RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000775 SEPARATION DATE: 20061115

BOARD DATE: 20110630

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt (0861, Fire Support Man) medically separated for recalcitrant thoracic spine pain status post improvised explosive device (IED) blast sustained in combat*.* The CI was injured in January 2005 outside Baghdad when a mortar landed near his tent. He sustained a nasal fracture and laceration, perforated left tympanic membrane, partial thickness (second degree) burns to his face and hands, superficial shrapnel injuries to his torso, and brief loss of consciousness (minutes). He was evacuated to Germany where he underwent a closed reduction of his nasal fracture and closure of associated laceration. He was then transported to the Army Burn Center in San Antonio where he was treated conservatively (no grafting), released the following day on hospital convalescent leave, and discharged from hospital a month later. Approximately one month after hospital discharge (three months status post injury), the CI sought care for worsening back pain. Magnetic resonance imaging (MRI) was normal. Treatment included medications, physical therapy, chiropractic manipulation, and pain management. He did not respond adequately to treatment and was unable to perform within his military occupational specialty or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Pain in thoracic spine was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the recalcitrant thoracic spine pain condition as unfitting, rated 0%, with likely application of the DoDI 1332.39. The CI did not appeal and was medically separated with a 0% disability rating.

CI CONTENTION: “PTSD.” He additionally attached his VA rating decision, with all of his VA conditions and ratings as per the rating chart below.

A rating comparison chart is found on the following page.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060922** | | | **VA (3 Mo. Pre Separation) – All Effective Date 20061116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Recalcitrant Thoracic Spine Pain S/P IED Blast Sustained In Combat | 5237 | 0% | Thoracolumbar Spine Strain | 5237 | 20% | 20060816 |
| Adjustment D/O w/Mixed Emotional Features | CAT IV | | PTSD | 9411 | 30% | 20060819 |
| ↓No Additional MEB/PEB Entries↓ | | | Right Knee PFS | 5099-5019 | 10% | 20060816 |
| S/P Right Foot Strain | 5021 | 10% | 20060816 |
| Cervical Spine Strain | 5237 | 10% | 20060816 |
| S/P Left Ankle Mult. Sprains… | 5271 | 10% | 20060816 |
| Recurrent Bilateral Tinnitus | 6260 | 10% | 20060818 |
| S/P Burns To Forehead w/Scars | 7800 | 10% | 20060823 |
| S/P Shrapnel Left Elbow/FA… | 7804 | 10% | 20060816 |
| S/P Burns Back w/Scars | 7804 | 10% | 20060816 |
| S/P Shrapnel Wounds Right Forearm w/Scars | 7804 | 10% | 20060816 |
| S/P Concussion w/Residual HA | 8045 | 10% | 20060819 |
| Left Ulnar Nerve Neuropathy | 8599-8516 | 10% | 20060816 |
| 0% x 15/Not Service Connected x 13 | | | 20060816  20060819 |
| **Combined: 0%** | | | **Combined: 80%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred conditions have him, reflected in his higher VA disability rating. However, 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 Department of Veterans Affairs, operating under a different set of laws, is empowered to consider service incurred conditions that were not unfitting for continued service at the time of separation, and periodically re-evaluate veterans for the purpose of adjusting the disability rating should the degree of impairment vary over time.

Thoracic Spine Pain Condition. There were two back evaluations in evidence which the Board weighed in arriving at its rating recommendation. The VA exam had a goniometric range of motion (ROM). Both exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB ~ 4 Mo. Pre-Sep | VA C&P ~ 3 Mo. Pre-Sep |
| Flex (0-90) | “Full” | 60⁰ |
| Ext (0-30) | 20⁰ |
| R Lat Flex (0-30) | 30⁰ |
| L Lat Flex 0-30) | 30⁰ |
| R Rotation (0-30) | 30⁰ |
| L Rotation (0-30) | 30⁰ |
| COMBINED (240) | 200⁰ |
| Comment | TTP; no spasm; neuro normal; (no comment on gait, posture, or painful motion) | Spasm of L trapezius, TTP, normal posture, gait antalgic due to ankle, neuro normal SLR neg |
| §4.71a Rating | 10% (PEB 0%) | 20% |

The narrative summary (NARSUM) four months pre-separation noted the CI complained of pain in the thoracic spine, exacerbated by certain activities, including bending over. The exam revealed “full ROM” (no specific axis or degrees of motion listed) of the cervical, thoracic, and lumbar spine, with tenderness to palpation in the cervical and thoracic regions. Spasm was noted to be absent, and neurologic examination revealed no abnormalities (motor exam of lower extremities omitted). Magnetic resonance imaging (MRI) of the thoracic spine in December 2005 was normal. The MEB physical exam, one month later (three months pre-separation), also noted “full range” of spinal motion, but “with pain,” tenderness in the thoracic spine, and a normal neurologic evaluation. The VA exam one week later noted reduced flexion and extension of the thoracolumbar spine with flexion of 60°, meeting the 20% criteria under the general rating formula for diseases and injuries of the spine, VASRD §4.71a. The examiner also noted spasm and tenderness of left trapezius muscle, normal posture and neurologic exam, negative straight leg raise, and an antalgic gait attributed to the left ankle condition (versus the back). None of the exams reported evidence of incapacitating episodes (specifically denied in the VA exam) requiring “bed rest prescribed by a physician and treatment by a physician,” so the CI’s condition is most appropriately rated under the general rating formula rather than that using incapacitating episodes under 5243, intervertebral disc syndrome. The ROM limitations at the exam most proximate to separation is the only exam with goniometric measurements and therefore the highest probative value. This exam met the 20% disability rating criteria for “forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees,” IAW the general rating formula. After due deliberation considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the thoracic spine condition, coded 5237.

Low Back Pain Condition (Radiculopathy). There was no evidence of unfitting peripheral nerve impairment in this case. The CI did not complain of numbness, tingling, or weakness of his extremities, nor did he complain of pain radiating into the extremities. All exams proximate to separation showed normal sensory and motor function in the lower extremities, normal reflexes, and there was no evidence of atrophy, foot drop, or neurologically-related gait abnormalities (antalgic gait at VA exam attributed to left ankle condition). IAW 4.71a, pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease is considered under the general rating formula above. This leaves no grounds for a Board recommendation of an additionally unfitting neuropathy. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of any lower extremity radiculopathy as an unfitting condition for separation rating.

Other PEB Conditions. The other condition adjudicated as category IV (not a physical disability) by the PEB was adjustment disorder with mixed emotional features. IAW DODI 1332.38, this condition falls under “conditions and circumstances not constituting a physical disability,” and is not subject to separation rating or consideration by this Board. However, the CI’s mental condition was diagnosed as posttraumatic stress disorder (PTSD) by the VA, rated 30%, from an exam two months prior to separation. His symptoms included insomnia, nightmares, anxiety, hypervigilance, suspiciousness, social withdrawal, depression, irritability, avoidance, and loss of interest and energy. He lived with his girlfriend and the examiner reported he seemed to “get along fairly well with other people and at work.” Mental status exam was normal except for “some mild depression, mild psychomotor retardation, and mild anxiety.” Global assessment of functioning (GAF) was 55, connoting moderate symptoms or moderate difficulty in social or occupational functioning. The CI also complained of short term memory loss, a condition evaluated by psychometric testing 13 months pre-separation, which found no cognitive disorder. The CI’s mental condition was not noted on any duty restriction or limited duty, or implicated in the non-medical assessment (NMA). The NMA specifically stated, “Even with his physical limitations he has always put forth maximum effort and attempted to perform. If not for his injury I believe that [the CI] would be able to continue his service and would achieve any goals he set for himself … his current physical limitations do not allow him to perform to his past demonstrated abilities.” The division psychiatrist stated the CI was psychologically fit for full duty in a memo dated less than five months pre-separation. The condition was reviewed by the action officer and considered by the Board. There was no indication from the record that any mental health or mental disorder symptoms (including the PTSD condition) significantly interfered with satisfactory performance of duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the adjustment disorder condition, nor for adding any mental disorder or PTSD as an unfitting condition for separation rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for PTSD (VA 30%; discussed above) and his other VA conditions. The following conditions had compensable (all 10%) ratings by the VA within 12 months of separation: right knee patellofemoral pain syndrome, status post right foot strain, cervical spine strain, status post left ankle multiple sprains and Brostrum [sic-surgery Broström procedure] repair, recurrent bilateral tinnitus, status post burns to forehead and above left eyebrow with residual scars, status post shrapnel left elbow/forearm with residual scar, status post burns back with residual scars, status post shrapnel wounds right forearm with residual scars, status post concussion with residual headaches, and left ulnar nerve neuropathy. All of these conditions were reviewed by the action officer and considered by the Board.

The cervical spine condition and left ulnar neuropathy (right hand dominate) were reviewed in-depth as the service treatment record indicated extensive pain management clinic treatment for “mid upper back pain, neck pain” as myofascial pain and also documented mildly decreased left grip strength with hypothenar area decreased muscle mass. Exams indicate painful motion and tenderness with episodic cervical musculature spasm without abnormal spinal contour. The NARSUM and VA exams documented full range of cervical spine motion. Neither the neck nor the left hand appeared to have any specific duty impairment; however, the NMA statement that “his current physical limitations do not allow him to perform to his past abilities” was non-specific regarding delineating upper back from cervical or left arm/hand limitations. Although it is possible that impairment from the cervical (neck) was overshadowed by the thoracic (upper back) condition, that possibility is unduly speculative as the basis for a Board fitness recommendation. The Board’s threshold for adding new unfitting conditions is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. After due deliberation and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the neck or left arm radiculopathy conditions as additionally unfitting for separation rating.

Remaining Conditions. Other conditions identified in the Disability Evaluation System (DES) file were deviated nasal septum status post nasal fracture with surgery (VA 0%), orbital fracture (VA 0%), perforated left tympanic membrane with surgery (VA 0%), left ear hearing loss (VA 0%), sleepwalking, eczema (VA 0%), and high blood pressure. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant during the MEB period, none were the bases for limited duty, and none were implicated in the NMA. 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. 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. As discussed above, PEB reliance on DoDI 1332.39 for rating thoracic spine pain was likely operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the thoracic spine pain condition and IAW VASRD §4.71a, the Board unanimously recommends a rating of 20% coded 5237. In the matter of the adjustment disorder condition, the Board unanimously recommends no change from the PEB adjudication as category IV (not a physical disability). In the matter of the PTSD, right knee patellofemoral pain syndrome, status post right foot strain, cervical spine strain, status post left ankle multiple sprains and Brostrom repair, recurrent bilateral tinnitus, status post burns to forehead and above left eyebrow with residual scars, status post shrapnel left elbow/forearm with residual scar, status post burns back with residual scars, status post shrapnel wounds right forearm with residual scars, status post concussion with residual headaches, and left ulnar nerve neuropathy, deviated nasal septum status post nasal fracture with surgery, orbital fracture, perforated left tympanic membrane with surgery, left ear hearing loss, sleepwalking, eczema, high blood pressure 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, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Thoracic Spine Pain | 5237 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100614, 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 26 Jul 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (reference (b)).

2. 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 20 percent (increased from 0 percent) effective 15 November 2006.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)