RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000735 SEPARATION DATE: 20061015

BOARD DATE: 20111220

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, Cpl/E-4 (0621, Field Radio Operator), medically separated for right thigh soft tissue defect with deep scarring. The CI was injured in an improvised explosive device (IED) blast on 23 June 2005, and sustained a right thigh soft tissue defect, burns involving her face and left upper and lower extremities encompassing 7% total body surface area (TBSA) and additional minor injuries. After a month of inpatient treatment and extensive outpatient treatment at the military burn center, Brooke Army Medical Center she did not respond adequately to treatment and was unable to perform within her military occupational specialty (MOS) or meet physical fitness standards. She was issued a permanent U3/L3 profile and underwent a Medical Evaluation Board (MEB). Right thigh soft tissue defect with deep scarring and 7% TBSA burns with facial disfigurement and superficial scarring were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501 on DD form 3947 taken directly from NAVMED 6100/1. Left eye corneal abrasion, healed and left tympanic membrane perforation healed were forwarded on the MEB submission as medically acceptable conditions. The Informal PEB (IPEB) adjudicated the right thigh soft tissue defect condition as unfitting, rated at 10%, with application of the SECNAVINST 1850.4E and Veterans’ Administration Schedule for Rating Disabilities (VASRD). The 7% TBSA burns with facial disfigurement and superficial scarring condition was categorized as related Category II diagnosis (conditions contributing to the unfitting condition). The other conditions, left eye corneal abrasion, insomnia, oral candidiasis and left tympanic membrane perforation were categorized as Category III diagnosis (conditions that are not separately unfitting and do not contribute to the unfitting condition). The CI appealed the decision, requesting reconsideration and a Reconsideration PEB (R-PEB). The R-PEB upheld the 10% adjudication. The CI made no further appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states, “Never received ratings for PTSD or any other important injuries received in Iraq.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions. 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 20060719** | | | **VA (1 Mo. Pre- & 6 Mo\* Post-Sep) – All Effective Date 20061016** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Thigh Soft Tissue Defect w/Deep Scarring | 7802 | 10% | Right Medial Thigh Shrapnel Wound | 7801 | 20% | 20060921 |
| Shrapnel Wound Right Thigh Muscles | 5314 | 30% | 20060921 |
| Cutaneous Right Thigh Neuralgia | 8729 | 0% | 20060921 |
| 7% Total Body Surface Area Burns With Facial Dis figurement And Superficial Scarring | CAT II | | Scars L. Upper Extremity & L. Hand | 7801 | 20% | 20060921 |
| Scars L. Lower Extremity & R. Groin | 7802 | 10% | 20070423\* |
| Facial Burns Left Forehead & Cheek | 7800 | 30% | 20060921 |
| Insomnia | CAT III | | PTSD/Major Depressive Disorder (Claimed As Insomnia) | 9411 | 50% | 20060921 |
| L. TM Perforation | CAT III | | L. TM Perforation | 6211 | NSC | 20060921 |
| Oral Candidiasis | CAT III | | Oral Candidiasis | 7202 | NSC | 20060921 |
| Left Eye Abrasion | CAT III | | Left Eye Corneal Abrasion | 6079 | NSC | 20060921 |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20060921 |
| Not Service Connected (NSC) x 2 | | | |
| **Combined: 10%** | | | **Combined: 90%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that posttraumatic stress disorder (PTSD) or other important injuries received in Iraq did not receive ratings. 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, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

Right Thigh Injury. The CI sustained a right thigh soft tissue defect injury, and burns to her left upper extremity, left lower extremity, head and neck totaling 7% TBSA from an IED blast on 23 June 2005. She underwent wound debridement in theater then was evacuated to Germany. She arrived on a ventilator, was stabilized, cleared of inhalational and internal injuries, and then extubated. By 27 June 2005 she was transferred to the military burn center in Texas. During her month of hospitalization, she underwent debridement, lavage, grafting and dressing care for all her burn wounds. The right thigh required a vacuum assisted closure device dressing applied every three days to promote healing. After a month of treatment she underwent rotational flap closure of the right thigh soft tissue wound. She continued to have pain, mild to moderate difficulty with tasks and was issued a permanent U3/L3 profile for right thigh defect and 7% TBSA burns. The APFT was restricted to sit-ups and push-ups. The functional requirements were limited to carrying and firing individual assigned firearm, wearing protective mask and wearing all chemical defense equipment. Patient administrative tracking team input included “cannot stand for extended periods of time, nor run in formation or even at her own pace for long period of time. Also, the decline in her physical strength is very noticeable.” The CI was working outside her MOS, was unable to participate in PRT, was missing eight hours of work per week, desired separation, and was referred to a MEB.

At the time of the MEB, seven months prior to separation, the CI was independent with self care, but reported mild to moderate difficulty with tasks requiring heavy lifting. She had moderate difficulty with tasks such as heavy household chores, yard work, recreational activities that took some force through using arm/hand, and managing transportation needs. She was independent with all mobility. The physical exam note was in the rehabilitation section of the MEB narrative summary (NARSUM) noting a significant soft tissue defect of the right thigh requiring flap closure. The medical examiner opined “she continues to experience significant physical impairment related to her burn wounds as well as other soft tissue injuries. She is ambulatory but limited due to her wounds, particularly the right thigh soft tissue defect, and was unable to resume her previous military duties.” A MEB addendum sent to the PEB reported a “6x1/2 and 7x1/2 scar associated with deep tissue loss on the right medial thigh (6.5 square inches)” causing pain 50-75% of the day requiring anti-inflammatory medications. The photographs in evidence depicted a residual large oval shaped scar on the medial right thigh with a concave appearance suggesting notable tissue loss and or an adherent scar, appearing larger than “6.5 square inches.”

The Department of Veterans’ Affairs (VA) compensation and pension (C&P) exam, completed one month prior to separation, indicated pain in her right thigh. The examiner commented on the “left” quadriceps muscle which the Board believed was a typographical error. The CI complained of pain of her right thigh especially with cold weather, repetitive motion and walking, causing the thigh to tire and feel weak. These symptoms were brought on after only a block of walking. The exam demonstrated a normal gait without any limp. The quadriceps and the vastus medialis were involved in the soft tissue defect. There was sensory numbness of the medial thigh. The scar was in the shape of a “V”, deep, numb, adherent to the underlying muscle and with notable muscle loss that was burning and painful. There was decrease in muscle strength compared to the opposite thigh. There was no limitation of motion of the joint of the right leg.

The PEB and VA chose different coding options for the right thigh injury condition. The PEB rated and coded the condition IAW §4.118 VASRD–skin as 7802 burn scar(s) or scar(s) due to other causes, that are superficial and nonlinear rated 10%. The VA coded and rated the condition for each system impacted by the CI’s injury, to include skin (7801 @20%), muscle (5314 @30%) and nerve (8729 @0%), for a §4.25 combined rating of 40% for the right thigh were there no other ratings to consider. The Board deliberated on how best to code the CI’s right thigh injury. By precedent, the Board does not recommend separation rating for scars unless their presence imposes a direct limitation on fitness; however, the PEB adjudicated the thigh scar as unfitting with rating criteria using surface area affected. There was clear evidence that the functional limitation from the right thigh injury was pain with fatigue and weakness. Both exams (as well as a treatment note by neurology stating “thigh muscles to include vastus, adductors are atrophied due to muscle mass loss from injury”) noted significant muscle loss, a deep nonlinear scar adherent to the remaining muscle, and sensory loss. The 5314 muscle code best captures these residual impairments. When considering the rating, the Board recognizes that the VA unbundled each system impacting the right thigh injury to maximize the rating for the CI. However, from a fitness determination, it is difficult to determine which system (if isolated) impacted fitness. With application of §4.56—evaluation of muscle disabilities, and with considering the type of injury, the prolonged treatment of the right thigh, that the CI was not able to function within her MOS and with history of debridement, prolonged hospitalization for treatment of wound to include rotational flap closure and objective findings of muscle loss, decreased strength as well as intermuscular scaring, the rating best fit the moderately severe disability of muscles. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.7 (higher of two evaluations), the Board majority recommends a separation rating of 30% for the right thigh injury coded 5314 with no additional finding of unfit for thigh scaring or neuropathy.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were 7% total body surface area burns with facial disfigurement and superficial scarring Category II; and insomnia, left eye corneal abrasion, left tympanic membrane perforation and oral candidiasis Category III.

The Board first deliberated the Category II condition of 7% TBSA burns with facial Disfigurement and superficial scarring. By precedent, the Board does not recommend separation rating for scars unless their presence imposes a direct limitation on fitness. With this in mind, the charge before the Board was to determine if any of the residual burn scars impacted fitness. The CI received a U3 permanent profile likely for scars related to her left non-dominant hand. The profile restrictions included no pull-ups and for use of compression dressings on her left hand. It did allow for pushups. The NMA did not specifically delineate if the left hand was functionally limiting for the CI’s MOS, but did state she was missing eight hours a week to care for her injuries and was not working in her MOS. The MEB exam eight months prior to separation documented difficulty with heavy chores, yard work, washing and blow drying hair and activities that take some force through using the arm or hand. In the rehabilitation note the burns of the wrist and the hand were documented as deep partial thickness which required grafting to the left dorsal hand, demonstrating moderate hypertrophy and moderate interdigital webbing of the 2nd 3rd and 4thweb spaces. The CI was able to make a fist. The exam also demonstrated moderately diminished grip strength on the left and minimal diminished strength with lateral, tip to tip and three jaw pinch motions. The CI was actively in rehab to address the left hand weakness and wearing compression garments to left hand, arm and forearm. She was performing home exercises to address potential ROM deficits of the left hand. She was also wearing a splint likely to help with scarring. The examiner opined the interdigital webbing likely would need releasing at a later date. Of the total 7% scarring, the left hand received 1% measuring 4x4 inches on the dorsal surface of the hand. The VA exam, one month prior to separation noted residual scar symptoms of the left hand to include itching and burning. The scar was deep, discolored, grafted and caused a tightness of the skin when closing the hand into a fist. The examiner documented no limitation of motion or function.

The Board deliberated the probative values for the MEB exam and the VA exam. The VA exam was most proximate to separation and was completed by a surgeon. While it did not evaluate the hand grip and finger mobility specifically with the DASH assessment tool, the examiner did document “no limitation of motion or function.” The Board noted there were no STRs in evidence from the MEB exam to the VA exam, specifically any occupational therapy physical therapy, rehabilitation notes nor orthopedic notes to help deliberate if the hand and finger mobility had improved. The Board concluded that the VA exam likely captured rehabilitation improvement since this exam was six months after the MEB exam. All evidence considered, there was not a preponderance of evidence in the CI’s favor supporting addition of left hand burn injury as an unfitting condition for separation rating.

The remaining scars, to include left upper extremity; left lower extremity; right groin and face were not specifically implicated in the NMA, nor noted as failing retention standards. The profile, however, did limit sun exposure and temperature extremes. Of note, the facial scars were not limiting for the use of a protective mask and use of all chemical defense equipment. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of these remaining scars as unfitting conditions for separation rating.

Finally the Board deliberated on the Category III conditions, left eye corneal abrasion, and left tympanic membrane perforation. None of these conditions were profiled, implicated in the non-medical assessment (NMA) or noted as failing retention standards. The corneal abrasion and the perforated tympanic membrane had healed by the time of the MEB. 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 duty 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 implies that compensable ratings should be considered for PTSD. The MEB NARSUM seven months prior to separation included a diagnosis of insomnia, and noted the CI demonstrated an age appropriate psychiatric exam and had no instability while hospitalized for her IED wounds. The VA exam completed one month prior to separation noted no inpatient psychiatric hospitalizations and three to four sessions as an outpatient receiving medication for sleep. The VA examiner diagnosed delayed onset PTSD including sleep disturbance. There was no evidence in the STR noting PTSD treatment prior to the VA exam. There was only treatment for insomnia. It was while on medical hold and following the NARSUM, MEB and PEB determinations that the CI’s PTSD symptoms flourished. PTSD was not mentioned in the DES file. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of insomnia as an unfitting condition for separation rating. By policy and precedent, the Board has limited its jurisdiction for recommending unadjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core DES file. The core DES file consists of the MEB referral document, the PEB adjudication document, the NARSUM (including any addendums or referenced examinations), the MEB physical exam, the commander’s statement, the physical profile(s), and any written appeals or internal DES correspondence. Contended conditions (PTSD in this case) which are not eligible for Board recommendations on this basis remain eligible for submission to the Board for Corrections of Naval Records (BCNR).

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. Additionally tinnitus and several other non-acute conditions 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 right thigh injury, the Board by a vote of 2:1 recommends a rating of 30% coded 5314 IAW VASRD §4.73. The single voter for dissent (who recommended a rating of 20% coded 7801 IAW VASRD §4.118) did not elect to submit a minority opinion. In the matter of the left hand injury, and the remaining scar injuries the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the insomnia, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the Left eye corneal abrasion and Left tympanic membrane perforation 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.

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 her prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right thigh soft tissue defect | 5314 | 30% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100625, 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 12 Jan 12 ICO xxxxxxxxxxxxxxx

(c) PDBR ltr dtd 4 Jan 12 ICO xxxxxxxxxxxxxxx

(d) PDBR ltr dtd 22 Dec 11 ICO xxxxxxxxxxxxxxx

(e) PDBR ltr dtd 19 Jan 12 ICO xxxxxxxxxxxxxxx

(f) PDBR ltr dtd 12 Jan 12 ICO xxxxxxxxxxxxxxx

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 3238: Assignment to the Temporary Disability Retired List with a 60 percent disability rating for the period 31 October 2007 through 30 April 2008 and placement on the Permanent Disability Retired List with a 30 percent rating effective 1 May 2008.

b. XXX-XX-0919: Placement on the Permanent Disability Retired List with a 30 percent disability rating 5 January 2006.

c. XXX XX 3246: Placement on the Permanent Disability Retired List at 30 percent effective 15 October 2006.

d. XXX XX 1973: Placement on the Permanent Disability Retired List with a 50 percent disability rating effective 31 Aug 2011.

e. XXX XX 2573: Separation from the Naval service due to physical disability rated at 20 percent (increased from 10 percent) effective 1 August 2005.

3. Please ensure all necessary actions are taken to implement these decisions, including the recoupment of disability severance pay, if warranted, and notification to the subject members once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)