RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD200900733 SEPARATION DATE: 20070228

BOARD DATE: 20110330

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve LCpl (5962, Data Systems Equip Repairer / 3043 Supply Admin), medically separated from the Marines in 2007. The medical bases for the separation were bipolar disorder II and bilateral hip osteoarthritis. In late 2003, between periods of active duty service, the CI developed mood swings, and periods of increased energy with decreased need for sleep lasting several days. He was diagnosed with bipolar II disorder and treatment resulted in resolution of symptoms and full remission. During his last period of active duty service, his bipolar condition remained stable in remission on medication. During his first period of active duty service, the CI presented for care of hip pain, but completed training and was playing soccer the month prior to discharge. Upon reactivation to active duty in October 2005, he complained of duty limiting hip pain and remained in a limited duty status until separation. He was diagnosed with degenerative joint disease of both hips attributed to a childhood developmental abnormality, slipped femoral capital epiphysis. In July 2006 he underwent a total right hip replacement surgery. He was unable to perform within his military occupational specialty or participate in a physical fitness test, and underwent a Medical Evaluation Board (MEB). Bipolar disorder II and bilateral hip osteoarthritis were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB adjudicated the bipolar disorder II and bilateral hip osteoarthritis conditions as unfitting, rated the bipolar disorder at 10%, and determined the bilateral hip osteoarthritis was a pre-existing condition without permanent service aggravation with application of the SECNAVINST 1850.4E and DoDI 1332.39. The CI made no appeals, and was medically separated with a 10% disability rating.

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CI CONTENTION: The CI requests disability rating for his bilateral hip osteoarthritis, status post right total hip replacement contending the condition was incurred by military service. He additionally lists all of his VA conditions and ratings as per the rating chart below. The CI states

“I began suffering from pain in my right hip while serving in the Marine Corps; it was found that I needed a total hip replacement. I received the surgery in July of 2006. In my PEB decision, I was told that my hips were to be considered a pre-existing condition because I did not serve enough time in the military, and the military could not find my x-rays from my enlistment. X-rays which the VA found showing that my lower extremities were normal. I was also treated for back pain several times while I served but I was told by Senior Chief G--- not to put that on my paperwork to the PEB. Also, I developed a worse case of flat feet and again I was told not to put that on the paperwork to the PEB. I suffered an injury to my ribs during MCT (Marine Combat Training) and suffer from Costrochrondroitis but I failed to put that on my paperwork to the PEB. Also I broke my left great toe while training and I did not put that info in the PEB paperwork because I was told it was not relevant. When I received my decision from the VA, it was found that my lower extremities were in normal condition when I enlisted and that I did not suffer from any problems with my joints, and was granted a 30% rating for my right hip and a 20% rating for my left hip; I was given a 20% rating for my back, and I was given 10% for my flat feet as well as 10% for my great toe. It is based on this information that I request that my case be reevaluated”.

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20061212** | | | **VA (6 Mos. After Separation) – All Effective Date 20070228** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bipolar Disorder II | 9432 | 10% | Bipolar II Disorder | 9432 | NSC | 20070802 |
| Bilateral Hip Osteoarthritis | EPTS | | L Hip, Osteoarthritis | 5010-5252 | 10% | 20070710 |
| R Hip, Total Arthroplasty … | 5054 | 30% | 20070710 |
| ↓No Additional MEB/PEB Entries↓ | | | Lumbar DJD, L4-5 | 5242 | 20% | 20070710 |
| Bilateral Flat Feet | 5276 | 10% | 20070710 |
| Fracture L Great Toe | 5284 | 10% | 20070710 |
| 0% X 0 / Not Service Connected X 3 | | | |
| **Final Combined: 10%** | | | **Total Combined: 60%** | | | |

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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 compared to VASRD standards, as well as the fairness of PEB fitness adjudications. The Board’s threshold for countering 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.

Bipolar Disorder. The CI experienced onset of symptoms in late 2003 to early 2004 diagnosed as bipolar II disorder while in inactive status between periods of active duty (per DD Form 214 and Reserve Annual Retirement Credit Record). However, the mental health clinic encounter dated September 22, 2006 stated active duty E-3 USMC “with 4 years of CAD,” indicating continuous active duty, which was not the case. While this fact was lost during the military disability processing, the VA noted this and did not grant service connection for bipolar disorder. At the time of the MEB psychiatry NARSUM, five months before separation, the CI’s bipolar disorder was in full remission on medication. The CI was “essentially symptom free…and doing well.” His mental status examination was normal including mood, affect, thought processes, cognition, memory, judgment, and insight. There was no suicidal ideation. At the time of a psychiatry compensation and pension (C&P) examination five months after separation, the clinical history of onset in late 2003 was recorded. At the time of C&P examination the CI was having symptoms but he had stopped taking medications since separation from the military. The psychiatrist noted the most recent episode was depressed and mild without psychotic features. The psychiatrist opined that the bipolar disorder was “less than likely related to his military service." There is no indication that the CI’s mental disorder developed as a result of a highly stressful event and the provisions of VASRD §4.129 are not applicable. While it appears that the PEB made an error with regard to service connection (in favor of the CI), the Board does not have the authority to change the PEB’s finding of service incurred or aggravated, unfit or to reduce the rating. The Board agreed with the rating adjudicated by the PEB, 10% for mild symptoms or symptoms controlled by medications.

Bilateral hip osteoarthritis. The PEB determined the CI’s hip condition existed prior to service and was not permanently aggravated by service beyond the natural progression of the disease. There was no injury in service of sufficient magnitude to result in degenerative joint disease in both hips of this severity and advanced stage within the few years under consideration. Treating orthopedic surgeons opined that the condition was likely the result of a childhood developmental defect, slipped femoral capital epiphysis. While the VA cited the October 2001 enlistment examination as showing no evidence of hip disease in its decision to grant service connection, accepted medical principles and service medical documentation does not support that conclusion. The CI first entered active duty on January 28, 2002. He presented for care of hip and leg pain 11 days later on February 9, 2002 reporting that he had been kicked during martial arts training (MCMAP; Marine Corp Martial Arts Program). However, he also reported that he had symptoms for three months without resolution. At the time of a February 11, 2002 sports medicine clinic encounter, the physician records that the CI had symptoms of right hip pain during receiving (in-processing of new recruits entering basic training) while sitting Indian style, further aggravated by sitting and standing for prolonged periods of time. The examiner also recorded “PTE” (prior to entry) in May 2001, that the CI “fell onto R hip during M.A. (martial arts) maneuver - jumping, spinning, and reverse roundhouse kick. No hip pain prior to this injury. Stopped MAs. Continued to have mild pain, posterior right hip running.” CI enlisted October 20, 2001 and there is no documentary evidence that the May 2001 incident was incurred in training conducted by the military. Despite his condition, the CI successfully completed training and, just prior to discharge while playing soccer, he injured his left great toe. A February 21, 2003 medical record entry recorded that the CI was physically qualified for separation from active duty (effective March 22, 2003). Documentation shows that the CI was playing flag football in October 2003 while in inactive status (when he sought care for a twisted ankle, knee, and back) also reflecting evidence that the preceding period of active duty service did not permanently aggravate his existing prior to service condition. In July 2005, while still in inactive status, the CI presented for complaints of symptoms that at the time were attributed to muscle strain but were consistent with his chronic hip condition. He re-entered active duty on October 13, 2005. Six days after re-entering active duty he presented to the clinic with a complaint of right hip region pain for four months and was placed on limited duty. He remained on limited duty from that time until discharge in 2007. Persistent symptoms prompted orthopedic surgery evaluation in January 2006 when advanced degenerative joint disease of both hips was diagnosed. The X-ray changes present (joint space narrowing with formation of bone spurs) take many years preceding CI’s enlistment to develop. The January 20, 2006 orthopedic surgery note records that there were no inciting factors or injury. Subsequent orthopedic surgery notes reflect persistent limiting right greater than left hip pain. In July 2006, the CI underwent right total hip replacement, and, following recovery, he underwent MEB and was medically discharged. All Board members agreed that the evidence demonstrated the CI’s hip condition existed prior to service. In its deliberations regarding whether the CI’s pre-existing hip condition warranted a finding of permanent service aggravation, the Board noted the report of symptoms prior to enlisting in the Marines. The mild symptoms during the first period of active duty did not prevent completion of training with return to full activity consistent with no permanent service aggravation during that period of active duty. The CI entered the second period of active duty with duty limiting pain that had begun in the preceding months and was immediately placed in a limited duty status. Thus, there was no military related activity in the second period of active duty that would have aggravated the condition beyond the natural progression of the disease. There was no specific injury reported while on active duty or during drills that could have caused the disease, or resulted in symptom aggravation that did not resolve. After due deliberation, and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the bilateral hip osteoarthritis as incurred or permanently aggravated by service beyond the natural progression of the disease for separation rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for back pain, rib injury/costochondritis, fracture of the left great toe, and flat feet (pes planus). CI had documented history of low back pain with radiculopathy prior to service with abnormal findings on X-ray at the time of his pre-enlistment medical examination (disc space narrowing). While the CI had occasional complaint of low back pain, there is no evidence it interfered with performance of duties. CI sustained a rib injury to the rib cage in May 2002 during training. Service records reflect medical treatment that did not prevent continued training or military duties. A December 10, 2002 clinic record documents his return to full duty. There are no further medical documents reflecting problems with this condition. CI sustained a fracture of the great toe while playing soccer while on active duty in January 2003. There are no further documented toe problems and records indicate he was playing football in October 2003. CI was noted to have mild pes planus at the time of his pre-enlistment medical examination. At the time of the MEB history and physical examination, pes planus was characterized as moderate and symptomatic; however, there is no documentation of duty limiting symptoms. None of these conditions were significantly clinically active during the MEB period, none carried attached profiles, and none were implicated in the commander’s 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. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. 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. As discussed above, PEB reliance on DoDI 1332.39 for rating the bipolar condition was operant in this case and the condition was adjudicated independently of that instruction and regulation by the Board. In the matter of the bipolar disorder II condition and IAW VASRD §4.130, the Board unanimously recommends no change in the PEB rating. In the matter of the bilateral hip osteoarthritis, the Board unanimously agrees that it cannot recommend a finding of service incurred or permanently aggravated for additional rating at separation. In the matter of back pain, rib injury/costochondritis, fracture of the left great toe, and pes planus, 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.

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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** |
| Bipolar Disorder II | 9432 | 10% |
| Bilateral Hip Osteoarthritis | EPTS | -- |
| **COMBINED** | **10%** |

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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.

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL

OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 8 Apr 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 xxxxxxxxxx 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)