RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxx BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000032 SEPARATION DATE: 20041115

BOARD DATE: 20110624

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl/E-4 (1141, Electrician) medically separated for chronic right hemiscrotal pain. He was treated (including surgery) but he did not respond adequately to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. The CI was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Chronic right hemiscrotal pain was 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 found the chronic right hemiscrotal pain unfitting, and rated it 10%. The CI accepted the PEB findings, and waived a formal hearing. He was thus medically separated with 10% disability IAW applicable Navy and DoD regulations.

CI’s CONTENTION (20091215): In block 3 of DD Form 294, the CI writes, “See Attached VA Letter.” In block 12 of DD Form 294, he lists seven conditions; “Status Post Right Wrist Contusion, Chronic Left Patellofemoral Pain Syndrome, Tinnitus, Right Epididymal Cyst Post Surgery x2, Pseudofollculitis barbae, Bilateral Pes Planus, Right Scrotal Scar Post Surgery x2.” A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Navy IPEB – dated 20040823** | | | **VA (3 mo. Pre Separation) – All Effective 20041116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Hemiscrotal Pain | 7599-7525 | 10% | Right Epididymal Cyst | 7599-7525 | 10% | 20040811 |
| ↓No Additional MEB/PEB Entries↓ | | | Right Wrist Contusion | 5214 | 30% | 20040811 |
| Left Knee Pain | 5260 | 10% | 20040811 |
| Tinnitus | 6260 | 10% | 20040811 |
| Pseudofolliculitis Barbae | 7813-7806 | 10% | 20040811 |
| 0% x 2/Not Service Connected x 1 | | | 20040811 |
| **Combined: 10%** | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY:

Chronic Right Hemiscrotal Pain. In August 2002, this Marine was referred to urology due to pain in his right hemiscrotum, along with a palpable right supratesticular mass. There was no history of trauma, urinary infection or venereal disease. An ultrasound showed the mass to be a varicocele. Due to persistent pain, the CI underwent exploratory surgery in February 2003. No suspicious lesions were found, and the exploratory exam was essentially normal. He was treated with several medications (including antibiotics) but the pain persisted. The CI was placed on limited duty (LIMDU) in March 2003, and was seen for follow-up in October 2003. He underwent a spermatic cord steroid block in December 2003. This provided temporary improvement. In April 2004, the CI underwent a second surgical procedure on the scrotum (varicosity ligation and cremasteric lysis). Following surgery, he was still unable to lift heavy objects, or meet physical fitness standards. The CI chose not to have an orchiectomy which may have eliminated the source of his pain. At his MEB urology exam (20040518) the CI had a normal gait, with tenderness of his right testicle and epididymis. There was fullness above the right testis consistent with a varicocele or hydrocele. There was no palpable hernia, and the testes had normal lie and normal rotation. Urinalysis and urine culture were normal. The MEB examiner did not feel that the CI would improve enough to return to full duty.

Three months prior to separation, at his VA Compensation and Pension (C&P) exam, the CI reported that he was voiding about seven times a day (every two hours) and once during the night. He denied difficulty starting urination or urinary incontinence. He reported problems with maintaining an erection, and had pain with intercourse. Exam of the right scrotum revealed a 2cm, nontender, well healed scar. Palpation of the penis, testicles, left epididymis and spermatic cords was normal. There was evidence of an epididymal cyst on the right, but no hernia or other mass was noted. The examiner stated that there were no functional limitations.

The PEB and the VA both used VASRD code 7599-7525, and both rated the condition at 10%. It is clear from the treatment record that this code is correct, and that 10% is the most appropriate rating for this condition. For a 30% rating the CI would need to have evidence of poor renal function or recurrent infections requiring drainage, or hospitalization greater than two times per year, or continuous intensive management. The CI had normal renal function, no recurrent infections requiring drainage, and no need for continuous intensive management. Although the CI did have some erectile dysfunction and urinary frequency, these symptoms were not the predominant cause of disability, were not separately unfitting and would not be rated separately. The non-tender scrotal scar was also not unfitting at separation. The Board unanimously recommends a rating of 10% for the painful right hemiscrotal condition, IAW VASRD §4.115b. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the right hemiscrotal pain.

Remaining Conditions. Diverticulosis, left ankle instability, right wrist instability, left knee pain, pes planus, tinnitus, pseudofolliculitis barbae, plantar faciitis, and several other conditions were also noted in the Disability Evaluation System (DES) file. None of them were the basis for LIMDU, and none were implicated in the Commander’s statement. These conditions were all 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, there were other conditions noted in the VA rating decision proximal to separation, but not documented in the DES file. The Board does not have the authority to render fitness or rating recommendations for any conditions not considered by the DES. 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 right hemiscrotal pain and IAW VASRD §4.115b, the Board unanimously recommends no change in the PEB adjudication.

In the matter of the urinary frequency, erectile dysfunction, scrotal scar, diverticulosis, left ankle instability, right wrist instability, left patellofemoral pain syndrome, bilateral pes planus, tinnitus, pseudofolliculitis barbae, plantar faciitis, or any other conditions eligible for consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no re-characterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Right Hemiscrotal Pain | 7599-7525 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091215 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, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 16 Aug 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)