RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: marine CORPS

CASE NUMBER: PD200900688 SEPARATION DATE: 20060615

BOARD DATE: 20110421

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl (0311/8152, Rifleman/Basic Security Guard), medically separated from the Marine Corps in 2006 after two years of active service. The medical basis for the separation was bilateral symmetric moderate mid-frequency sensorineural hearing loss. He was placed on limited duty and removed from exposure to hazardous noise. Although had hearing loss stabilized, repeated exposure to noisy military environments was believed to further aggravate his condition and he therefore underwent a Medical Evaluation Board (MEB). Bilateral symmetric moderate mid-frequency sensorineural hearing loss was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the bilateral symmetric moderate mid-frequency sensorineural hearing loss condition unfitting, rated 0%; with application of the SECNAVINST 1850.4E. The CI made no appeals, and was medically separated with a 0% disability rating.

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CI CONTENTION: CI states, “The hearing loss causes communication issues on my job and in my personal life. Also the hearing loss has prevented me from obtaining employment and doesn’t allow for certain areas of employment relating to my military training and specialty.”

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RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20060411** | **VA 2 Mo. After Separation – Effective Date 20060616** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Sensorineural Hearing Loss | 6100 | 0% | Bilateral Hearing Loss | 6100 | 0% | 20060831 |
| ↓No Additional MEB/PEB Entries↓ | Tinnitus\* | 6260 | 10% | 20060831 |
| IGA Neprhopathy | 7502 | 0% | 20060831 |
| Not Service Connected x 1 |
| **Combined: 0%** | **Combined: 10%** |

\*Tinnitus granted from 20060831

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ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service aggravated condition has 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 Veterans Administration (VA), however, can rate and compensate all service connected conditions without regard to their impact on performance of military duties. 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 compared to VA Schedule for Rating Disabilities (VASRD) standards, as well as the fairness of PEB fitness adjudications at the time of separation.

Sensorineural Hearing Loss. CI had a history of hearing loss since early adolescence and entered the Marine Corps on a waiver for hearing loss. Eighteen months after entry into military service, the CI was evaluated for worsening hearing with difficulty understanding speech. Specialty evaluation by otolaryngology diagnosed bilateral symmetric sensorineural hearing loss in the mid-frequency range, and hearing aids were recommended. The CI was placed on two consecutive six-month periods of limited duty and removed from exposure to hazardous noises. Periodic audiograms demonstrated stability of the condition over the course of one year. Although the hearing loss stabilized, there was considerable risk that continued noise exposure while on active duty (firearms, machinery, vehicles, aircraft, etc.), would result in continued decline in hearing, including high frequencies, further impairing his ability to communicate in complex listening environments. Results of audiometric evaluations are displayed in the chart below:

|  |  |  |  |
| --- | --- | --- | --- |
| HEARING | EXAM | MEB ~5 Mo. Pre Sep | VA C&P ~2 Mo. After Sep |
| Left Ear | Average Hearing Loss | 45 dB | 45 dB |
| Speech Discrimination | 76% | 88% |
| Table VI / VIa | III / II | II / II |
| Right Ear | Average Hearing Loss | 46 dB | 48 dB |
| Speech Discrimination  | 84% | 92% |
| Table VI / VIa | II / II | II / II |
| §4.85 Rating | Table VII | 0% | 0% |

(Average hearing loss is the sum of pure tone thresholds at 1000, 2000, 3000, and 4000 Hz divided by four)

Application of VASRD §4.85 for both the MEB and compensation and pension (C&P) examinations yields a 0% rating. Although the alternate rating approach in §4.86a does not apply, rating using the alternate Table VIa does not result in a higher rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the hearing loss condition.

Remaining Conditions. The MEB history and physical (H&P) examination records a history of kidney disease. The CI developed blood in his urine (hematuria) and underwent nephrology evaluation leading to diagnosis of IgA nephropathy. He was placed on limited duty while undergoing the evaluation; however, at its completion the nephrologist released the CI to full unrestricted duty. Other conditions identified in the MEB H&P examination were intermittent low back pain (related to working out), foot pain when wearing boots, and controlled high blood pressure secondary to the kidney condition. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically active during the MEB period, were the bases for limited duty or were implicated in the commander’s 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, tinnitus was noted in the VA rating decision. The C&P examination recorded a four-year history of tinnitus (preceding enlistment) occurring twice per month. Service treatment records did not record tinnitus and several entries specifically indicated no tinnitus. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the Disability Evaluation System. The Board therefore has no reasonable basis for 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the right sensorineural hearing loss condition and IAW VASRD §4.85, the Board unanimously recommends no change in the PEB adjudication. 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bilateral Sensorineural Hearing Loss | 6100 | 0% |
| **COMBINED** | **0%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091113, 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 XXX, FORMER USMC

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 3 May 11

 I have reviewed the subject case pursuant to reference (a) and, for the reasons set forth in reference (b), approve the recommendation of the Physical Disability Board of Review XXX’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.

 Assistant General Counsel

 (Manpower & Reserve Affairs)