RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000099 SEPARATION DATE: 20071031

BOARD DATE: 20110628

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt/E-5 (0341 / Mortar man) medically separated for a single improvised explosive device (IED) blast injury w/lower extremity (LE) neurovascular injury. The CI sustained multiple shrapnel wounds to his legs with the most severe damage to the right superficial femoral artery and right superficial femoral vein which required emergency surgery and prosthetic graft. The CI sustained other related severe IED blast injuries to his left knee, right elbow and right thigh, complicated by infection, radiculopathy and soft tissue and nerve damage. The CI was placed on limited duty (LIMDU). He did not respond adequately to treatment and was unable to perform within his military occupational specialty or meet physical fitness standards. The CI was referred to a Medical Evaluation Board (MEB). The MEB forwarded injury due to war operations by antipersonnel bomb (fragments); injury to superficial femoral artery; injury to femoral veins; open wound(s) (multiple) of unspecified site(s), complicated; other gram-neg organism in conditions classified elsewhere and of unspecified site; other symptoms involving nervous and musculoskeletal systems and blood transfusion, without reported diagnosis were forwarded to the Physical Evaluation Board (PEB) on NAVMED 6100/1. The PEB adjudicated “IED blast injury w/LE neurovascular injury” as unfitting rated 20%, with application of the SECNAVINST 1850.4E, and/or DoDI 1332.39. The PEB adjudicated status post (s/p) bilateral LE fasciotomies; s/p right superficial femoral vein injury and graft; s/p received blood transfusion from outside the U.S. Medical System; neurologic sensory and motor deficits of lower extremities; and s/p right superficial femoral artery injury and graft as related category 2 diagnoses (“conditions that contribute to the unfitting condition”). The PEB also adjudicated s/p infected wounds including MDR acinetobacter as category III (“conditions that are not separately unfitting and do not contribute to the unfitting conditions”). The CI made no appeals and was medically separated with a 20% combined disability rating.

CI CONTENTION: “The 20% rating given to Lowe, Andrew by the military upon separation was not rated as high as the VA rated the same issues within less than 12 months after separation.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20070803** | **VA (2 Mos. After Separation) – All Effective Date 20071101** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| IED Blast Injury w/LE Neurovascular Injury | 8521 | 20% | Right LE , Peripheral Cutaneous Nerve Injury | 8529-8521 | 30% | 20080124 |
| Neurologic Sensory and Motor Deficits of Extremities | Category II |
| S/P Right Superficial Femoral Vein Injury and Graft | Category II | Right Superficial Femoral Artery and Femoral Vein Injury S/P Bypass Graft and S/P Right Greater Saphenous and Right Lesser Saphenous Vein Harvest | 7199-7113 | 30% | 20080124 |
| S/P Right Superficial Femoral Artery Injury and Graft | Category II |
| S/P Bilateral LE Fasciotomies | Category II | Right Leg Scars BK S/P IED Blast and Treatment | 7801 | 20% | 20080124 |
| *See above PEB Conditions* | Right Thigh, Muscle Injury Group XIV and Scarring, S/P T&T Shrapnel Wounds | 5314 | 40% | 20080124 |
| Left Knee and Calf Wounds w/Peripheral Cutaneous Nerve Injury and Scarring BK, S/P Shrapnel Wounds … | 8522-5312 | 30% | 20080124 |
| Left Thigh Scars | 7801 | 20% | 20080124 |
| S/P Received Blood Transfusion from Outside the U.S. Medical System | Category II | No VA Entry |
| S/P Infected Wounds Including MDR Acinetobacter | Category III | See above VA Conditions | 20080124 |
| ↓No Additional MEB/PEB Entries↓ | Right Elbow S/P Shrapnel Wound Surgery w/Residual  | 5206 | 10% | 20080124 |
| Tinnitus | 6260 | 10% | 20080124 |
| 0% x 5/Not Service Connected x 2 | 20080124 |
| **Combined: 20%** | **Combined: 100%** |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member’s medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However, the VA, operating under a different set of laws (Title 38, United States Code) is empowered to compensate service connected conditions and to periodically re-evaluate veterans for the purpose of adjusting the veteran’s disability rating should the degree of impairment vary over time. This case focuses on the CI’s extensive injuries from a single IED blast injury with nerve, vascular and motor deficits. The PEB diagnoses wording of unfitting “IED blast injury w/neurovascular injury” may include both lower extremities; however, the PEB worksheet (JDETS) indicated the intent was for an unfitting right LE condition alone. The Board specifically considered only conditions that had a clear adverse impact to continued service at the time of separation. Post-separation worsening was not included in considering the rating.

IED Blast Injury w/LE Neurovascular Injury (with Neurologic Sensory and Motor Deficits of LE, S/P Right Superficial Femoral Vein and Artery Injury and Graft, Bilateral LE Fasciotomies and S/P Infected Wounds as Category II). At the time of injury*,* the CI sustained a through and through injury to the right thigh involving the muscle groups XIV and XVII in the right thigh and right knee with significant damage to the right superficial femoral artery and right superficial femoral vein which required emergency surgery and a prosthetic graft. He later had native vessel grafting from the left greater saphenous vein and lesser saphenous vein. When he was MEDEVAC’d to Landstuhl Germany, the CI was found to have right LE compartment syndrome and a fasciotomy was performed. The CI was found to have injuries mainly to his legs, more severe on the right than the left leg; however, the left leg still sustained IED injury. The CI was then transferred to Tripler Army Medical Center (AMC) where he had infected wounds and required antibiotic therapy. X-rays done 12 months prior to separation identified shrapnel in the right femur and right ischium (pelvis) and the left lateral hip, femur, knee, tibia/fibula, and ankle. A computed tomography (CT) scan identified findings consistent with prior penetrating injury involving the right medial thigh with extensive tissue defects, adjacent air in the musculature and peripherally enhancing low density masses within the hamstrings and quadriceps muscle. At his neurology examination five months prior to separation, the CI complained of numbness and tingling pain in the right calf and ankle and numbness from above the right knee to the dorsum of the toes. He additionally complained of left leg numbness in the ovoid area from above the knee to mid shin and having only about 85% strength in his right LE, especially the dorsiflexors of the foot along with occasionally stubbing the toes of his right foot and tripping, right ankle rolling, and inability to raise the right foot (consistent with foot drop) to prevent tripping. On physical examination, the findings were numbness to pain in areas noted above, along with mild loss of position sense right foot and mild weakness of dorsiflexion. The CI was seen by vascular surgery five months prior to separation who documented that the CI complained of continued swelling of the right LE; but he was able to walk and run approximately one mile before he started having pain. The surgeon opined that the CI was doing well and that the arterial duplex demonstrated no evidence of stenosis. The vascular surgery addendum stated “fitness for duty relates only to his vascular reconstructions. It does not assess function from his soft tissue or nerve injury, or from his functional status.” On the narrative summary (NARSUM) approximately four months prior to separation, the CI complained of the following symptoms which occurred with prolonged standing: right calf and ankle swelling/edema; shooting pains of the right lateral ankle/calf and thigh; and right thigh and calf weakness; numbness of the right LE including the knee. At this point, the CI was only able to run about ½ mile because this caused his right leg to swell worse than with other activities. The CI also had proprioception deficits of the right LE and stumbling at times which the examiner opined might have been attributed to both some right leg motor and sensory deficits. The examiner noted that the CI’s problems with right LE proprioception could cause him to trip, stumble, or invert his right ankle and not judge how high to lift his right foot with daily activities. The examiner recommended that the CI be followed routinely by vascular surgery and that he be medically separated.

At the VA compensation and pension (C&P) examination approximately two months post-separation the CI complained of not having sensation in the distal right thigh where a foot long metal piece had lodged in his leg with residual sensation on the plantar aspect of the right foot; residual constant right calf swelling compared to the left; calf swelling increased significantly with exercise or walking, with associated tingling and pain; pain and tingling sensation in different areas of his right and left legs. The physical exam findings indicated that the scars on the right and left leg were mostly hyperpigmented with some hypo-pigmentation and significant tissue adherence and contraction along with numbness and significant pain on palpation. The examiner further noted that these scars were extensively disfiguring. The left knee findings were normal flexion 0-140 degrees with crepitus and mild pain without evidence of fatigability, weakness or lack of endurance. The left ankle findings were dorsiflexion 0-10 degrees (norm 0-20), plantar flexion 0-35 degrees (norm 0-45), inversion 0-25 degrees (norm 5-20) and eversion 0-10 degrees (norm 5-15) with pain, fatigability and lack of endurance with repetitive range of motion (ROM). The neurological exam findings were significant for loss of sensation light touch, pin prick or cold temperature from the distal aspect of the left knee to the mid left shin in an oval distribution, and on the right leg a loss of sensation to light touch, pin prick or cold sensation from 15 cm above the right patella down to the entire leg with 75% decreased sensation on the plantar aspect of the right foot.

The PEB rated the “IED blast injury w/LE neurovascular injury” as 8521, paralysis of external popliteal nerve (common peroneal nerve) at 20% (moderate). The VA used code 8529-8521 and rated the right LE, for peripheral cutaneous nerve and popliteal nerve (common peroneal nerve) at 30% (severe). The CI’s primary disability was due to the external popliteal nerve (common peroneal nerve) resulting from the IED injuries requiring vascular grafting and fasciotomy.

The Board considered adding the right upper thigh leg muscle condition 5314 group XIV and/or knee 5312 group XII disabilities as separately unfitting. However, there was little evidence of significant motor impairment attributable to the thigh or knee region muscle injuries, and duty impairment appeared to be predominately from the right lower leg. The left LE had muscle, nerve and vascular damage as well; however, the CI’s duty impairment was attributed almost exclusively to the right LE.

The Board considered that the CI’s primary duty-impairing disability was right LE functional loss with nerve injury (proprioception and weakness of right foot), and right leg swelling interfering with prolonged standing and running. All disability was from the single traumatic IED event with wounds, fasciotomy, infection, artery and vein reconstructions and muscle injury all considered, and applied the tenants of VASRD §4.1 (essentials of evaluative rating), §4.40 (functional loss) and §4.41 (history of injury). The Board focused on rating the CI’s right LE neurovascular injury and unbundling the neurologic and vascular components as separately ratable conditions. Additional muscle injury coding of the right LE would not be IAW VASRD guidance in §4.55(a): A muscle injury rating will not be combined with a peripheral nerve paralysis rating of the same body part, unless the injuries affect entirely different functions. The Board adjudged that the CI’s disability of neurovascular injury was predominant to any unfitting muscle coding option. The unfitting vascular component was the lower leg swelling and pain, with the neurologic component the proprioception and weakness of right foot.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 reasonable doubt, the Board majority recommended that the LE neurovascular injury be separated into IED blast injury w/ right LE neurologic injury, 8521 at 30% IAW VASRD §4.124a, and IED blast injury w/ right LE vascular injury, 7199-7113 at 30% IAW VASRD §4.104.

Other PEB Conditions. The PEB adjudicated neurologic sensory and motor deficits of lower extremities (category II), s/p right superficial femoral vein injury and graft (category II), s/p right superficial femoral artery injury and graft (category II), s/p bilateral LE fasciotomies (category II), s/p received blood transfusion from outside the U.S. Medical System (category II). The blood transfusion condition was the single condition not address in the primary unfitting condition analysis. However, s/p received blood transfusion from outside the U.S. Medical System is not considered a physical disability IAW DoDI 1332.38. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of any of the PEB fitness adjudications for the category II and III conditions; however, their contribution to the primary unfitting condition was considered in rating.

Other Conditions (Tinnitus and Right Elbow S/P Shrapnel Wound Surgery w/Residual Pain). The tinnitus condition was rated 10% by the VA. The MEB audiologist based on the audiogram findings recommended that the CI continue with annual hearing evaluations and continues use of hearing protection when exposed to loud noise. The right elbow condition was rated by the VA at 10%. At the VA C&P exam the right elbow findings were flexion 0-145 degrees with pain. Although the right elbow was injured in the IEB blast detailed above, the VA C&P exam indicated the right elbow had a normal range of motion (flexion 0-145 degrees) with pain. There was no tie to fitness or duty performance for the right arm. These conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that either condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that neither tinnitus nor the right elbow condition was subject to service disability rating.

Other Contended Conditions. The acute posttraumatic stress disorder (PTSD) was listed on the LIMDU. However, the NARSUM indicates that there was no psychiatric diagnosis on Axis I or Axis II and the psychiatrist opined that the CI was found psychiatrically fit for full duty. The non-medical assessment noted only duty limitations attributable to the lower extremities (“running or bear weight”) with otherwise superior performance. No mental health or cognitive deficits were implied. The Board therefore has no reasonable basis for recommending PTSD or any mental health disorder as an 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 IED blast injury w/LE neurovascular injury condition, the Board, by a vote of 2:1, with the majority agreeing that the blast injury w/LE neurovascular injury condition be separated into IED blast injury w/ right LE neurologic injury, 8521 at 30% IAW VASRD §4.124a and IED blast injury w/ right LE vascular injury, 7199-7113 at 30% IAW VASRD §4.104. The single voter for dissent (who recommended 8521 at 30% without 7199-7113) did not elect to submit a minority opinion. In the matter of the PTSD, tinnitus and right elbow conditions 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 recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| IED Blast Injury w/ Right LE Neurologic Injury | 8521 | 30% |
| IED Blast Injury w/ Right LE Vascular Injury | 7199-7113 | 30% |
| **COMBINED** | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100113, 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

 (b) PDBR ltr dtd 11 Jul 11

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 rated at 50 percent (increased from 20 percent) with transfer to the Permanent Disability Retired List effective 31 October 2007.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid disability separation pay if warranted, and notification to the subject member once those actions are completed.

 Assistant General Counsel

 (Manpower & Reserve Affairs)