RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900690 SEPARATION DATE: 20061020

BOARD DATE: 20110610

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve HM3 (8404/Field Medical Service Technician) medically separated for chronic episodic positional vertigo and complete hearing loss of the left ear. Symptoms began in 2003*.* Despite treatment, the hearing loss persisted. The vestibular symptoms recurred and he did not respond adequately to treatment, including surgery, and was unable to perform within his rating or to meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Chronic episodic positional vertigo and complete hearing loss, left ear, were forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW SECNAVINST 1850.4. The IPEB adjudicated the chronic episodic positional vertigo condition and complete hearing loss, left ear condition as unfitting, each rated 10%, with application of SECNAVINST 1850.4E and DoDI 1332.39 and the VA Schedule for Rating Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB) which upheld the IPEB adjudication. He then submitted a Petition for Relief (PFR) to the Naval Council of Review Boards (NCRB) which upheld the FPEB adjudication and denied the PFR. He was then medically separated with a 20% combined disability rating. He subsequently appealed the Board for Correction of Naval Records (BCNR) which directed him to the PDBR.

CI CONTENTION: “I provided the Navy the opportunity to teleconference my ENT doctor at hearing to support my case that my condition warranted higher rating. I provided my VA rating, which at the time was 60%. I am providing medical evidence from my physical therapist showing my condition occurred more than once a week. The Navy chose to ignore Dr Wallace my ENT that my condition resulted in daily symptoms by copy or his letter. The condition warrants 100% evidenced by VA rating. The preponderance of evidence suggests I get dizzy and stumble more than once a week, in addition to the total hearing loss and inner ear damage results of paralymphatic fistula.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service FPEB – Dated 20060623** | **VA (2 Mo. After Separation) – All Effective Date 20060410** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Episodic Positional Vertigo | 6100 | 10% | Positional Vertigo & Dysequilibrium with L Hearing Loss & Intermittent Tinnitus | 6299-6205 | 60%\* | 20060624 |
| Complete Hearing Loss, L Ear | 6204 | 10% |
| ↓No Additional MEB/PEB Entries↓ | Not Service Connected x 2 | 20060221 |
| **Final Combined: 20%** | **Total Combined: 60%** |

\*100% effective 20080717

ANALYSIS SUMMARY:

Chronic Episodic Positional Vertigo with Complete Hearing Loss, Left Ear. In September 2003, the CI had difficulty with ear pressure and continuously performed a valsalva maneuver while on a redeployment flight. He experienced vertigo, nausea, vomiting, and dizziness upon disembarkation. The vertigo persisted and was associated with occasional tinnitus and sudden hearing loss on the left. Magnetic resonance imaging and lab tests were normal. Initial management included salt restriction and prednisone with subsequent vestibular rehabilitation. A Rinne test was negative (indicating bone conduction better than air i.e., abnormal) and Weber lateralized to the right (indicating left ear dysfunction). The tests indicate a sensory and conductive loss on the left; hearing loss persisted. The vertigo was treated with vestibular rehabilitation which did not result in full resolution. An electronystagmogram showed no nystagmus, but did reveal left-sided weakness on caloric testing. He underwent exploratory surgery with repair of a left peri-lymphatic fistula discovered during surgery. There was improvement of the vertigo; without complete resolution. MEB exam on 23 February 2006, eight months pre-separation, revealed occasional vertigo resulting from left-sided head movement and from looking upward. The CI felt unsteady most of the time. No nystagmus was noted and tympanic membranes were normal. Romberg and tandem gait were slightly unsteady, but overall gross gait was normal. There was no dysdiadochokinesia (an inability to perform rapid alternating movements). The audiogram associated with the exam showed a complete loss of hearing and speech discrimination on the left and normal hearing and speech discrimination on the right.

VA compensation and pension (C&P) exam for audiology and ear disease on 21 February 2006 were proximate to the MEB evaluation. He was again noted to have 100% discrimination and normal hearing on the right with no hearing on the left. The C&P ear exam noted that, by history, he still walked with unsteadiness and had difficulty with sudden movements. The ears were noted to be clear and no nystagmus was present. No objective assessment of gait or vestibular function was documented. The assessment reads, “occlusion, left, probable cochleovestibular fistula, not active at this time but has not progressed to normal.” A follow up note with his civilian ENT specialist dated 19 May 2006 five months before separation noted that he gave a history of positional vertigo two to three times per day, each episode lasting a few seconds. He had some occupational impairment (home inspector) due to difficulty driving and working at heights when dizzy. On exam, the ears were normal, nystagmus absent, gait and tandem walking “performed well,” while Romberg test was “slightly positive with tendency to fall backward.” A brief note one month later by the same physician noted, “one with positional vertigo would be expected to stagger or stumble occasionally with such spells.” Tinnitus was noted on the audiology evaluation, but not on the MEB or C&P ear exam. The PEB coded the vertigo as 6204 (peripheral vestibular disorders), the hearing loss as 6100 (complete hearing loss) and rated each at 10% using the VASRD. The VA coded hearing loss, vertigo, and tinnitus as 6299-6205 (analogous to Meniere’s syndrome) for positional vertigo/disequilibrium with left ear hearing loss and intermittent tinnitus rated at 60%. The VA later rated the condition at 100%, 21 months after separation.

The Board considered the VA analogous coding to Meniere’s syndrome as more reflective of the actual clinical condition of perilympahtic fistula since the two disorders are clinically related and have the same symptom complex. The Board then considered the appropriate disability ratings. Using Tables VI and VII in the VASRD, a 10% rating for the hearing loss is obtained regardless of which audiometric exam is utilized. The Board notes that the CI gave a history of vertiginous episodes two to three times per day, lasting a few seconds. While there is a note from a civilian otolaryngologist stating that occasional staggering would be expected, staggering is not noted on any exam despite provocative testing. Cerebellar testing was not normal, i.e.. positive Rhomberg and unsteady tandem gait, but cerebellar gait was not noted to be present. The frequency of attacks was consistent with the highest rating of 100%; however, there was no cerebellar gait which is required for the 100% or the 60% rating. Thus the Board considered the appropriate coding to be 30% under the coding analogous to Meniere’s syndrome. The Board noted that the PEB considered the hearing loss and vestibular dysfunction separately while the VA considered the symptoms as once complex analogous to Meniere’s syndrome. The Board noted that there was no documented evidence of staggering to support a 30% rating under the PEB code 6204. Using the analogous code 6299-6205, the three conditions (peripheral vestibular disorder, hearing impairment, and tinnitus) are treated as a single condition which better reflects the underlying pathology, i.e. perilymphatic fistula. After due deliberation, in consideration of the totality of the evidence and VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 30% for the chronic episodic positional vertigo with complete left hearing loss condition, coded 6299-6205.

Other conditions. No other conditions were noted in the Disability Evaluation System packet, contended by the CI, or service connected with a compensable rating by the VA within twelve months of separation. 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. In the matter of the chronic episodic positional vertigo with complete left hearing loss, the Board recommends, by a 2:1 vote, that the chronic episodic positional vertigo and complete hearing loss be rated at 30%, coded 6299-6205. The dissenting voter who favored no re-characterization did not elect to submit a minority opinion.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Episodic Positional Vertigo with Complete Hearing Loss, Left Ear | 6299-6205 | 30% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091021, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXXX, FORMER USN, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 21 Jun 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (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 30 percent (increased from 20 percent) with transfer to the Permanent Disability Retired List effective 31 October 2003.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid disability separation pay if warranted, and notification to the subject member once those actions are completed.

 Assistant General Counsel

 (Manpower & Reserve Affairs)