RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900666 BOARD DATE: 20101027

SEPARATION DATE: 20080815

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SUMMARY OF CASE: This covered individual (CI) was an active duty E-5/Sgt (0811, Artillery Cannoneer) medically separated from the Marine Corps in 2008 after seven years and ten months of service. The medical basis for the separation was Post-Traumatic Osteoarthritis Right Elbow. While the CI had injured his right elbow prior to entering service, it had completely healed and was considered to be 0% disabled upon entry. However, the condition was permanently aggravated by service. The CI injured his right elbow four times while on active duty and required surgical repair. He did improve with treatment but was not able to return to full duty and underwent a Medical Evaluation Board (MEB) for his right elbow condition. The informal Physical Evaluation Board (PEB) determined the CI was unfit for continued Naval service secondary to the Right Elbow condition. The CI was then separated from service at a 10% 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: “Right Elbow severely damaged over time, with tears and breaks requiring Orthoscopic Surgery. To repair tendons and ligaments. The right arm cannot fully extend to normal degrees of extension. Plus a loss in strength in right hand. The member was in ARTILLERY FOR 7 YEARS 10 MONTHS AND 09 DAYS. Hearing loss as well has occurred, but was not taken in to consideration. IRAQI VETERAN FROM 2002 -2003 OIF AND 2006-2007. The member has been seen by a Psychiatrist and has been diagnosed with Post Traumatic Stress Disorder. I feel as though my condition warrants disability retirement due to the January 2008 NDAA changes regarding PTSD. It is to my understanding that DoD is now rating PTSD at 50%”

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RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20080605** | **VA (2 Mo. prior Separation) – All Effective 20080816** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Post-Traumatic Osteoarthritis Right Elbow | 5299-5003 | 10% | Traumatic Osteoarthritis of the Right Elbow, Status Post Fracture with Surgical Repair (also claimed as right arm dislocation and right arm condition) | 5010-5206 | 10% | STR |
| Bilateral Hearing Loss | MEB H&P | Bilateral Hearing Loss | 6100 | 0% | STR |
|  | Not in DES | History of Tinea Pedis | 7813 | 0% | STR |
|  | Not in DES | Post-Traumatic Stress Disorder | NSC |  |  |
|  | Other NSC X 14 |  |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 10%**   |

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ANALYSIS SUMMARY:

Post-Traumatic Osteoarthritis Right Elbow. The CI injured his right elbow when he sustained a fall on 25 April 2005 while riding a horse. He was right-handed. He underwent evaluation and physical therapy with satisfactory progress. He requested and was placed on full duty on 09 August 2005 as his unit was preparing for deployment. On 25 October 2005 he re-injured his right elbow during section chief qualification for artillery in Camp Pendleton, California. His physical therapy was halted on 07 December 2005 due to complaints of instability and paresthesias involving his right elbow. On 21 January 2006 he fell down a flight of stairs at home in Camp Pendleton, California and exacerbated his right elbow injury. The CI underwent a medial collateral ligament reconstruction for right elbow instability on 07 February 2006. A spur resection and ulnar nerve decompression were also performed. On 07 February 2006 his first limited duty (LIMDU) period started at Camp Pendleton, California.

The elbow was reinjured on 22 October 2007 during Jungle Warfare Training at Marine Corps Base Japan in Okinawa, Japan. He was referred to the Orthopedic Clinic at U.S. Naval Hospital Okinawa, Japan and was seen in clinic on 06 November 2007 with a diagnosis of right elbow sprain. At that time he had significant swelling, weakness and pain with manual testing. A magnetic resonance imaging (MRI) and a CT scan were ordered given his past history of trauma and prior surgery. The treatment was a brace and physical therapy. On 06 November 2007 his second LIMDU period started at U.S. Naval Hospital Okinawa, Japan. Imaging studies showed chronic degenerative changes and no surgically correctable pathology. On 11 March 2008 formal physical therapy was discontinued. The CI’s right elbow symptoms persisted despite maximal therapy and these symptoms negatively impacted his ability to perform his duties as a Marine Corps Cannoneer in the opinion of the treating orthopedic surgeon and his Commander. His MOS (occupational specialty) required physical labor with the upper extremities and his condition did not allow him to perform his required duties. The CI required a range of motion elbow brace to provide stability at the time of the MEB narrative summary (NARSUM) 20080331. He also was taking routine non-steroidal anti-inflammatory medications at that time. The 20080331 NARSUM did not include a physical examination. However, a complete history and physical was completed for the MEB on 20080410 and it documented right elbow range of motion (ROM) limited to 160 degrees of extension and 120 degrees of flexion, right grip strength 4/5, and pain with resisted wrist flexion and extension.

The CI was seen in the occupational therapy clinic 20080306 with a complaint of worsening pain and increasing weakness. He was unable to open a jar with his right hand. The therapist noted normal active ROM of the right elbow, flexion weakness of the fingers, and a preference for right-handedness. Grip strength was not measured at this visit. This note also documented that activities of daily living were limited by limited use of the right upper extremity. Grip strength was measured as 32 lbs on the right and 103 lbs on the left, right grip was 31% of left on 20080103. Previous testing of grip strength had been normal and the CI had not complained of weakness. Previous testing done by Hand Surgery at a post-operative visit (surgery 20060207) on 20060407 noted normal grip strength of 107 lbs on the right and 104 lbs on the left at the 3rd position but a positive Tinels’s sign at the wrist. Occupational Therapy noted grip strength with 5-7 lb variation between the right and left side on 20060307 and the CI reported no problems with grip strength on 20060309. Occupational therapy noted flexion weakness of the fingers with normal grip strength (95 lbs both sides at setting 2) on 20060222. At that visit right elbow flexion was 107 and extension was -38. Normal flexion is 145 and extension is 0 degrees. At an outpatient visit to orthopedics 20071023 (around the time of the October 2007 injury) the CI was noted to have right elbow flexion of 120 degrees and lack 10-15 degrees of extension, his baseline since surgery. He had full pronation and supination. He also had decreased sensation in the distribution of the ulnar nerve. Motor examination was normal.

The VA rating decision of 20090816 was not based on a compensation and pension (C&P) examination because the CI failed to show for any of his examination appointments. The rating decision was based on a review of the CI’s service treatment record (STR) and noted an initial injury to the right elbow prior to entry into service. The injury was healed and considered to be 0 percent disabling on entrance to active duty. Records show that he injured his right elbow four times while in military service including fracture and ligament tear requiring surgical repair. The MEB physical 20080410 noted limitation of motion of the right elbow with 160 degrees of extension and 120 degrees of flexion along with reduced grip strength and painful motion. X-rays confirmed post-traumatic osteoarthritis. Service connection was granted for obvious aggravation of the condition by military service. A 10% rating was applied as the minimal compensable evaluation for the right elbow based on complaints of pain on activities with limitation of motion as a result of a chronic disease. While there was limited range of motion, it is below the minimum compensable level for the elbow. However, a 10% rating for the right elbow traumatic osteoarthritis is warranted based on painful motion IAW VASRD §4.59 Painful motion. While the PEB and the VA used different VASRD codes to rate the right elbow arthritic condition, the CI’s condition warrants a 10% rating in both, and neither one offers any advantage to the CI. Both ratings are based on painful motion. However, the CI also had a peripheral neuropathy caused by repeated injuries to his right elbow. On multiple occasions occupational therapy noted decreased strength of finger flexion and significantly decreased grip strength of the right hand was measured in January 2008. The CI had complained of increasing weakness and inability to open a jar with his right hand. The right grip was only 31% of the left whereas all previous measurements noted normal grip strength on both sides. The MEB history and physical also noted decreased grip strength of 4/5 on 20080410. This weakness would preclude satisfactory performance of the CI’s required duties as an Artilleryman and is considered unfitting. It is rated as a mild incomplete paralysis of the intrinsic muscles of the hands and flexors of the fingers on the dominant side and warrants a 20% rating.

Other Conditions

The NARSUM did not formally identify any other medical conditions at separation. Neither the physical profile nor the Commander’s statement identified any conditions other than the elbow. The only documented physical limitations were those attributed to the adjudicated condition. Bilateral Hearing Loss was noted in the MEB History and Physical. The STR documents that the CI was entered in the Hearing Protection Program in 2004. His artillery was considered to be high-risk for hearing loss. An audiogram dated 20040416 showed all frequencies between 500 Hertz (Hz) and 4000 Hz with loss values equal to or greater than 60 decibels (dB), in both ears. No speech recognition testing results are in the record for review. Although the CI failed to report for any C&P examinations, the VA granted 0% disability for this condition based on the audiogram of 20040416. There is no evidence that this condition was unfitting at the time the CI separated from service and therefore no disability rating is recommended.

Other Conditions Not in the Disability Evaluation System (DES). 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. Post-Traumatic Stress Disorder and any contended conditions not covered above remain eligible for Board of Correction for Naval Records (BCNR) consideration.

Post-Traumatic Stress Disorder (PTSD). The MEB History Form 2807-1 (20080410) documented symptoms consistent with PTSD and noted the CI had never been evaluated by Mental Health or Deployment Health. The examiner noted a normal psychiatric exam, but did recommend a referral to Mental Health for PTSD Symptoms. However, there is no record of any evaluation for or diagnosis of PTSD. The CI claimed disability for PTSD symptoms with the VA, but did not follow-up for his C&P evaluation. The VA found no record of diagnosis of or treatment for PTSD, neither while in service nor at the VA and therefore denied service connection for this condition. There is a single note from a mental health interview with a VA psychiatrist on 20091026, more than 14 months after separation. The CI had been receiving medical care from the VA, had a positive screen for PTSD, and was referred to the psychiatrist. He was diagnosed with chronic PTSD. He was prescribed Trazadone and was to continue therapy at the Vet Center. However, this is well outside the 12 month window specified in DoDI 6040.44 as a basis for Board recommendations. As no diagnosis was made while the CI was on active duty, this condition is considered outside the scope of the Board.

History of Tinea Pedis. No information concerning this condition was found in the STR. No other conditions were service connected by the VA within twelve months of separation.

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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 10% for 5299-5003 Post-Traumatic Osteoarthritis of the Right Elbow. The CI’s right elbow continued to have decreased range of motion (ROM) and painful motion despite receiving appropriate treatment. The ROM limitations were not sufficient to meet the minimum rating criteria. However, IAW VASRD §4.59 Painful motion, a 10% rating for the Right Elbow condition is warranted. The intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint. The minimal compensable rating for the dominant elbow is 10%.

The single voter for dissent (who recommended also rating 8512 Mild Incomplete Paralysis of Right Hand Intrinsic Muscles and Finger Flexors at 20% for combined total of 30%) did not elect to submit a minority opinion.

The Board also considered the condition of Bilateral Hearing Loss and unanimously determined that this condition was not unfitting at the time of separation from service and therefore no disability rating is applied. This condition did not prevent the CI from performing any required duties and no physical limitations are attributed to this condition. The other diagnoses rated by the VA (PTSD and Tinea Pedis) were not mentioned in the Disability Evaluation System 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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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090818, 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 XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 4 Nov 10

 I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (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)