RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD1100197 SEPARATION DATE: 20030517

BOARD DATE: 20120330

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (12B, Combat Engineer) medically separated for post-concussive syndrome with headaches. The condition began in 2001 as a consequence of being kicked in the head. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). Post concussive syndrome and vascular headaches were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The PEB adjudicated the post concussive syndrome with chronic daily headaches condition as unfitting, rated 10% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “At the time I was discharged, I was a young soldier. I was unaware of any appeal process when I received a low rating of 10%. My entire unit (1st Armored Division) was deployed and there was minimal staff available to answer my questions/concerns. I feel I was unfairly pushed out of the Military without a proper rating that reflected my injuries caused during training. After leaving the Military, the Department of Veterans Affairs evaluated my current medical board findings and gave me an immediate rating of 30%. From the beginning of my injury, I have had terrible, debilitating migraine headaches and other issues. These migraines are so severe that I actually vomit, bleed from the nose and experience periods of extreme drowsiness and subsequently sleep for usually 12 to 14 hours following each attack. Since the beginning, these symptoms have concerned me and have affected my personal life in ways I could not begin to understand. Since the time I was kicked in the head, the migraines have gotten increasingly worse. I petitioned the VA to reevaluate my condition and they recently raised my combined rating to 60% in which the neurologist related my condition as, "Intractable" and told me my pain would likely continue for the rest of my life; however, my migraines continue to get worse on a daily basis. As they continue to get worse, I have noticed they are affecting my work related abilities, in that I frequently have to leave sick. As the migraines and symptoms continue to worsen, I fear I will not be as employable due to the time needed off from work. I am concerned that the long term results of this injury will leave me without the proper medical insurance/benefits due the injury caused by the Military. I served my country honorably and feel a great injustice was done when I was originally rated at 10% for a traumatic brain injury (TBI) with post concussive migraine headaches. I was also rated for “tinnitus” due to my job field being in and around explosives. My right ear has had severe ringing in it since the injury and leaving the military.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| **Service PEB – Dated 20030107** | | | **VA (3 Mo. Pre Separation) – All Effective 20030518** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Post-Concussive Syndrome | 8099-8045-8100 | 10% | Post-Concussion Syndrome | 8045-9304 | 30% | 20030224 |
| ↓No Additional MEB Entries↓ | | | Not Service Connected x 1 | | | 20030224 |
| **Combined: 10%** | | | **Combined: 30%\*** | | | |

\*Combined increased to 60%: added migraine at 30% (23 October 2008) and tinnitus at 10% (8 September 2009)

ANALYSIS SUMMARY: The DES is responsible for maintaining a fit and vital fighting force. While the MES 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, and not based on possible future worsening. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions without regard to fitness for military duties and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary 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, 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. The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted service improprieties in the disposition of a case.

Post-Concussive Syndrome With Chronic Daily Headaches Condition. The CI’s condition began following a head injury during basic training in 2001. On a statement of medical examination and duty status (5 December 2002) the CI stated that while crawling on the ground during a night infiltration course someone accidentally kicked him in the head. A neurology clinic note dated 18 June 2002 states the injury was the result of a drill sergeant kicking him on his right temple during basic training in November 2001 while he was wearing his Kevlar helmet. He reported a five to ten minute period of unconsciousness followed by a few days of decreased memory; headaches began 3 or 4 days after the event. Daily, constant dull headaches persisted, with moderate to severe exacerbations of pain on physical exertion. Service treatment record (STR) notes and the narrative summary (NARSUM) examiner state the headaches were typically on one side with pain behind the eye and were associated with phonophobia (sensitivity to sound) but not nausea, vomiting or photophobia. Bright spots and a purple color were noted in his visual field when headaches were severe. Multiple medications were unsuccessful in alleviating the headaches. The NARSUM examiner (25 October 2002) noted that whenever the CI bumped his head he would lose consciousness for up to 5 minutes, then experience severe headache for several hours. He claimed to have no headache free days or periods. Strenuous activity, or wearing a helmet or rucksack caused a sensation of impending unconsciousness. Running more than two to three hundred yards resulted in dizziness. Multiple medications were ineffective in controlling his headaches. His neurologic exam was normal. Brain imaging studies were normal and an electroencephalogram (EEG) ruled out a seizure disorder. Documentation from the CI’s command reported that the CI failed the PT test in February 2002 due to experiencing a headache while running, and was unable to complete morning PT runs due to experiencing a headache two times in March 2002. As documented by his command, the CI experienced a fainting spell in April 2002 while on a field training exercise. While laying mines, which involved the use of a hand-held picket pounder, standing up and laying down and off loading of heavy material, the CI complained of headache and later blacked out and fell to ground. He was returned to garrison. A team leader reported that in June 2002 during gunnery training in the field, the CI complained of headache due to the vibrations of the track vehicle and long hours wearing the CVC helmet. He was evaluated in the aid station and returned to garrison. Subsequent physical profile restrictions limited strenuous duties, military field training, and wear of the Kevlar helmet or rucksack. No further episodes of loss of consciousness were reported by command after the April 2002 incident. The clinic entry dated 28 June 2002 reported the last episode of syncope (fainting, loss or consciousness) was in April. The 29 July 2002 neurology clinic record entry reported no syncope since the last neurology appointment in June 2002 which preceded the clinic record entry which reported no episodes since April. At the time of neuropsychological testing, 25 September 2002, the CI reported there had been several additional head “bumps and bonks”, although LOC was denied. The 21 March 2003 neurology appointment recorded that there had been no syncope since he had not exerted himself. An exercise treadmill test (12 August 2002) was terminated after 10 minutes and 30 seconds due to headaches, but there was no dizziness, syncope, or visual changes. The CI attained an exercise level of 12 METs on the stress test correlating with a vigorous level of exertion. Subsequently, correspondence from the PEB in March 2003 indicated that eyewitnesses had recently observed the CI clearly participating in strenuous recreational activity (snowboarding) in sunlight with no apparent limitations or adverse effects. A neuropsychiatric evaluation was performed 25 September 2002. Headaches on the day of testing were “worse than normal” and the examiner noted that the CI clearly desired separation from the military. Overall, the CI performed within the average range and performed within expected parameters on a number of academic tasks. The testing concluded that observed difficulties with complex attention, concentration and memory as well as increased irritability under conditions of cognitive load or time demands were likely a result of the head injury. However, it was also recognized that “his level of motivation in performing the measures was not likely to be at an optimal level, explaining, in part, the discrepancy between his past and current levels of cognitive resources.” The commander’s statement, dated 24 October 2002, noted the problems with headache and physical profile restrictions preventing strenuous military duties and stated that the CI was performing non-strenuous duties satisfactorily. During clinic encounters, the CI was observed to be in no acute distress. Other than the episodes previously described during physical training and field training, there were no reported episodes of prostrating headaches.

The VA Compensation and Pension (C&P) examiner on 24 February 2003 stated that headaches occurred every day since a few days after the injury, with the pain being centered behind the right eye the majority of the time. Strenuous activities increased the headache severity and made the CI feel faint. Several claimed episodes of loss of consciousness were attributed to strenuous activity. Dizzy spells and loss of balance were occasionally present. He walked two miles five days per week. He also complained of difficulty with attention, concentration and short term memory. These symptoms worsened at times of increased headache severity. “The veteran does have chronic daily pain but he is able to perform all activities of daily living. His restrictions are related to strenuous activities.” Although seven years after separation, the Board noted in a VA traumatic brain injury (TBI) C&P examination 6 April 2010, the examiner documented that the duration of loss of consciousness after the traumatic event in 2001 was “about a minute” and that he had “an immediate headache.” The CI further stated that while in the service he “was only having stress and exercise-induced headaches; however did not have constant, daily headaches like he does now.” The recorded employment history reflected that at the time of the C&P examination he was employed as a sheriff’s deputy. Following separation the CI was employed as a retail floor associate from 2003 to 2004, and then a sheriff’s deputy since 2005. Follow-up neuropsychological testing by the VA (25 March 2010) revealed functioning in the average to high average range, and that the appearance of some impaired language functioning results were due to his test-taking approach.

The PEB coded the headache condition 8099-8045-8100 (migraine headaches rated analogous to TBI), but it is not clear if the 8100 rating criteria were actually utilized. Under this code, the rating is based on the frequency of “prostrating attacks” over the last several months. The VA at the time of separation characterized the condition as “post concussion syndrome with chronic headache” coded 8045-9304 (“brain disease due to trauma” and “dementia due to head trauma”). This coding approach was consistent with the VASRD in effect at the time, which required that subjective symptoms of TBI be rated in this manner. The VA’s 30% rating was based on the general rating formula for mental disorders (“occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks”). Regarding the appropriate coding option, it was agreed that the 8045-9304 code chosen by the VA is technically accurate in this case. The applicable 2003 VASRD for the 8045 code (TBI) states:

“Purely subjective complaints such as headache, dizziness, insomnia, etc., recognized as symptomatic of brain trauma, will be rated 10 percent and no more under diagnostic code 9304. This 10 percent rating will not be combined with any other rating for a disability due to brain trauma. Ratings in excess of 10 percent for brain disease due to trauma under diagnostic code 9304 are not assignable in the absence of a diagnosis of multi-infarct dementia associated with brain trauma.”

The PEB’s rating was consistent with the above VASRD criteria. The option of applying the 8100 coding criteria was deliberated at length. Board members debated whether this approach was justified by VASRD §4.7 (higher of two evaluations) and §4.3 (reasonable doubt). Due to his headache condition, the CI was unable to run, perform strenuous military training, wear a Kevlar helmet or wear a rucksack. Although the CI had chronic daily headache graded as 6/10 point pain scale, clinic encounter examiners observed him to be in no acute distress. He was able to perform non-strenuous military duties, walk two miles 5 days per week, and snow board. The STR indicated that here had been no further episodes of syncope since April 2002. Other than the episodes previously described during physical training and military field training, there were no reported episodes of prostrating headaches. The Board noted that the neurologist concluded the CI’s headaches were worsened and perpetuated by analgesic rebound phenomenon and also noted the neurologist’s comments that poor follow up with his primary care manager had resulted in lack of progress regarding medication management recommendations. Except for circumstances of military unique physical exertion, there was not sufficient evidence of prostrating headaches during the several months prior to separation that would warrant rating the headache condition higher than the 10% adjudicated by the PEB.

The Board also debated the cognitive impairment from TBI in this case. The VA’s 30% rating was based on a judgment that the cognitive dysfunction was the dominant aspect of the CI’s condition, but all clinical records were clear that the CI’s only clinically significant symptom was headaches. While neuropsychological testing showed some impairment with complex attention, concentration and memory, overall cognitive functioning was in the normal range, the tester acknowledged that testing was limited by a worse than usual headache and that motivation may have been a factor in the test results. Interference with duty due to cognitive problems is not reported by the commander or in other memorandum from his command regarding duty performance and STR do not record concern regarding cognitive limitations. Therefore, Board members agreed that any cognitive symptoms that may have developed as a result of the head injury were not separately unfitting, and furthermore should not be rated in addition to the headache condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the post-concussive syndrome with chronic daily headaches condition.

Other Contended Conditions. The CI’s application implies that a compensable rating should be considered for tinnitus, which was assigned a 10% rating by the VA effective 8 September 2009. Outpatient neurology notes documented the presence of tinnitus. On the separation History and physical exam, the CI marked “No” for any ear related or hearing symptoms. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that it interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the stated condition was not subject to service disability rating.

Remaining Conditions. One other condition identified in the DES file was mild hearing loss. This condition was not significantly clinically or occupationally active during the MEB period, did not carry an attached profile and was not implicated in the commander’s statement. This condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to separation rating. Additionally a bilateral knee condition was noted in the VA rating decision proximal to separation, but was 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.

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 chronic daily headaches condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the cognitive impairment condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the tinnitus condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the hearing loss condition 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. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Post Concussive Syndrome with Chronic Daily Headaches | 8099-8045-8100 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110324, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

Deputy Assistant Secretary

(Army Review Boards)