RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: . BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1000131 SEPARATION DATE: 20060115

BOARD DATE: 20101005

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (5811, Military Police) medically separated for left saphenous nerve neuropathy secondary to shrapnel wound. He did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS) or to meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Left lower extremity saphenous nerve neuropathy was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the left saphenous nerve neuropathy as unfitting, rated 10% IAW with the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was thus medically separated with the 10% disability rating.

CI CONTENTION: “There have been changes to the rating system, and I feel I should have been rated higher than I was.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20051109** | | | **VA 20050921(4Mo. Pre-Separation) – Effective 20060116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Saphenous Nerve Neuropathy | 8527 | 10% | Residual Shell Fragment Wound Left Lower Extremity | 8527-5312 | 30% | 20050921 |
| PTSD | MEB H&P |  | PTSD | 9411 | 10% | 20050926 |
| Tinnitus | MEB H&P |  | Tinnitus | 6260 | 10% | 20050929 |
| ↓No Additional MEB Entries↓ | | | 0% x 3 / Not Service Connected x 4 | | | 20050921 |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 40%** | | | |

ANALYSIS SUMMARY:

Left Saphenous Nerve Neuropathy. The CI was injured in an improvised explosive device blast on 26 March 2005, with shrapnel wounds to the left lower leg, left upper arm, and abrasions on the buttocks. The penetrating wound to his left medial calf resulted in extensive soft tissue damage requiring extensive debridement, a deep medial fasciotomy and repair of the soleus muscle. Irrigation and debridement procedure and eventual secondary closure of the left leg wound were performed. He had a foot drop initially after the injury. The narrative summary (NARSUM) on 7 October 2005 noted that he underwent rehabilitation, but continued to have persistent and unremitting pain with attempts to wear a boot or to engage in exercise. Examination documented numbness involving the medial aspect of the lower leg and foot. Abnormal range of motion was not documented in the NARSUM or on the MEB separation examination. Left lower extremity strength was normal on the MEB examination. Nerve conduction study on 15 August 2005 showed profound axonal injury as evidenced by marked decrease amplitude, but a relative preservation of latency involving the left saphenous nerve. The saphenous nerve is a sensory nerve with no motor function. The MEB determined that the CI's medical condition precluded his return to active duty and the left saphenous nerve neuropathy condition was referred to the PEB.

The VA compensation and pension (C&P) examination on 21 September 2005, four months before separation, noted that he continued to have numbness and weakness with inability to wear boots or do his job. On examination, he had tissue loss in the left calf with numbness medially in the saphenous nerve distribution. His ROM was normal for left ankle plantarflexion, but dorsiflexion was absent beyond neutral, reflecting muscle group XII dysfunction.

The PEB found the left saphenous nerve neuropathy to be unfitting with a 10% rating utilizing code 8527 (internal saphenous nerve, paralysis of). Code 8527 assigns a maximum 10% rating for severe to complete paralysis. The VA rating decision on 15 February 2006, one month after separation, rated the residual shell fragment wound left lower extremity condition at 30%, coded 8527-5312 (internal saphenous nerve, paralysis of - group XII muscle injury). The 30% rating under code 5312 requires severe impairment which was assigned due to the loss of dorsiflexion. A 20% rating would be assigned for moderately severe and 10% for moderate impairment.

The Board considered the PEB rating which reflects the left saphenous nerve injury. The VA rating also included the group XII muscle dysfunction related to the inability to dorsiflex the foot. This code is utilized for muscle injury to the anterior compartment muscles that provide dorsiflexion of the foot. The clinical records document soleus muscle injury with some tissue loss requiring surgical repair. This muscle provides for plantar flexion of the foot, which is normal. Although the CI did have a foot drop initially, the primary complaint noted in the DES file was numbness and pain. The VA examination prior to separation demonstrated evidence of anterior compartment muscle dysfunction with loss of dorsiflexion. The PEB exam did not record any ROM for the ankle, and thus did not have a full exam for rating purposes. The Board considered the coding options including 5271 (ankle, limited motion of) and the VA coding that reflects both the neuropathy and the loss of dorsiflexion of the ankle associated with the residual shell fragment wound left lower extremity. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board, unanimously recommends a rating of 30%, coded 8527-5312 IAW VASRD §4.124a and §4.73.

Remaining Conditions. Other conditions identified in the DES file were posttraumatic stress disorder (PTSD), tinnitus, decreased hearing, left upper arm pain secondary to shrapnel injury, left knee pain secondary to antalgic gait, and headaches. PTSD was noted on the MEB examination, but was not forwarded to the PEB as unfitting. The CI stated in his C&P mental status exam, four months prior to separation, that he was seen by a psychiatrist once who suggested medications and referred to him group therapy; however, he elected not to take meds or undergo therapy. His global assessment of functioning (GAF) at the time of his C&P was 60. No duty limitations were required due to PTSD, and there was no evidence that the PTSD caused unfitness for duty. Tinnitus and hearing loss were not linked to fitness, and hearing loss was not ratable. Headaches were not linked to fitness, were not specifically treated, and no prostrating attacks were documented. The other conditions were not clinically significant during the MEB/PEB period, none were the basis for limited duty, and none were implicated in the non-medical assessment. 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, residuals patellofemoral syndrome left knee, right knee condition, right ankle condition and status post burns on back were noted in the VA rating decision proximal to separation, but were not documented in the DES file. 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 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. 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 residual shell fragment wound left lower extremity condition condition, the Board unanimously recommends a rating of 30% coded 8527-5312, IAW VASRD §4.124a and §4.73.

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** | **PERMANENT**  **RATING** |
| Residual Shell Fragment Wound Left Lower Extremity | 8527-5312 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091216, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 17 Oct 11 ICO xxxxxxxxxxxxxxxx

(c) PDBR ltr dtd 25 Oct 11 ICO xxxxxxxxxxxxxxxx

(d) PDBR ltr dtd 27 Oct 11 ICO xxxxxxxxxxxxxxxx

(e) PDBR ltr dtd 27 Oct 11 ICO xxxxxxxxxxxxxxxx

(f) PDBR ltr dtd 20 Oct 11 ICO xxxxxxxxxxxxxxxx

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (f).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. XXX XX 1149: Placement on the Permanent Disability Retired List with a 30 percent disability rating (increased from 10 percent) effective 15 January 2006.

b. XXX XX 5703: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 1 December 2002.

c. XXX-XX-5371: Separation from the Naval Service due to physical disability rated at 10 percent (increased from 0 percent) effective 15 November 2004.

d. XXX XX 9959: Placement on the Temporary Disability Retired List at 50 percent from 15 February 2008 through 14 August 2008 with final disability separation on 15 August 2008 with a 10 percent disability rating.

e. XXX XX 6809: Separation from the Naval Service due to physical disability rated at 20 percent (increased from 10 percent) effective 30 March 2009.

3. Please ensure all necessary actions are taken to implement these decisions and the subject members are notified once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)