RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD200900687 SEPARATION DATE: 20051215

BOARD DATE: 20110323

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCPL (0311 /Infantryman), medically separated from the Marines in December 2005. The medical bases for separation were right index finger metacarpophalangeal joint contracture and extensor tendon adhesion. While deployed to Iraq, CI sustained a shrapnel wound to his right dominant hand, sustaining a fracture to his right index finger metacarpal bone in November 2004. Despite surgery and physical and occupational therapy, he experienced residual loss of motion of the metacarpophalangeal joint and persistent pain related to tightening (contracture) of soft tissue structures. He did not respond adequately to treatment, and was unable to perform his military occupational specialty. He was placed on limited duty, and underwent a Medical Evaluation Board (MEB). Right index finger metacarpophalangeal joint contracture and extensor tendon adhesion were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. Right index finger metacarpal neck open fracture was forwarded on the MEB submission as a related Category 2 diagnosis. The PEB adjudicated the right index finger metacarpophalangeal joint contracture and extensor tendon adhesion condition as unfitting, rated 0%; with application of the SECNAVINST 1850.4E and DoDI 1332.39, respectively. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: The CI states “Conditions have deteriorated over time. See attachments and #1 thru #4 plus all medical records. Lumbar Strain 10%; Post Shrapnel Inj 10%; Residual Scar 10%; Bilateral Tinnitus 10%; PTSD 50%; TBI 40%. I feel, and it has become apparent, that my PTSD and my TBI were overlooked at time of discharge.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20051026** | **VA (1 Mo. Prior to Separation) – All Effective Date 20051216** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| R Index Finger Condition… | 5229 | 0% | Right Index Finger Condition… | 5229-5309 | 10% | 20051123 |
| Scar S/P Shrapnel Injury R Hand… | 7804 | 10% | 20051123 |
| R Index MC Neck Open Fx | Cat II |
| Obesity | Cat IV | No VA Entry |
| ↓No Additional MEB/PEB Entries↓ | Lumbar Strain | 5237 | 10% | 20051123 |
| PTSD\* | 9411 | 30% | 20070705 |
| 0% X 1 / Not Service Connected X 0 | 20051123 |
| **Final Combined: 0%** | **Total Combined: 50%** |

\*PTSD rating initially 0% due to CI missing scheduled exam; increased by VARD August 2007 to 30% effective day after separation based on Compensation and Pension (C&P) examination in July 2007

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred conditions have had on his quality of life. However, the military services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation, and not based on possible future changes. The VA, however, can rate and compensate all service-connected conditions, without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service-connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time. 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, as compared to the Veterans’ Administration Schedule for Rating and Disability (VASRD) standards, as well as the fairness of PEB’s fitness adjudications. The Board’s threshold for countering Disability Evaluation System (DES) fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. Any changes in the VASRD rating criteria following the CI’s separation are not applicable in this case.

Residuals of right index finger metacarpal neck open fracture/ right index finger metacarpophalangeal joint contracture and extensor tendon adhesion (post shrapnel injury). The narrative summary (NARSUM), nine months post injury and four months prior to separation, documented a well-healed surgical scar, decreased range of motion (ROM) in flexion of the metacarpal phalangeal joint (MCP), but with ability to touch the palm adjacent to the palmar crease with the finger tip. Extension of the index finger including the MCP joint was to 0°. There was decreased grip strength of the right hand compared to the left. At the time of the VA C&P examination one month prior to separation (one-year post-injury), CI reported persistent weakness and pain, and difficulty lifting and carrying heavy objects, and keeping up with normal work requirements of his job. The examiner recorded that the ROM of the right index finger was mildly limited and manual dexterity was mildly impaired. However, the examiner recorded that the right index finger exam revealed no abnormal movement, instability or weakness, and no evidence of nerve damage. Hand strength was recorded as normal, and the CI was able to make a tight fist bilaterally without difficulty. ROM was sufficient so that “the distance near the tips of the fingers approximating to the medial transverse folds of the palms was 0 inches bilaterally.” Extension of the index finger, including the MCP joint, was to 0°. The examiner concluded that the involved muscle group could move the joint independently, but motion and function was limited by pain, but not by easy fatigability or weakness. The VA rated the CI’s condition 10% using VARSD codes 5229-5309 for limitation of motion (5229 index finger) and muscle function (5309 Group IX muscle function), applying §4.59 (painful motion). The Board noted that documented ROM (resulting in a gap of less than one inch between the fingertip and the proximal transverse crease of the palm and no limitation of extension) correlates with a 0% rating IAW VASRD §4.71a for 5229 code. Similarly, by the time of the C&P examination, strength was recorded as normal, correlating with a 0% rating under the code for muscle group IX. The Board concurred that the documented painful motion warranted a 10% rating IAW VASRD §4.59 (painful motion) and §4.71a under code 5229 for the dominant hand. The Board unanimously agreed there was no evidence that the surgical scar was separately unfitting warranting a rating.

Posttraumatic stress disorder (PTSD). CI was diagnosed and treated for PTSD while on active duty. Available service medical records do not include mental health treatment records. The MEB history and physical examination (H&P, DD Forms 2807 and 2808, September 21, 2005) documented treatment with medication for PTSD including symptoms of depressed mood, anxiety, sleep difficulties, and memory difficulties that were characterized as “mild.” PTSD was not forwarded to the PEB as a condition not meeting medical retention standards, and there was no duty limitation. The VA initially established service connection for PTSD, rated 0% due to the CI missing his VA examination. Over one year following separation, CI presented to the VA with increased symptoms of PTSD, and the C&P psychiatrist (July 2007) assigned a Global Assessment of Functioning of 75 for mild symptoms. The VA rating decision in August 2007 awarded a 30% rating based on this C&P examination, with rating retroactively effective the day after separation. After due deliberation, and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending PTSD as additionally unfitting for separate rating.

Traumatic Brain Injury (TBI). CI contends TBI was missed while in service and requests military disability rating based on the VA evidence. CI was exposed to explosive ordinance while deployed and suffered shrapnel injuries from a mortar blast which could be considered a blast injury that could lead to TBI. CI underwent a VA TBI evaluation in March 2009, three years after separation. He reported that following the blast injuring his hand, he was dazed and confused, but did not experience loss of consciousness. He endorsed multiple subjective symptoms. The VA awarded service-connected rating of 40%, effective February 2009. The service treatment records and DES documents do not record a history of head injury, or symptoms of TBI. On the Post-Deployment Health Assessment (PDHA, DD Form 2796) on January 11, 2005, two months after injury, CI denied symptoms of TBI including headache, dizziness, and difficulty remembering. At the time of the MEB H&P examination (DD Form 2807, Question 15) on September 2005, the CI denied head injury, headache, memory loss, or dizziness. The CI did report symptoms due to his diagnosed PTSD including possible memory difficulties to question 17. The mental health C&P examination 19 months after separation (July 2007) documented mild concentration and short term memory problems, which are also consistent with his PTSD. Although TBI was noted in the VA rating decision three years after separation, it was not documented in the DES file. Further, residuals of TBI were not clinically active during the MEB period, did not carry an attached profile, and were not implicated in the commander’s statement. 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.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for lumbar strain and residual scar post-shrapnel injury. At the time of the MEB H&P examination, CI reported a history of occasional back pain self-treated with over the counter medication. The examiner recorded that “Has never needed medical treatment or required more than NSAIDs.” The spine and musculoskeletal examination was recorded as normal. The residual scar of the hand post-shrapnel injury did not interfere with performance of duties (residuals of the shrapnel injury to the hand were previously considered above). These conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to a service disability rating. The CI’s application also asserts that a compensable rating should be considered for bilateral tinnitus. Although the CI complained of tinnitus at the time of the PDHA, it is not present in the subsequent DES documentation and was not a focus of clinical attention. 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 thus has no basis for recommending bilateral tinnitus for separation rating.

Remaining Conditions. Several additional non-acute conditions or medical complaints were also documented including bronchitis, pain right shoulder, right knee strain, right elbow pain. None of these conditions were clinically symptomatic during the MEB period, none carried attached duty limitations, and none were implicated in the non-medical assessment (commander) statement. 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. Obesity is a condition that does not constitute a physical disability, and is not subject to separation rating, as appropriately adjudged by the PEB Category IV designation. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical, or found elsewhere 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 thus has no 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. In the matter of the residuals of right index finger metacarpal neck open fracture/ right index finger metacarpophalangeal joint contracture and the extensor tendon adhesion (post-shrapnel injury) and IAW VASRD §4.71a, the Board unanimously recommends a change in rating to 10%, coded 5229. In the matter of the PTSD condition 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| R Index Finger MCP Joint Contracture and Extensor Tendon Adhesion | 5229 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091014, 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

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 25 Mar 11

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

2. The subject member’s official records are to be corrected to reflect the following disposition:

 a. Separation from the naval service due to physical disability rated at 10 percent (increased from 0 percent) effective 15 December 2005.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)