RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900702 sEPARATION DATE: 20080219

BOARD DATE: 20110224

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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 MA2 (MWD Handler) medically separated from the Navy in 2008 after approximately 5 years of service. The medical basis for the separation was chronic pain syndrome. The condition began sometime after a Humvee rollover incident in Iraq in 2005. Despite multiple treatment modalities, his symptoms did not improve. He remained unable to perform within his military occupational specialty, was placed on limited duty (LIMDU), and underwent a Medical Evaluation Board (MEB). Neck pain and low back pain were referred to the Physical Evaluation Board (PEB) as medically unacceptable. No other conditions were addressed in the narrative summary (NARSUM) or forwarded to the PEB on the NAVMED Form 6100/1. Other conditions included in the NARSUM and Disability Evaluation System (DES) file will be discussed below. An informal PEB adjudicated the chronic pain condition as unfitting rated at 10% with application of the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and SECNAVINST 1850.4E. The CI made no appeals, and was thus medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “10% evaluation was assigned for Chronic Pain Syndrome by the Department of the Navy. VA Rating decision dated 6/17/2008 assigned a 40% evaluation [Sic – *for*] Myofascial Pain Syndrome.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20071219** | | | | **VA (1 Mo. Post-Separation) – All Effective 20080220** | | | | |
| **Condition** | | **Code** | **Rating** | **Condition** | | **Code** | **Rating** | **Exam** |
| Chronic Pain Syndrome | | 5237 | 10% | Myofascial Pain Syndrome | 5099-5025 | | 40% | 20080318 |
| - | Cervicalgia | CAT 2 | | Cervical Spine Strain | | 5237 | 20% | 20080318 |
| - | Low Back Pain | CAT 2 | | Thoracolumbar Spine Strain | | 5237 | 20% | 20080318 |
| Bilateral Sacral Sclerosis | | CAT III | |
| ↓No Additional MEB/PEB Entries↓ | | | | PTSD with Depression fr Pain … | | 9411 | 50% | 20080505 |
| Headaches, Post-Traumatic | 8045-8100 | | 50% | 20080318 |
| Right Hip Strain | | 5014 | 10% | 20080318 |
| Left Hip Strain | | 5014 | 10% | 20080318 |
| Tinnitus | | 6260 | 10% | 20080320 |
| Callus, Foot | | 7804 | 10% | 20080318 |
| **2 x Not Service Connected** | | | |  |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined: 100%** | | | | |

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ANALYSIS SUMMARY: The Service coded the CI’s “Chronic Pain Syndrome; Probable Myofascial Pain and/or Chronic Ligament Strain” (with associated category 2 Cervicalgia and Low Back Pain) condition under 5237 “Lumbosacral or cervical strain “for CI’s multi-segment back pain. This was not IAW VASRD 4.71a., General Rating Formula for Diseases and Injuries of the Spine, Note (6): “Separately evaluate disability of the thoracolumbar and cervical spine segments.” The Board explored coding the CI’s condition on the cervical and lumbosacral spine conditions, however, there was a paucity of in-service goniometric range of motion (ROM) exams, and the chronic pain was the CI’s primary disability and unfitting diagnosis. Keeping the same diagnosis and unfitting condition as the PEB was favored with the use of a different VASRD disability code.

Chronic Pain Syndrome (With Catagory 2 Cervicalgia and Low Back Pain). The CI’s pain prior to separation was consistently described as constant (not episodic), severe, debilitating, and exacerbated by certain activities or movements. It was accompanied by paresthesias in the upper and lower extremities. It was refractory to numerous therapies, including physical therapy, acupuncture, trigger point injections, TENS, oral and transdermal pain medications, epidural injections, nerve blocks and radiofrequency nerve ablation. The CI had widespread musculoskeletal pain and tender points with associated bilateral upper and lower extremity paresthesias consistently documented in the treatment record, along with headaches. He missed eight hours of work per week. His pain was noted as 8 of 10 with interference in the activities of daily living (ADLs). Pain was not fully relieved with trigger point injections and numerous medication therapies, and was noted as nearly continuous pain. The rheumatology NARSUM Addendum (20071130) noted 18 of 18 positive trigger points and the impression was:

“Chronic Pain Syndrome: The patient has polyarticular joint pain, severe back pain, and some paresthersias. Overall, this is consistent with a myofascial pain syndrome or chronic pain syndrome. He has received multiple procedures and modalities and has subsequently failed to improve on these therapies. At this time, the chronic pain is significantly impacting his activities of daily living. He does not have any evidence of a systemic inflammatory disease such as rheumatoid arthritis.”

The VASRD code 5099-5025, “With widespread musculoskeletal pain and tender points, with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud’s-like symptoms” is an accurate characterization of the pathology in this case. The CI's symptoms were closer to "That are constant, or nearly so, and refractory to therapy" (40%) than "That are episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but that are present more than one-third of the time" (20%). The preponderance of evidence in this case supports a 40% rating under the VASRD formula for the chronic pain condition. After due deliberation, considering all of the evidence and mindful of VASRD 4.3 (reasonable doubt), the Board recommends a separation rating of 40% for the chronic pain syndrome coded 5099-5025.

Other PEB Conditions (Neck/Back Condition). There were no other conditions forwarded by the MEB, but the PEB listed two diagnoses; cervicalgia and low back pain, as Related Category 2 conditions. The PEB did not consider them separately unfitting. The DES package also noted sacroiliitis, lower spine degenerative disc disease, and L5-S1 radiculopathy. An EMG (nerve conduction study) identified mild radiculopathy, but no evidence of peripheral neuropathy. There was no evidence of clinical impairment from any non-pain radiculopathy, and it was identified by the VA as not service connected. These conditions were discussed by the Board and were considered and rated as part of the CI’s chronic pain syndrome, and therefore were not separately rated. The Board noted that the VA did separately rate the Cervical Spine Strain (20%) and Thoracolumbar Spine Strain (20%) in addition to Myofascial Pain Syndrome (40%). Additionally, bilateral sacral sclerosis was listed as a Category 3 condition, not separately unfitting and not contributory to the unfitting condition. These conditions were not separately implicated in the Non-Medical Assessment (NMA), but would have easily been overshadowed by the CI’s primary unfitting condition. However, the Board considered the level of disability of these conditions and adjudged that it was not independently unfitting absent the CI’s overall pain. They were considered by the Board as part of the CI’s chronic pain syndrome and not separately ratable. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the cervical, low back or sacral sclerosis conditions.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for Posttraumatic Stress Disorder (PTSD) [and depression secondary to chronic back pain], Posttraumatic headaches, right and left hip strains, tinnitus, and right foot callus. The CI was specifically evaluated for PTSD by a psychiatrist prior to separation and was found to be free of this condition and PTSD or other mental health diagnosis could not be found as separately unfitting, although the Board considered the linkage between chronic pain and mental health symptoms. The CI’s primary unfitting Chronic Myofascial Pain Syndrome was rated (above) with associated fatigue, sleep disturbance, stiffness, paresthesias, headache, depression, and anxiety symptoms. There was no indication in the records that absent the chronic pain syndrome that any mental health condition, headache condition, or other specific joint or neurologic condition rose to the level of being unfitting. Review of the VA records did not indicate that the military overlooked a condition that rose to the level of being potentially unfitting. The other conditions were reviewed by the Action Officer and considered by the Board. There was no evidence for concluding that any of the other 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 Service disability rating.

Remaining Conditions. Several additional medical complaints were also documented in the DES file. 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.

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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. As discussed above, PEB reliance on SECNAVINST 1850.4E for rating the chronic pain syndrome condition was likely operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic pain condition, the Board unanimously recommends a rating of 40% coded 5099-5025 IAW VASRD §4.71a. In the matter of the cervical, low back and sacral sclerosis conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not (separately) unfitting, but with inclusion on rating the CI’s chronic pain condition. In the matter of the PTSD, headaches, right and left hip strains, tinnitus, and right foot callus and 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.

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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 Myofascial Pain Syndrome | 5099-5025 | 40% |
| **COMBINED** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091201, 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 XXXXXX, FORMER USN, XXX-XX-XXXX

Ref: (a) PDBR ltr of 23 Mar 11

(b) DoDI 6040.44

1. I have reviewed reference (a) pursuant to 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 40 percent (increased from 10 percent) with placement on the Permanent Disability Retired List effective 19 February 2008.

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

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)