RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1000055 BOARD DATE: 20100804

SEPARATION DATE: 20070331

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was an active duty LCpL (0311/Infantryman) medically separated from the Marine Corps in 2007 after nearly 3 years of service. The medical basis for the separation was Post Traumatic Stress Disorder (PTSD) and Post-concussive Syndrome. PTSD and Post-concussive Syndrome were addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) on the NAVMED 6100/1, *Medical Board Report Cover Sheet*, as medically unacceptable. The CI was found unfit for continued Naval service and medically separated with a combined disability rating of 20% determined by the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: ‘I received a email form wounded warriors saying a law suit was won and needed to be reevaluated. One of my injuries PTSD I received I am told if The Navy wants to retire me for it has to be a minimum of 50% for that disability alone. The other Postconcussive syndrome another I got 10% for has been up graded to what it really is a TBI. I complained about my TBI the second I got back all the got me from my pog new 1stSgt was nothing. He knew about ALL my conditions and hide them from everyone and got to Iraq and made up a bunch of LIES about me resulting in hardly any of my ‘brothers in arms’ to talk to me and to start sending me nasty emails. SO much to the point when I’m trying to help friends of mine wives because they’re husbands just died well they where getting phone calls from Marines in Iraq saying not to talk to me. I had to relocate to Florida from what little family I have and little friends that will talk to me. Everyone looks at me different because of this false diagnosis. But really I can no longer do winters or extended periods on my feet due to the double stress fracture in both feet I received in Afghanistan. I can keep going on and on but believe the fact that wounded warriors contacted me is enough for you to review my case. Any additional documents you need I’m more than happy to provide. I think it’s time you fix this unjustice. I held up my end of my signed contract I just didn’t know the U.S. Government was going to piss all over their half of it.’

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060614** | | | **VA (5 Month after Separation) – All Effective 20070401** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 50% | 20070817 |
| Postconcussive Syndrome | 9304 | 10% | Postconcussive Headaches | 8100 | 50% | 20070817 |
| Headache Syndrome, Pain Issues, Sleep Difficulties | Category II | | Cervical Strain | 5237 | 10% | 20070817 |
| **TOTAL Combined: 20%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 80%** | | | |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY

PTSD:

The PEB 10% rating for PTSD was most likely derived from DoDI 1332.39 as this instruction was in effect at the time of the PEB adjudication in June 2007 and this date preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DOD adherence to VASRD 4.129. In accordance with DoDI 6040.44 and DOD guidance (which applies current VASRD 4.129 to all Board cases), the Board is obligated to recommend a minimum 50% PTSD rating for a retroactive 6 month period of Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD 4.130 criteria at 6 months for its permanent rating recommendation. The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the VA Compensation and Pension (C&P) PTSD examination 4 1/2 months after separation.

The CI had VA PTSD C&P examinations at 4 1/2 and 20 months after separation from service. Both exams documented similar levels of functional impairment and resulted in a 50% disability rating by the VA. The CI had not been receiving treatment for PTSD at the time of his first VA examination. However, his level of functioning did not improve after treatment was resumed and may have slightly declined as evidenced by a Global Assessment of Functioning (GAF) of 58 in August 2007 and 50 in November 2008. His condition appears to have been fairly stable over time. Therefore, the initial VA examination can be assumed to reasonably represent the level of functional impairment present at 6 months after separation from service.

The Medical Evaluation Board (MEB) NARSUM completed 20061016 documented the diagnosis of PTSD with a Definite disability for continued military service and a Moderate disability for occupational functioning. His GAF was determined to be 41-50 and his symptoms were considered Severe. The CI’s coping skills had sharply decreased with the current stressors of his recent combat experience as well as the loss of several friends in combat. He reported a history of multiple concussions followed by daily headaches, and cognitive complaints. He was unable to successfully perform his military duties. He was unable to safely use a weapon and was counseled repeatedly about his forgetfulness. He was absent from work due to frequent medical appointments and headaches. His relationships were also adversely affected by his cognitive and emotional difficulties. The examiner determined that further treatment in the military setting was not likely to restore the patient to a full duty status and he would likely require ongoing psychotherapy as well as pharmacotherapy following discharge. There is insufficient evidence in the NARSUM or service treatment record (STR) to support an initial rating of greater than 50%.

The initial VA C&P examination of 20070818 documented the CI met the DSM-IV criteria for PTSD due to behavioral, social changes, re-experiencing and heightened physiological arousal due to PTSD. He had received medication and counseling while in the military but was not under treatment at the time of the examination. He was unemployed and living with his mother. His symptoms included anger, rage, sleep disturbance, irritability, nightmares, exaggerated startle reaction, and flashbacks. He appeared irritable on exam and his affect was congruent. He did not have hallucinations, delusions, or homicidal or suicidal ideation. His symptoms severity was Moderate and frequency was often. Duration of symptoms was minutes to hours.

He restarted and continued treatment for PTSD at the VA but his symptoms did not change in frequency, severity, or duration between the initial C&P exam and the C&P exam of 20081122. At the time of this exam he was enrolled in the West Side VA PTSD program. He complained of anxiety and anger and being on guard all of the time. He felt uncomfortable among people. He also complained of neck and back pain and sometimes tinnitus. He stated that currently he was in rehabilitation at West Side VA Hospital. He did not socialize with people and he isolated himself. He had no history of psychiatric hospitalization. His mood was one of anxiety. He reported he lost a few hours from work but the time frame was not specified. The examiner noted he was able to do desk type work. However, his treating psychologist and psychiatrist submitted medical statements that affirmed he was not able to work secondary to his PTSD and he was granted individual unemployability effective 20081008.

The two VA C&P examinations documented the two different providers’ assessments of severe disease but neither provided specific details in terms of describing either the symptoms the CI was experiencing or impairments in his occupational, school, or social endeavors. With the information available from the initial VA C&P examination, the CI clearly meets the criteria for a permanent 30% disability rating for PTSD.

Postconcussive Syndrome with Headaches, Photophobia, and Memory Loss

The CI reported multiple (six to eight) head injuries while deployed. All but one was without loss of consciousness and all were diagnosed as concussions. He had one more significant head injury with a short loss of consciousness with a HUMVEE rollover accident in December 2005. He did not require neurosurgical evaluation for any of these injuries.

After he returned home he had severe chronic headaches with nausea, vomiting, and photophobia that frequently were incapacitating. The headaches occurred two to three times a day and lasted for ten to thirty minutes.

If, as the Navy neurologist opined, the CI’s headaches, photophobia, and memory problems were attributed to PTSD and not to a separate diagnosis of Postconcussive disorder, a 50% rating for PTSD could be warranted. This determination was based on the absence of findings on brain CT and MRI scans and the failure of his headaches to respond to any of the usually effective migraine medications. However, studies have shown that pathologic changes due to traumatic brain injury (TBI) are frequently not detectable with standard structural neuroimaging. The damaging effects of TBI occur at a subtle microscopic level of injury and a significant brain injury can be present with a normal MRI. The neurologist stated ‘I feel that the majority of his problems are due to PTSD and there may be some minor somatization.’

The Navy PEB determined that Post-concussive Syndrome was an unfitting condition separate from PTSD and the Board cannot reverse this fitness determination. The PEB also separated out headache syndrome, pain issues, and sleep difficulties as separate conditions that were related to Post-concussive Syndrome but were not unfitting. A NARSUM addendum also included myofascial pain syndrome with chronic pain of the cervical and thoracic spine as a diagnosis. The 10% disability rating for Post-concussive Syndrome apparently was based the CI’s remaining Post-concussive Syndrome symptoms of photophobia and memory problems.

The VA rated the PTSD at 50% and also rated post-concussive headaches at 50% based on the frequency of incapacitating headaches. The VA rating decision explained that the Post-concussive Syndrome components of headaches, photophobia, and memory problems were used to support this 50% rating. The current TBI rating criteria were not in effect when the CI separated or 6 months later at the end of the mandatory 6 month TDRL period (20071001). However, VA Training Letter (TL 07-05) was effective as of 20070831 and the Board must follow its rating procedures. This training letter allows the separate rating of mental illness and TBI or Post-concussive Syndrome as long as the same symptoms or functional impairments are not used to support both ratings. The final (and current) TBI rating regulation became effective 20081023. While the CI’s memory problem could be part of his PTSD, it could also be a result of the multiple head injuries the CI sustained while deployed. There is no way to objectively determine which one is the responsible condition. Neuropsychological testing was performed but the results were inconclusive and cognitive impairment could not be ruled in or out. The CI did have subjective symptoms of memory problems and this could be used in rating PTSD or Post-concussive Syndrome but not both. Also, while the neurologist stated the CI’s headaches and photophobia were a result of somatization, they could also be a result of his multiple head injuries. Somatization requires the elimination of any physiologic cause of a symptom and that is not possible in this case. Therefore these symptoms should be considered as part of his Post-concussive Syndrome. Whether one, two, or all three of these symptoms are used to rate the Post-concussive Syndrome, the rating would be 10% for subjective symptoms.

Other conditions

Myofascial Pain Syndrome/Cervical Strain. There is no evidence this condition was unfitting at the time of separation from service.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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. After careful consideration of all available information the Board unanimously determined that the most appropriate rating for PTSD is an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed; and a 30% permanent rating at 6 months IAW VASRD §4.130. The Board also unanimously determined that the Post-concussive Syndrome is most appropriately rated at 10% IAW the VASRD §4.124a and VA Training Letter TL 07-05, AUG 2007. A permanent 30% rating for PTSD is based on daily moderate symptoms of PTSD that cause moderate difficulty in social and occupational functioning. These symptoms include anger, rage, sleep disturbance, irritability, nightmares, exaggerated startle reaction, and flashbacks. The 10% rating for Post-concussive Syndrome is based on subjective mild memory loss and photophobia which, more likely than not, resulted from multiple head injuries.

The Board also considered the condition of Myofascial Pain Syndrome/Cervical Strain 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 significantly interfere with any required duties and no duty restrictions are attributed to this condition.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows; 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 a permanent combined 40% disability retirement as below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Post-Traumatic Stress Disorder | 9411 | 50% | 30% |
| Postconcussive Syndrome | 9304 | 10% | 10% |
| **COMBINED** | **60%** | **40%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100102, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 12 Aug 10

1. I have reviewed the subject case pursuant to reference (a). 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 with placement on the Temporary Disability Retired List with a disability rating of 60 percent for the period 31 March 2007 thru 30 September 2007.

b. Final separation from naval service due to physical disability effective 1 October 2007 with a disability rating of 40 percent and placement on the Permanent Disability Retired List.

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)