RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: MARINES CORPS

CASE NUMBER: PD1000076 SEPARATION DATE: 20070515

BOARD DATE: 20110216

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Active Duty LCPL (3531 Motor Vehicle Operator) medically separated from the Marine Corps in May 2007 after 18 months of service. The medical basis for the separation was Post Concussive Syndrome resulting from two head injuries in July 2006 manifested by subjective symptoms including chronic headache and visual disturbance. She was placed on limited duty (LIMDU) and did not respond adequately to treatment and could not perform within her military occupational specialty or participate in a physical fitness test and underwent a Medical Evaluation Board (MEB). Post Concussive Syndrome was addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. One other condition, as identified in the rating chart below, was forwarded on the MEB submission as a medically acceptable condition. Other conditions included in the narrative summary (NARSUM) and Disability Evaluation System (DES) packet will be discussed below. The informal PEB (IPEB) adjudicated the post concussive syndrome condition as unfitting, rated 10%; with application of SECNAVINST 1850.4E. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: CI requests a higher disability rating based on worsening of her post concussive symptoms including headache, vision, and memory problems. She also cites her VA rating for Adjustment Disorder with mixed anxiety and depressed mood, and personality disorder. The CI stated: ““Member still has post concussion headaches which are very severe-vision is getting worse and dizziness very often-Memory problems are also a factor.” “Continuing health problems whereas before concussions no continuing health problems. Very healthy individual before head trauma. Recently diagnosed with ulcer + acid reflux.” “Other conditions for which I was found with are – Adjustment disorder with mixed anxiety + depressed mood and multiple personality – percent assigned 30%.” As a matter of policy, all service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20070326** | **VA (2 Mo. before Separation) – All Effective: 20070516** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Post Concussive Syndrome | 8045-9304 | 10% | Post Concussive Syndrome, Headache, and Dizzyness, S/P Head concussion … | 8099-8045 | 10% | 20070316 |
|  | Post-Concussion HA | Category 2 |
|  | Recurring Near Syncopal …  | Category 2 |
|  | S/P Concussive Event | Category 2 |
| Positive Epstein Barr Virus Titer | Category III | No VA Entry |
| ↓No Additional MEB/PEB Entries↓ | Adjustment DO with mixed Anxiety and Depressed Mood | 9440 | 30% | 20070323 |
| NSC X 1 |  |  |  |
| **TOTAL Combined: 10%** | **TOTAL Combined: 40%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that her service-incurred condition has had on her 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. 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 changes in the VASRD rating criteria following the CI’s separation are not applicable in this case.

Post Concussive Syndrome: The IPEB rated CI’s post concussive syndrome (including post concussive headaches, post concussive events, and recurring near syncopal events) using VA Schedule for Rating Disabilities (VASRD) code 8045-9304 (dementia due to head trauma), applying the General Rating Formula for Mental Disorders §4.130 which is in accordance with VASRD rating guidelines in force at the time including Training Letter 06-03, FEB 2006. The Board is required to adhere solely to the VA disability rating guidelines (IAW DoDI 6040.44 and the National Defense Authorization Act 2008) which includes adherence to any concurrent applicable disability rating policy changes issued via 'FAST' or Training Letters based on the CI’s separation date; in this case TL 06-03, FEB 2006. By precedent and legal opinion, the Board is obligated to comply with the Training Letters and 'unbundle' the elements of TBI (previously rated collectively as post-concussion syndrome) where that is to the member’s benefit. In this case that applies to other residuals of TBI including the CI’s post-concussive headaches, visual blurring, cognitive complaints and emotional dysfunction. The CI experienced two head injuries in July 2006 without reported loss of consciousness. In the first she had a syncope episode in formation and struck her head on the pavement. The next day a tent pole struck her in the head when the tent was blown over in a wind storm. Medical evaluations after these injuries documented report of persistent headache following the second injury. Neurologic examinations and a CT scan were normal, and she was diagnosed with concussion. As a result of numerous persisting symptoms including headache, dizziness, blurred vision, and symptoms suggestive of depression, she was unable to depart on a planned deployment to Iraq on August 9. She was referred to neurology and mental health for care. The neurology NARSUM, 4 months prior to separation recorded continuing complaints of near daily headache lasting 2 to 3 hours, blurry vision, feeling poorly, lack of depth perception, peripheral vision difficulties, and occasionally feeling light headed and dizzy. Complete neurologic examination was normal including mental status examination, thought processes, speech, hearing, cranial nerves, autonomic function, balance, motor and sensory function. The neurology NARSUM did not document any cognitive deficits and a separate diagnosis of cognitive disorder was not listed in the Neuropsychological evaluation note dated February 28, 2007. Ophthalmology evaluation found normal visual function and attributed her visual symptoms to the post concussive syndrome. MRI (magnetic imaging) scanning of the brain approximately 8 weeks post-injury was normal. Internal medicine evaluation found no underlying medical cause for her complaint of fatigue. A 13 March 2007 neurology progress note records CI report of headaches occurring every other day. The 16 March 2007 VA Compensation and Pension (C&P) examination records CI report of headaches 3 times per day. An 18 April 2007 neurology progress note records CI report of headaches 3 to 4 times per week. Neurologic examinations remained normal during these encounters. Although she reported headaches three times per day during the C&P, the examiner also recorded CI statement “She denies any functional impairment as a result of this condition.” She did however report difficulty driving. The C&P examiner concluded with diagnosis of post concussive syndrome with subjective symptoms. A psychiatry C&P examination around the same time recorded complaints of memory and concentration problems. The examiner concluded she was experiencing “at most mild difficulty.” The Board considered the rating for traumatic brain injury IAW VASRD criteria in effect at the time of separation (includes TL 06-03, February 2006). The CI manifested subjective symptoms that would not otherwise warrant rating under another diagnostic code. IAW with VASRD guidance and TL 06-03 in effect at the time, the CI’s post concussive syndrome symptoms are rated 10%. CI’s headaches were the dominant symptom and may be considered for rating under the code for Migraine headaches, 8100. However, evidence of the record did not support a minimum rating of 10% that requires prostrating attacks. The Board concluded there was no physical or neurologic dysfunction warranting consideration under a separate diagnostic code including her complaint of memory and concentration problems noted in the psychiatry C&P.

Next the Board turned its attention to the issue of emotional/behavioral dysfunction which may be due to head trauma. Neuropsychological evaluation February 2007 diagnosed Depressive Disorder not otherwise specified and Borderline Personality Disorder, by history. The neuropsychologist assigned a GAF of 65 denoting mild symptoms. Her mental health condition was not referred as a separately unfitting condition, but may be considered as a residual of her head injury and Post Concussive Syndrome, especially if it was caused by the head injury or substantially and permanently worsened. In this case, it is not a foregone conclusion that head injury directly caused or worsened her depressive symptoms and emotional dysfunction. The psychiatry C&P, 7 weeks prior to separation, records pre-service depressive symptoms and suicidal thoughts and behavior in the months prior to entering the Marines. After entry, she had difficulty adjusting to military service at the outset and was very emotional while at Boot Camp. The Board noted that CI denied any prior mental health history at the time of her enlistment medical examination and during the February 2007 neuropsychological evaluation. While she reported increased depressive symptoms at the time of her head injuries, she also reported to the C&P examiner experiencing emotional distress and anxiety attacks related to her upcoming deployment to Iraq. The C&P examiner diagnosed Adjustment Disorder and noted characteristics consistent with Borderline Personality Disorder. The examiner assigned a GAF of 60 denoting moderate symptoms, however the C&P examiner also reported that her “symptoms have improved since finding that she was to be discharged. This relieved a lot of stress.” The Board unanimously concluded by preponderance of evidence that the CI’s depressive symptoms and emotional / behavioral dysfunction (diagnosed as Depression NOS, Adjustment Disorder, and Borderline Personality), were due to her existing prior to service condition, her difficulty adjusting to military service, and her anxiety regarding deployment to Iraq, rather than a direct result of head trauma. The Board notes that adjustment disorders and personality disorders are unsuiting conditions that are not ratable or compensable under the rules of the military disability system. The applicant’s mental health condition was also not forwarded for consideration by the MEB to the PEB as not meeting standards or interfering with duty. All Board members agreed that CI’s mental condition did not warrant a separate rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s 10% rating decision for post concussive syndrome / residuals of traumatic brain injury.

Other PEB Conditions: Recurring syncope was associated by the PEB to the post concussive syndrome. Medical documentation attributes the syncopal episodes to heat and hydration issues and by the time of the NARSUM there had been no further incidents for some time. There is no other primary medical documentation of syncope after August 2006, and it was no longer a complaint by the time of the C&P examinations. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was positive Epstein Barr Virus titer, a laboratory test result that in isolation is not unfitting. This test was obtained as part of evaluation of her subjective complaint of fatigue. None of these conditions were cause for limited duty, implicated in the NMA statement or noted as interfering with duty performance. All were reviewed by the Action Officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Other Contended Conditions: The CI’s application asserts that compensable ratings should be considered for ulcer and acid reflux, conditions that were not specifically noted in the NARSUM and apparently diagnosed after separation. Although stomach problems were identified by the CI on the MEB physical and noted by the examiner, no specific diagnosis of ulcer or acid reflux or found elsewhere in the DES file. These conditions were not cause for limited duty, implicated in the NMA statement or noted as interfering with duty performance. 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. Further, the Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board, therefore, has no reasonable basis for recommending these as unfitting conditions for separation rating.

Remaining Conditions: Other conditions identified in the DES file were exercise induced wheezing / asthma, hemorrhoids, problems in stomach, and bowel movements. Several additional minor or resolved conditions or medical complaints were also documented. None of these conditions were cause for limited duty, implicated in the NMA statement or noted as interfering with duty performance. 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.

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 Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the Post Concussive Syndrome with Headache and subjective symptoms, the Board unanimously recommends no change in the PEB’s adjudication of 10%. In the matter of the positive Epstein Barr Virus Titer condition, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. In the matter of the contended mental health conditions, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of 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.

RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20091221 w/attachments.

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 XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 25 Feb 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 that Ms. XXXX’s records not be corrected to reflect a change in either her characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)