RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Marine corps

CASE NUMBER: PD0900659 SEPARATION DATE: 20090330

BOARD DATE: 20111014

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (1171, Water Support Technician) medically separated from the Marine Corps in 2009. The medical basis for the separation was headaches with mixed features. The CI had a history of headaches since 2001 but they worsened following a febrile illness while deployed to Iraq in 2007. The febrile illness was thought to be consistent with a viral meningitis, and the CI was medically evacuated in September 2007. Following recovery from the illness, the headaches persisted in spite of treatment. In December 2007, the CI was diagnosed with posttraumatic stress disorder (PTSD) and was treated with medications and psychotherapy. The CI did not responded adequately to treatment and the CI was unable to perform within his military occupational specialty (MOS). He underwent two Limited Duty (LIMDU) Boards and a Medical Evaluation Board (MEB). Meningitis and headaches with mixed features were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. PTSD and rule-out traumatic brain injury (TBI) were the previous subjects of a LIMDU and considered by the PEB. The PEB adjudicated the headaches with mixed features as the only unfitting condition, rated 10% (30% minus 20% deduction for existing prior to service [EPTS]) with application of SECNAVINST 1850.4E. Meningitis and post-concussion syndrome were adjudicated as related category 2 diagnoses, and TBI and PTSD were adjudicated as category 3 diagnoses, not separately unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I separated from the Marine Corps early due to negligence in my chain of command. The case needs to be re-examined for further review.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Navy IPEB – Dated 20090209** | | | **VA (1 Mo. After Separation) – All Effective Date 20090331** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Headaches Mixed Features | 8199-8100 | 10% | Headaches | 8100 | 30% | 20090428 |
| Meningitis | CAT II (Related) | | Meningitis | 8019 | NSC | 20090428 |
| Post Concussion Syndrome | CAT II (Related) | | Post Concussion Syndrome | 8045 | NSC | 20090428 |
| PTSD | CAT III | | PTSD | 9411 | 30% | 20090409 |
| Residual TBI | CAT III | | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Cervicalgia | 5237 | 10% | 20090428 |
| Chronic Lumbar Strain | 5237 | 10% | 20090428 |
| Tinnitus | 6260 | 10% | 20090428 |
| 0% X 2 / Not Service Connected X 7 | | | 20090428 |
| **Combined: 10%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However, the Department of Veteran Affairs (VA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service connected conditions without regard to impact on performance of military duties and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should the degree of impairment vary over time. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected improprieties in the processing of his case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VA Schedule for Rating Disabilities (VASRD) standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

Headache Condition. The CI reported that his headaches began in 2001, prior to service, but they were not debilitating and he did not miss work. There is no mention in the service treatment record of the CI seeking treatment for his headaches until after his evacuation from Iraq in September 2007. During his deployment, the CI developed an illness with fever, rash, headache and laboratory abnormalities (leukopenia, thrombocytopenia, elevated liver enzymes), prompting his evacuation. In spite of a normal lumbar puncture, the CI stated that he was diagnosed with meningitis, though no documentation of the initial diagnosis is evident in the treatment record. Treatment for a rickettsial infection improved his rash and blood count, but his headaches persisted. The CI was able to go white water rafting in September 2007 upon arrival home, without difficulty. These headaches were reported to be frequent and severe, and accompanied by photophobia and nausea. The CI was evaluated and treated by neurology. A brain magnetic resonance imaging (MRI) and a repeat spinal tap were normal. In spite of multiple medications the CI continued to report experiencing frequent debilitating headaches. A LIMDU Board on 25 January 2008 recommended no deployment and physical training to tolerance, which was continued by a second LIMDU Board on 14 April 2008. In the MEB narrative summary (NARSUM) of 25 August 2008, seven months prior to separation, the CI stated he was having severe headaches once or twice a week, lasting from one to three days, and accompanied with photophobia and nausea. He also had milder headaches almost constantly. The MEB examiner, a neurologist, documented a normal neurological exam and normal laboratory studies. The examiner noted that medical treatment had been ineffective in improving the CI’s headaches. The MEB examiner opined that the original work-up of the CI’s rash and fever was consistent with meningitis, “either viral, rickettsial, or some other infectious or autoimmune process.” The examiner concluded the CI “is left with persistent debilitating headaches. This was a common complication after meningitis.” The examiner forwarded meningitis and headaches with mixed features to the PEB as unacceptable conditions. The PEB found the CI unfit due to his headaches rated at 30% (analogous to migraines, coded 8199-8100), with a 20% deduction for EPTS. The PEB found meningitis to be a category 2 related diagnosis.

At a VA compensation and pension (C&P) examination on 28 April 2009, one month after separation, the CI endorsed nearly daily headaches requiring medication. Associated symptoms included nausea, vomiting, occasional blurred vision and nose bleeds. Examination was normal.

However, at the time of the C&P he was feeling better and was going to the gym to exercise and denied any significant restriction of daily activities. The examiner diagnosed headaches with mixed features, and history of meningitis/suspected rickettsial febrile syndrome, resolved. A follow up evaluation on 30 July 2009 documented that, since the initial C&P examination, he had not seen a doctor for his headaches, did not report episodes of incapacitation, and noted the headache was triggered by having sex for too long. The examiner found “no objective evidence that his headaches were aggravated by military service” and no evidence of permanent worsening of his headaches. The examiner also found no documentation to confirm a diagnosis of viral meningitis or rickettsial disease. VA’s rating decision on 16 November 2009 noted the headaches EPTS but did not make a deduction from their 30% rating.

The Board carefully reviewed all the evidentiary information available. While the CI’s headaches did exist prior to service, the service treatment record supports worsening symptoms after his deployment in 2007. The Board disagreed with the PEB assessment that the CI’s debilitating headaches met the criteria for a 30% rating under the VASRD §4.124a, as well as its 20% deduction for EPTS. The Board could find no support for the PEB’s 20% EPTS deduction. The Board noted that there was no evidence in the treatment record that the CI’s existing prior to service headaches resulted in any prostrating attacks or interfered with any activities, military or otherwise, prior to 2007. In accordance with VASRD §4.22 (deduct from the present degree of disability the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule), the Board concluded that the CI’s headache symptoms at the time of enlistment did not reach a compensable level under VA code 8100, and therefore the EPTS deduction for the headache condition would be 0%.

The Board debated whether the CI’s headaches at the time of separation merited a 30% or a 10% disability rating. The Board noted that review of the service treatment record finds four clinic encounters for acute exacerbation of headache during the 12-month period prior to separation, all in the final 6 months. When rating headaches under the diagnostic code 8100 migraine headaches, VA guidance uses the clear English definition of prostrating. The standard dictionary definition of "prostration" is "utter physical exhaustion or helplessness," and does indicate that seeking medical attention is required. The commander’s assessment specifies six to eight hours of lost work due to medical appointments to neurology and the deployment health clinic (for counseling), but it does not state that the CI missed any duty due to headache or acute treatment. Other than the four entries noted, the remaining medical record entries reflected either no pain or mild pain (of the remaining nine entries with pain ratings, six showed pain rating of zero, one each for pain rating of two, three and four). The C&P examination and the follow up examination three months later, although noting continued complaint of headaches, did not reflect the occurrence of incapacitating or prostrating headaches. After a lengthy discussion, the Board unanimously agreed that the CI’s headache condition, analogous to migraines, most closely matched the criteria for a 10% rating under VA code 8100 at the time of separation. There is not reasonable doubt in the CI’s favor therefore to justify a Board recommendation for other than the 10% rating assigned by the PEB for the headache condition.

Post Concussion Syndrome and Traumatic Brain Injury Conditions. The psychiatric addendum to the MEB on 18 December 2008 recorded a diagnosis of post concussion syndrome. The CI reported that in June 2007 he bumped his head against the wall of his vehicle during an improvised explosive device (IED) attack. He admitted to being dazed but denied loss of consciousness and he did not seek treatment. Because of worsening headaches and subjective short term memory loss, a LIMDU Board on 14 April 2008 diagnosed possible TBI and recommended six months of LIMDU to allow for testing. Neuropsychiatric testing in August 2008 revealed impaired attention and concentration as well as decreased learning and memory. The examiner concluded that the CI’s “performance pattern is consistent with having sustained a TBI,” but in a later phone conversation with a PEB member the examiner admitted that TBI was only one possible cause of the CI’s problem. As noted below, neuropsychological testing also noted symptoms of depression. The examiner also noted that the CI had been treated for attention deficit hyperactivity disorder (ADHD) as a child (symptoms of which often persist into adulthood), and was drinking a six-pack to a case of beer at a time. The CI reported he was going through a divorce at the time of testing and he was suffering from a headache during testing. The PEB determined that post concussion syndrome was a category 2 diagnosis related to the CI’s headaches, and residuals from TBI was a category 3 diagnosis, not separately unfitting. A VA C&P follow-up evaluation on 30 July 2009 found insufficient evidence for a brain injury or post concussion syndrome, and the VA rating decision of 16 November 2009 denied service connection for post concussion syndrome based on results of C&P examination. Reviewing the service treatment record, the Board could find no documentary evidence of a head injury that required medical treatment. The neuropsychiatric testing was not specific for TBI, and his symptoms of memory and concentration problems were more likely related to his psychiatric condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the post concussion and TBI conditions.

Posttraumatic Stress Disorder Condition. The PEB determined the PTSD condition was not unfitting for continued military service. The Board must first consider the PEB’s fitness determination. If the Board determines the condition was unfitting for military service, it must then consider the applicability of VASRD section §4.129, and then the ratings depending upon whether §4.129 applies.

The CI was deployed to Iraq from February 2007 to September 2007 when he was medically evacuated for the medical reasons noted above. The CI first sought mental health treatment in December 2007, and was treated with medication and psychotherapy for symptoms that included insomnia, anxiety and depression. In April 2008 he was placed on LIMDU for PTSD by the mental health service, with restrictions to include no weapons and no field training. Neuropsychological testing in August 2008 documented symptoms of insomnia, nightmares, irritability, self-isolation, suicidal ideation and memory difficulties. The examiner noted that the CI had been treated for ADHD as a child, and was drinking a six-pack to a case of beer at a time. The CI also reported he was going through a divorce. The CI reported he was suffering from a headache during testing. The test results were “indicative of an individual experiencing marked distress with prominent depression and hostility,” and “suggested some aspects of posttraumatic stress reaction.” The examiner opined that “it is likely that elements of PTSD are impacting cognitive function.” A psychiatric addendum to the MEB on 18 December 2008, three months prior to separation, noted symptoms of insomnia, anger, irritability, anhedonia, emotional numbing and difficulty concentrating. The examiner noted that the CI had a physically abusive father and that the CI had been married for two years but recently divorced. Mental status exam showed a sad mood with normal range of affect that was congruent with subject matter discussed, normal thought processes, intact judgment and memory, and no suicidal or homicidal ideation. The examiner assigned a global assessment of function (GAF) of 41-50 (serious impairment in social, occupational or school functioning). The examiner diagnosed PTSD with social impairment and significant occupational impairment. The examiner noted social impairment from anger, irritability, emotional numbness and feeling distant from others, and difficulty having loving feelings. The NARSUM provided no detail regarding occupational functioning but noted that the CI reported he had job offers for employment following separation. The PEB adjudicated the PTSD as a category III diagnosis, not separately unfitting. The PEB based this decision on the paucity of mental health notes in the service treatment record, no post deployment health assessment to corroborate combat action, and no documentation of criterion A stressors. “There is simply no info to support a diagnosis of PTSD, less that it is unfitting.” At the time of a mental health VA C&P examination, two weeks after separation, the examiner diagnosed chronic PTSD as mild and assigned a GAF of 68 for some mild symptoms.

The Board carefully reviewed all the evidentiary information available. While the Board agreed with the PEB that there was a paucity of mental health documentation in the service treatment record, it noted that frequently mental health records are kept out of the treatment record for confidentiality reasons. The CI was placed on LIMDU status in April 2008 specifically for PTSD, with duty limitations (no weapons, no field training) commensurate with a PTSD diagnosis. PTSD is the first diagnosis mentioned in the commander’s non-medical assessment as having “a negative impact on his ability to perform.” All evidence considered, the Board cannot find enough strength in the PEB position to overcome a good deal of reasonable doubt in the CI’s favor regarding the fitness adjudication for the PTSD condition. The Board therefore recommends that it be rated as an additionally unfitting condition.

The Board next addressed if the tenant of §4.129 (mental disorders due to traumatic stress) were applicable. IAW VASRD §4.129, when a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the CI’s release from active military service, the rating agency should assign an evaluation of not less than 50%. The permanent rating should be based on the CI’s functioning six months following separation. While examiners may have readily accepted an account of a stressor given in the setting of an evaluation, the actual existence of a stressor is a factual determination that must be based on a review of the entire record. Clinicians routinely accept and report statements of history given by patients, ordinarily without efforts at independent verification, and with scant ability by the examiner to objectively confirm events. Thus, the clinician is in the role of a conduit of information that does not involve the application of actual medical expertise. Unless the clinician was present at that time, he or she cannot assume the role of witness to past events advanced as stressors, or validate symptoms and severity. The Board noted that although the CI later reported combat stressors and combat wounds from an IED, there is no primary documentary evidence of combat, no combat awards, and no references to combat injuries in medical documentation contemporaneous to his deployment and medical evacuation from the theater of operations. There was no “highly stressful event” for which provisions of §4.129 would apply. The Board concludes therefore that the application of §4.129 is not appropriate to this case, and will premise its rating recommendation on the psychiatric acuity at separation.

The most proximate source of comprehensive evidence on which to base the separation rating recommendation in this case is the VA C&P psychiatric examination performed two weeks after separation on 9 April 2009. This C&P examination noted reported symptoms of depression, insomnia, loneliness, passive suicidal ideation and memory difficulties. The CI related that he had been in several firefights while in Iraq. He saw a rocket propelled grenade kill the driver of the vehicle in front of him, and a mine blew up the driver of the CI’s vehicle and knocked him unconscious. The CI reports not remembering what happened after the explosion and remembers waking up in the hospital after that event. However, loss of consciousness and hospitalization for a combat or head injury is not supported by medical records or prior CI reports. He reported weird dreams but did not have nightmares about Iraq. The CI was unemployed, and spent most of his time playing video games while he sought employment. He was living with friends, had another friend he saw on weekends, and spoke with his mother and sister on a regular basis. He reported he was not drinking alcohol. Mental status examination noted suicidal and homicidal ideation, rambling and racing thoughts, and depressed mood. Affect was normal, with intact judgment and insight, average intelligence, and good impulse control. Memory was judged to be moderately impaired on examination. Psychometric testing was compatible with mild PTSD and moderate depression. The examiner diagnosed mild chronic PTSD, and depression. The examiner opined that the depression was secondary to the PTSD and that the prognosis was fair. The examiner concluded that there was occasional decrease in work efficiency with intermittent periods of inability to perform occupational tasks due to PTSD but with generally satisfactory functioning in routine behavior, self care and conversation, and assigned a GAF of 68 for some mild symptoms (some difficulty in social, occupational or school functioning, but generally functioning pretty well). The Board noted that with the relief of military stressors and resolution of his divorce, the CI’s condition significantly improved between the time of the NARSUM and the C&P examination at the time of separation. Although not a psychiatry examination, the C&P examination in July 2009 reflected stable symptom reporting and therefore indicated stable severity since the time of the separation C&P examination.

The Board will remain adherent to §4.130 standards as the measure of disability for its permanent rating recommendation, but exercises its prerogative to judiciously scrutinize the probative value and applicability of the evidence to which the §4.130 criteria are applied. The Board is left to consider that the CI’s accounts of his symptoms and their severity, which constitute much of the psychiatric evidence, are subject to a reasonable reduction in their probative value weight. In its assignment of probative value to the elements of the examination, the Board must acknowledge that VA C&P examinations may predispose a heightened symptom reporting since the examinee is generally quite aware that the severity of symptoms is directly correlated with the resulting rating and financial gain. In such cases, the Board leans more heavily on the well-grounded evidence such as actual performance and functioning, objective elements of the mental status examination and symptoms which are consistently reported and compatible with clinical expectations. In so doing, however, the Board remains cognizant of VASRD §4.3 (reasonable doubt) and favorably concedes matters which it cannot opine to a “more likely than not” standard. The CI’s VA psychiatric rating examination is subject to probative value concerns due to the apparent changing and enlarging CI report of combat stressors, combat injuries, and representation of pre-service academic achievement (“straight As” not supported by school transcript in the file).

The Board’s deliberation settled therefore on arguments for a 30% versus 10% permanent rating recommendation. Social and occupational impairment consistent with a 30% evaluation (occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks…) could be surmised from some of the symptoms reported at the time of the April 2009 C&P examination including irritability, chronic sleep impairment, social withdrawal, and mild memory and concentration problems. There was no anxiety, panic attacks, or suspiciousness. Although there were reported problems with irritability in social functioning, intact friendship and family relations were indicated. The July 2009 C&P examination reflected an intimate relationship, without detail. As the CI was unemployed, there was no information regarding occupational functioning and impairment in this sphere can only be inferred from reported symptoms. An argument for a 10% permanent rating can be sustained by the §4.130 description for that rating, i.e., “occupational and social impairment due to mild or transient symptoms which decrease work efficiency…only during periods of significant stress, or; symptoms controlled by continuous medication.” The CI was not taking his psychiatric medication at the time of the April 2009 C&P examination but was still able to function pretty well with only mild symptoms, as supported by a GAF of 68. All of the evidence, bolstering and reducing support for the higher rating, was debated. As many conflicting opinions as possible were resolved in favor of the CI when it was reasonable to do so. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends the PTSD condition was unfitting for military service and warranted a separation disability rating of 10%, coded 9411.

Remaining Conditions. Other conditions identified in the DES file were back pain, nasal polyps with nose bleeds, folliculitis and hemorrhoids. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant during the MEB period, none were the basis for limited duty and none were implicated in the commander’s non-medical assessment. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally neck pain, tinnitus, gastritis, bilateral wrist and hand pain, bilateral hearing loss and several other non-acute conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. 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 Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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. As discussed above, PEB reliance on SECNAVINST 1850.4E for rating was operant in this case and the conditions were adjudicated independently of that policy and regulation by the Board. In the matter of the headache condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the post concussion syndrome and TBI conditions, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the PTSD condition, the Board unanimously recommends that it be added as an additionally unfitting condition for separation rating coded 9411 and rated 10% IAW §VASRD 4.130. In the matter of the back pain, nasal polyps with nose bleeds, folliculitis and hemorrhoids conditions or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Headache Condition | 8199-8100 | 10% |
| Posttraumatic Stress Disorder | 9411 | 10% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091112, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President,

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 17 Oct 11 ICO xxxxxxxxxxxxxxxx

(c) PDBR ltr dtd 25 Oct 11 ICO xxxxxxxxxxxxxxxx

(d) PDBR ltr dtd 27 Oct 11 ICO xxxxxxxxxxxxxxxx

(e) PDBR ltr dtd 27 Oct 11 ICO xxxxxxxxxxxxxxxx

(f) PDBR ltr dtd 20 Oct 11 ICO xxxxxxxxxxxxxxxx

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (f).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. XXX XX XXXX: Placement on the Permanent Disability Retired List with a 30 percent disability rating (increased from 10 percent) effective 15 January 2006.

b. XXX XX XX: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 1 December 2002.

c. XXX-XX-XXXX: Separation from the Naval Service due to physical disability rated at 10 percent (increased from 0 percent) effective 15 November 2004.

d. XXX XX XXXX: Placement on the Temporary Disability Retired List at 50 percent from 15 February 2008 through 14 August 2008 with final disability separation on 15 August 2008 with a 10 percent disability rating.

e. XXX XX 6809: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 30 March 2009.

3. Please ensure all necessary actions are taken to implement these decisions and the subject members are notified once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)