things but he denied most of the symptoms of Generalized Anxiety Disorder. His mental status examination noted a mildly anxious mood and an affect that was congruent and mildly anxious. The psychiatrist noted a diagnosis of Panic Disorder with Agoraphobia and a Global Assessment of Functioning (GAF) of 65.

The service treatment record (STR) included a pre-deployment health assessment that noted the CI was non-deployable pending a dental exam and evaluation by cardiology and mental health for symptoms of chest pain, hyperventilation, and dizziness to rule out cardiac disease and/or anxiety disorder. The cardiac evaluation included a normal examination and Holter monitor and cardiac disease was ruled out. The mental health referral resulted in enrollment in counseling. Initially no medication was started because the CI was on a tricyclic antidepressant for his chronic testicular pain. After a trial on Celexa resulted in negative side effects, the CI was treated with Zoloft. He was also on Trazadone and Neurontin for his chronic pain.

At the VA C&P examination completed two months prior to separation the CI stated that his Anxiety was aggravated by the Marine Corps because it was too much stress for him, particularly the training and being away from his family. His Military Police training occurred from September to December 2007 and during this time he began experiencing anxiety and was worried, nervous and fidgety. He experienced panic attacks a couple times a day and each attack lasted 20 minutes. These attacks included increased heart rate, sweaty palms, tightness in his chest, and shortness of breath. He reported his twice a month psychotherapy was not very helpful. The CI reported some mild feelings of sadness and depression, but related it more to the frustration he has about the panic attacks, as well as his testicular pain. The mental status examination noted a very flat affect and a slightly depressed mood. He had panic attacks as described above as well as some difficulty with concentration when in a crowd and this caused him to become angry. He felt suspicious in unfamiliar places and had an obsessional ritual of checking his pulse two or three times a day. The VA psychiatrist diagnosed Generalized Anxiety Disorder and Panic Attack Disorder and noted a GAF of 45. His psychiatric symptoms did cause occupational and social impairment with occasional decrease in work efficiency and intermittent inability to perform occupational tasks, although generally he was functioning satisfactorily with routine behavior, self-care, and normal conversation. He had anxiety, suspiciousness, chronic sleep impairment, mild memory loss, and panic attacks a couple of times a day. The VA rated the level of disability at 30%.

The CI had reported a history of panic attacks on his enlistment history and physical examination. No further details about this condition were annotated but the examination documented a normal psychiatric examination and the CI was permitted to enlist without any type of waiver. As described above, the CI was referred to Mental Health for further evaluation of his chronic pain, where he was diagnosed with Chronic Anxiety Disorder with Agoraphobia. As these episodes of anxiety could be documented back to age 16, the condition were determined to have existed prior to service and not aggravated by service as a Marine by the PEB. Therefore no disability rating was applied by the PEB. When the CI requested permanent limited duty until 20081130, the PEB did not recommend permanent limited duty because the CI posed a danger to others. A PEB memorandum stated an MP with panic attacks poses a danger to others.

While the CI did have a history of panic attacks prior to enlisting, there is no information regarding the frequency or severity of these attacks. At the time of his enlistment the condition was not considered to be serious enough to warrant any special evaluations or waivers at the Military Entrance Processing Station. There is no evidence the CI had any significant problems related to anxiety or panic attacks while in basic training. However, while in military police training he experienced increasing frequency and severity of panic attacks to the point where they occurred just about every day and sometimes multiple times per day.

The PEB determined there was no evidence of service aggravation but also recommended the CI not be granted three months of permanent limited duty because an MP with panic attacks should be considered a danger to others.

Other Conditions

Left Shoulder Strain, Lumbar Strain

There is insufficient evidence to demonstrate that either condition was unfitting at the time of separation from service. Neither condition interfered with satisfactory performance of required duties.

Other Conditions Not in the DES

Bilateral Shin Splints and Left Plantar Warts with Subcutaneous Nodule on Right Mid-Shin

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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 condition of 8730 Chronic Refractory Bilateral Orchialgia is most appropriately rated 10%.

The CI’s Chronic Refractory Bilateral Orchialgia did not respond to any of the multiple treatment modalities provided. It caused significant pain and prevented him from engaging in any type of strenuous activity. This condition warrants a 10% rating under either VASRD 8730 or 7525.

The Board determined by simple majority that the condition of 9412 Panic Attack with Agoraphobia was unfitting but had existed prior to service and was not permanently aggravated by service. The Board noted the increased frequency and severity of symptoms but opined there was not sufficient evidence to determine the condition was permanently aggravated by service.

The single voter for dissent (who recommended rating 9412 Panic Disorder with Agoraphobia at 30%) submitted the addended minority opinion.

The other diagnoses rated by the VA (Bilateral Shin Splints and Left Plantar Warts with Subcutaneous Nodule on Right Mid-Shin) were not mentioned in the Disability Evaluation System (DES) package 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 there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Refractory Bilateral Orchialgia | 8730 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091030, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MINORITY OPINION:

The Board determined by simple majority that the CI’s condition of 9412 Panic Disorder was unfitting but had existed prior to service and was not permanently aggravated by service. The Board noted the increased frequency and severity of symptoms but opined there was not sufficient evidence to determine the condition was permanently aggravated by service. This is also what the Navy Physical Evaluation Board determined.

The single voter for dissent opined the increased severity and frequency of symptoms that occurred during training as described in the Analysis Summary supports a determination of permanent service aggravation and was not merely due to a natural progression of disease. There was no evidence of any event outside of Naval service that could explain the increase in functional impairment documented in the STR. He was not performing the full duties of a military policeman (MP) and was functioning as an MP Section Training Clerk. He was also denied permanent limited duty because he was considered a danger to others as a result of his mental health condition, not his Orchialgia. He was not considered a danger to others when he entered service or prior to his military police training.

Therefore, a disability rating should be applied to this condition IAW the VASRD General Rating Formula for Mental Disorders. A 30% rating for 9412 Panic Disorder with Agoraphobia is warranted based on intermittent periods of inability to perform occupational tasks due to panic attacks, suspiciousness, chronic sleep impairment, anxiety, and mild memory loss.

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL

 OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 26 Oct10

 I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (reference (b)) that XXXXXXXX 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)