RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: USMC

CASE NUMBER: PD1000029 BOARD DATE: 20100707

SEPARATION DATE: 20080830

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SUMMARY OF CASE: This covered individual (CI) was a Marine Corps Lance Corporal medically separated from the Marine Corps in 2008 after more than three years of service. The medical basis for the separation was Multilevel Vertebral Thoracic Compression Fracture with Chronic Pain with a history of vertebral fractures and Post Traumatic Stress Disorder (PTSD). These conditions were determined to be medically unacceptable IAW applicable Navy Regulations and SECNAVINST 1850.4E. There are six additional conditions which were determined to be medically acceptable. The CI was referred to the PEB, determined unfit for continued Naval service, and separated at 20% combined disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD)and applicable Navy and Department of Defense regulations.

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CI CONTENTION: The CI states: ‘I feel that my rating should be changed immediately. My family and myself were shocked, betrayed and disgusted when my findings came back as 20%. My conditions which include, but are not limited too, are as follows; sleepless nights due to major back pain and anxiety resulting from past experiences that also spawn paranoia. The affects of many combat patrols psychologically are irreparable. My everyday life has been drastically altered due to my present conditions I’m unable to lift large/heavy objects nor am I able to walk long distances. I have nightmares occasionally of periods of time in Iraq that I can’t escape from. There once was a time where I could have put a cereal bowl in the left side of my buttok (sic), which could be attributed to 40% of muscle tissue that has been removed. I’ve been forced to live with these conditions amongst others. I have un-controllable (sic) periods of fear for my life because of the intense, abnormal situations myself and others were exposed to the effects of it cannot be expressed in words, but it is incredibly insulting that I received a 20% rating.’

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | | **VA (12 Months after Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Multilevel Vertebral Thoracic Compression Fracture with Chronic Pain | 5237 | 10% | | 20080620 | Thoracic Spine Compression Fracture with Chronic Lumbar Strain | 5235 | 10% | 20090824 | 20080831 |
| History Of Vertebral Fractures | Cat II |
| Post Traumatic Stress Disorder | 9411 | 10% | | 20080620 | Post Traumatic Stress Disorder | 9411 | 50% | 20090822 | 20080831 |
| Major Depressive Disorder, Single Episode, In Partial Remission | CAT III |
| Insomnia | CAT III |
| Traumatic Brain Injury | CAT III |  | |  | Residuals of Traumatic Brain Injury | 8045 | 10% | 20090826 | 20080831 |
| Status Post Gunshot Wound, Combat Related  Injury With Iliac Crest Fracture and Gluteal  Soft Tissue Injury | CAT III |  | |  | Muscle Group 17 Injury With Left Iliac Facture,  Residuals of Gunshot Wound to Left Pelvis and Left Buttock | 5317 | 20% | 20090824 | 20080831 |
| History of Gun Shot Wound to the Pelvis | CAT III |
| History of Pelvic Fracture | CAT III |
|  |  |  | |  | Scar, Residuals of Gunshot Wound to Left Pelvis | 7804 | 10% | 20090824 | 20080831 |
| **TOTAL Combined: 20%** | | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **70% from 20080831** | | | | |

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ANALYSIS SUMMARY:

Post Traumatic Stress Disorder (PTSD)

The CI was an active duty Marine LCpl Infantryman/Scout Sniper who deployed to Iraq twice (Oct 05-May 06 and Mar 07-May07). He had multiple exposures to IEDs during his first deployment. During his second deployment he sustained a gunshot wound to his left hip and pelvis on 20070424 during a firefight. This injury resulted in multiple surgeries and the CI was hospitalized for a month. While recovering from this injury and resultant surgeries he was involved in a motorcycle accident and sustained multilevel thoracic spine fractures. While he was being treated for these injuries he reported panic attacks, nightmares, and difficulty sleeping and was referred to mental health for evaluation.

Outpatient mental health treatment was begun in August 2007 and the CI reported mild to moderate symptoms consistent with PTSD, as well as symptoms of depression. He experienced intrusive thoughts about the incident when he got shot, repeated dreams of getting shot, flashbacks, emotional upset at reminders of deployment events, pounding heart and shortness of breath at certain triggers, feeling distant from others, and feeling that he would not live a full life. He also had insomnia, decreased interest in activities, feeling that he was a failure, psychomotor agitation, and increased irritability.

He was initially treated with Zoloft and Trazodone and was also taught relaxation exercises to reduce hyperarousal. Cognitive restructuring was used to address thoughts that contributed to his anxious arousal and depression. His mood and irritability initially improved but his hyperarousal symptoms persisted. As he attempted to increase recreational and social activities his irritability increased and required an increased dose of medication. Trazodone was not sufficient to treat his insomnia and was discontinued. Lunesta was then tried with inconsistent results.

The narrative summary (NARSUM) reported the CI was compliant and made a good effort to implement all recommended therapies, but he continued to experience mild full-ranging symptoms of PTSD and depression. The patient described himself as the rock of his family and his friends, although he was struggling to find the "peace of mind" to fulfill this role since being shot. His functioning had improved somewhat and he had enrolled at Clemson University to begin classes after separating from service.

The NARSUM diagnoses included PTSD; Major Depressive Disorder, Single Episode, in Partial Remission; and Traumatic Brain Injury (TBI) and reported a Global Assessment of Functioning (GAF) of 65. The provider opined he would continue to need mental health services in the future.

The CI filed a Veterans Administration (VA) claim on 20090630 and a VA Compensation and Pension (C&P) examination was done 20090822, just under twelve months after separation from service. He was diagnosed with Chronic Mild to Moderate PTSD and was noted to have problems with his social environment. His GAF was reported as 55. At the time of this exam he was experiencing a moderate degree of impairment in social functioning and a minimal degree of impairment in occupational functioning. The overall level of disability was described as mild to moderate. He had not been in any type of mental health treatment after he left the service and this may have contributed to a worsening of symptoms.

The CI stated ‘I guess it is a culmination of events. I had a rough transition from the Marine Corps. A lot of it relates to the combat stress. I do not sleep well at night. I jump at loud noises. I still go off by myself. I just isolate. I do not get emotionally attached the way I used to, emotionally desensitized.’ He reported variable difficulty maintaining sleep, getting three to five hours of sleep per night. He did nap occasionally. He stated that his room has to be completely dark and there cannot be any sounds. He stated he is easily awakened by just regular household noise. He reported nightmares one to two times every two months. He stated it is typically about his combat experiences. He stated he has had two times where he vividly dreamt about the time he was wounded. He stated that he woke up and was in the verge of a panic attack. Typically when he had nightmares he would wake up anxious. He did not have night sweats. He denied flashback symptoms but did note that he hears a lot of sounds that other people just seem to ignore. He reported intrusive thoughts two to three times per week. He stated, ‘That's when I have bad memories.’

At the time of this VA exam he did not like to be around large groups of people. He was a full-time college student at Clemson. He stated even walking on campus he was always mentally noting his ‘avenue of approach’ and looking for people behind buildings. When he would go to a restaurant, he would sit in the back with his back to the wall, so he could see the entire room. When driving, he had increased anxiety, particularly if people were coming up on him or if there were debris on the side of the road. He stated that, ‘I deal with stop signs, but I prefer not to slow down.’ He reported difficulty with anger control and intermittent anxiety.

The CI was never married and at the time of the VA exam he lived by himself and had had a girlfriend for the previous four months. He was a full-time student at Clemson and reported he was doing well in school in his sophomore year. He was working part time as a bartender and stated he was doing well on that job. No objective information about his performance at work or school is available. He was capable of performing his activities of daily living and does them routinely and independently.

During the VA examination, he was noted to be tense and edgy, but he stated this was not typical. More typically, he stated that he will be in stressful situations and will be handling them and then pass a certain threshold where he would experience both extreme anger and anxiety. He reported mild dysphoria, emotional blunting, and a startle to noise. He did not watch news from Iraq or Afghanistan. His affect was generally normal although there were a few points where he became tearful when talking about his symptoms and how his life has changed. He reported mild dysphoria but no other symptoms of depression. Pressured speech was not noted but, he did have a high rate of verbal fluency.

Traumatic Brain Injury (TBI)

TBI does not appear to have been unfitting at the time of separation from service.

The CI had neuropsychological testing done in October 2007. The report is not present in the service treatment record (STR), but the VA TBI C&P exam addendum reports the findings are consistent with a mild traumatic brain injury with mild cognitive sequelae. The examiner stated the report did show mild deficits in attention and concentration, as well as mild decreases in efficiency, speed of cognitive processing, and higher level processing.

Gunshot Wound Left Hip

The patient had multiple surgeries secondary to a gunshot wound with the last surgery performed in May of 2007, with foreign body removal, multiple irrigation and debridements and wound vac therapy. A total of eleven surgeries were done. He completed his physical therapy. The patient's evaluation at Naval Medical Center, Portsmouth for his spine and chronic back pain stated that no further surgery was needed at that time and it was anticipated that his pain should improve. At that time he was taking Vicodin and Tramadol for pain.

The patient sustained a left gluteal soft tissue injury from the gunshot wound. At the time of the NARSUM examination in March 2008 the CI stated he was doing well with decreased pain, which was then rated at 3 out of 10 allowing him to walk without a cane. However, he was not able to run greater than one mile. He had weakness with prolonged standing and walking and climbing greater than two flights of stairs.

He was initially placed on limited duty (LIMDU) for the gunshot wound from July 2007 through December 2007. He was placed on a second LIMDU from December 2007 through June 2008. The duty restrictions for both were the same, although the second LIMDU listed both the gunshot wound and the thoracic vertebral compression fractures of T8, T9, and T11, as a second diagnosis. Both listed the following duty restrictions: No running, jumping, climbing, squatting, marching, humping, unit PT, PFT, sports, martial arts, field duty, rifle range, work parties, standing watch, or formations. NO DEPLOYMENT. May perform rehab activities under supervision of rehab provider.

The Commander’s Non-Medical Assessment of May 2008 clearly states the Commander thought the CI was unable to perform his required duties secondary to this injury: ‘Lance Corporal S--- cannot serve in his primary MOS as an infantryman because of the wounds he received in combat. This Marine was shot twice in Iraq and has not fully recovered from his injuries. His left leg is weak and it prohibits him from walking long distances or standing for a prolonged period of time. This injury alone will not allow him to wear gear, conduct patrols, or complete a physical fitness test. On top of the injuries that resulted from combat, he was involved in a motor vehicle accident while on active duty and that incident aggravated his previous injuries and gave him new ailments.’

The NARSUM did not include range of motion (ROM) measurements of the left hip but reported the CI had full active ROM. There was no mention of pain or at what degree of motion pain occurred. The VA examination reported a slightly decreased ROM in flexion and abduction. However, the CI’s injury is actually an injury to the muscles in the left pelvic/hip area and not a true joint injury. Therefore it is more appropriately rated under a muscle injury VASRD code. Applying a rating for both a joint problem manifested by limited ROM and a muscle injury to the same area is prohibited as this would be pyramiding.

Both military and VA examinations reported weakness of the left leg with motor strength at 4/5. The military examination noted an antalgic gait but this was not present on the VA exam. The VA examination documented constant mild pain rated at 3/10 that did not interfere with movement of the left leg and also daily flares with severe pain that lasted less than one hour. The military examination documented the inability to run greater than one mile along with weakness with prolonged standing and walking and climbing greater than two flights of stairs. X-rays documented retained shrapnel.

(Separation Date 20080830)

|  |  |  |  |
| --- | --- | --- | --- |
| Movement  **Left Hip** | Normal ROM | ROM Mil  20080321 | ROM VA  20090824 |
| Flexion | 0-125 |  | 0-120 pain free (120) |
| Extension |  |  | 0-40 pain free |
| Abduction | 0-45 |  | 0-40 pain free (40) |
| Adduction |  |  | 0-40 pain free |
| Internal Rotation |  |  | 0-40 pain free |
| External Rotation |  |  | 0-40 pain free |
| Notes: |  | Mild antalgic gait; motor 4/5 in left leg; weakness with prolonged standing and walking or climbing greater than two flights of stairs; cannot run greater than one mile; full active ROM; able to squat; able to stand on left leg alone; able to walk without a cane; | Not additionally limited after repetitive use; no trochanteric tenderness; retained shrapnel on x-ray; normal gait; motor 5/5 except 4/5 left leg; sensory intact; normal DTRs |

VASRD §4.55 and §4.56 describe how muscle injuries will be rated and describe the cardinal signs and symptoms of muscle disability as loss of power, weakness, lowered threshold of fatigue, fatigue-pain, impairment of coordination and uncertainty of movement. The CI had weakness and lowered threshold of fatigue as a result of the gunshot wound. His disability is considered moderate. His injury was a deep penetrating wound of short track from a single bullet and/or shrapnel fragments, without evidence of explosive effect of high velocity missile, residuals of debridement, or prolonged infection. The injury resulted in cardinal signs and symptoms of muscle disability, namely weakness and lowered threshold of fatigue after average use. Entrance scars were present and loss of power and lowered threshold of fatigue compared to the sound side were present.

Thoracic Spine Vertebral Fractures

The CI had pain limited range of motion (ROM) of his thoracolumbar spine after treatment for compression fractures of T8, T9, and T11. Degenerative changes were noted at multiple levels. The limited ROM exam by the military and the VA are in the chart below. Both examinations support a 10% disability rating IAW the VASRD General Rating Formula for Diseases and Injuries of the Spine.

(Separation Date 20080830)

|  |  |  |  |
| --- | --- | --- | --- |
| Movement  **Thoracolumbar** | Normal ROM | ROM Mil  20080321 | ROM VA PAIN  20090824 |
| Flex | 0-90 | 0-78 (80) | 0-80 |
| Ext | 0-30 | 0-08 (10) | 0-10 |
| R Lat flex | 0-30 | 0-30 | 0-10 |
| L lat flex | 0-30 | 0-30 | 0-10 |
| R rotation | 0-30 | Not examined | 0-22 (20) |
| L rotation | 0-30 | Not examined | 0-22 (20) |
| COMBINED | 240 | 150/210 | 150 |
| Notes: |  | 10% | 10%  Not additionally limited after repetitive use; normal gait, motor, sensory, and reflexes; moderate paravertebral muscle tenderness; normal gait; motor 5/5, sensory intact to light touch and vibration; DTRs normal |

Other Conditions

Scar, Residuals of Gunshot Wound to Left Pelvis

No evidence this condition was unfitting at the time of separation from service. No duty restrictions attributable to this condition and no evidence it interfered with performance of required duties.

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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 PEB did not apply VASRD §4.129 to the CI’s PTSD adjudication as mandated by the NDAA 2008 in effect at the time. After careful consideration of all available information, the Board unanimously recommends an initial TDRL rating of 50% IAW VASRD §4.129 and a 30% permanent rating at six months IAW VASRD §4.130.

The condition of PTSD meets the criteria for a 30% rating both at the time of separation from service and twelve months later. He had persistent mild to moderate symptoms of PTSD at both points in time. He did appear to have a slightly greater degree of functional impairment at the time of the later exam but this was not sufficient to meet the 50% rating criteria. He had not been in therapy or on medication since leaving the service but treatment was warranted based on his condition. More likely than not, his condition at six months after leaving service was similar to what it was at separation and twelve months later.

The Board considered the condition of Muscle Group 17 Injury with Left Iliac Facture, Residuals of Gunshot Wound to Left Pelvis and Left Buttock and determined by simple majority that this condition was unfitting at the time of separation from service and unanimously determined it is appropriately rated at 20% under VASRD 5317. The CI’s Commander stated this condition prevented the CI from performing his required duties including conducting patrols, wearing required gear, and completing a physical fitness test. The single voter for dissent (who recommended no recharacterization of this condition as unfitting) did not elect to submit a minority opinion.

The CI had weakness and lowered threshold of fatigue as a result of the gunshot wound. This disability is considered moderate. His injury was a deep penetrating wound of short track from a single bullet and/or shrapnel fragments without evidence of explosive effect of high velocity missile, residuals of debridement, or prolonged infection. The injury resulted in cardinal signs and symptoms of muscle disability, namely weakness and lowered threshold of fatigue after average use. Entrance scars were present and loss of power and lowered threshold of fatigue compared to the sound side were present.

The Board unanimously determined that the scar related to the gunshot wound and subsequent surgeries was not unfitting at the time of separation from service and therefore no disability rating is applied. Although the scar was adherent to underlying tissue, was tender to palpation, and surrounded by an area of decreased sensation, the wound was completely healed and there was no limitation of movement. The scar did not prevent the performance of any required duties.

In the matter of the Multilevel Vertebral Thoracic Compression Fracture with Chronic Pain condition and IAW VASRD §4.71a General Rating Formula for Diseases and Injuries of the Spine, the Board unanimously recommends no recharacterization of the PEB coding or rating. The CI’s thoracolumbar spine was limited to 80 degrees of flexion and this warrants a 10% disability rating.

The Board also considered the condition of Traumatic Brain Injury (TBI) and unanimously determined that this condition was not unfitting at the time of separation from service and therefore no disability rating is applied. This condition did not prevent the performance of any required duties.

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RECOMMENDATION: The Board recommends that the CI’s prior separation be recharacterized to reflect that rather than discharge with severance pay, the CI was placed on the TDRL at 60% for 6 months following CI’s prior medical separation PTSD at minimum of 50% IAW §4.129 and DoD direction) and then permanently retired by reason of physical disability with a final combined 50% rating as indicated below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Post-Traumatic Stress Disorder | 9411 | 50% | 30% |
| Muscle Group 17 Injury with Left Iliac Facture, Residuals of Gunshot Wound to Left Pelvis and Left Buttock | 5317 | 20% | 20% |
| Multilevel Vertebral Thoracic Compression Fracture with Chronic Pain | 5237 | 10% | 10% |
| **COMBINED** | **60%** | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100111, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

**DEPARTMENT OF THE NAVY**

SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS  
 720 KENNON STREET SE STE 309  
 WASHINGTON NAVY YARD DC 20374-5023

IN REPLY REFER TO

1850

CORB:003 5 Aug 2010

From: Director, Secretary of the Navy Council of Review Boards

To:

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

Ref: (a) DoDI 6040.44

(b) PDBR ltr of 14 Jul 10

1. Pursuant to reference (a), the PDBR reviewed your case and forwarded its recommendation (reference (b) to the Department of the Navy for appropriate action.
2. On 4 August 2010, the Assistant Secretary of the Navy (Manpower & Reserve Affairs) took action on your case. Your records will be corrected to reflect assignment to the Temporary Disability Retired List for the period 25 August 2008 thru 24 January 2009 with a disability rating of 60% and placement on the Permanent Disability Retired List effective 25 January 2009 with a final disability rating of 40%.
3. The Secretary's decision represents final action in your case by the Department of the Navy and is not subject to appeal or further review by the Board for Correction of Naval Records.
4. The Deputy Commandant, Manpower & Reserve Affairs, United States Marine Corps, has been advised of this decision and will make the appropriate changes to your military records. You will be advised by that office once the changes have been completed.

Copy to: PDBR NVLSP