RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD1100302 SEPARATION DATE: 20050724

BOARD DATE: 20120313

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized Reserve member, SSG/E-6 (91E, Dental Specialist, 11B Infantryman) medically separated for migraine headaches. The condition began in 1992 but worsened in 2003. 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). Common migraine headache was 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 migraine headache condition as unfitting, rated 10% with application of DoDI 1332.39 (E2.A1.4.1.4). Upon the CI’s written appeal, the USAPDA confirmed the findings of the PEB and he was then medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “PEB report findings that headaches required three emergency room treatments in past five months. Documents prove that I was given injection and medicines to treat self and that I was only required to go to emergency room when headaches last more than two days. Documents (including letter from case manager) show that I have more than three headaches per month that make it impossible for me to work. I currently have headaches that last up to five days and now that I live in Grenada, West Indies, I do not have access to the same quality of medical service and medicines. PEB also found that “impairment prevents reasonable performance of duties.”` I was and still am completely unable to work when I have headaches.” He additionally lists patellar tendinitis on his application, implying a contention for its inclusion in the separation rating.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20050506** | **VA (12 Mo. Pre Separation) – All Effective 20050725** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Migraine Headaches | 8100 | 10% | Migraine Headaches | 8100 | 10% | 20040706 |
| ↓No Additional MEB Entries↓ | 0% x 1 / Not Service Connected x 2 | 20040929 |
| **Combined: 10%** | **Combined: 10%** |

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, 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.

Migraine Headache Condition. Although various clinical entries from 2003 until the MEB stated that migraines began in 2003, a DD Form 2697 dated 19 March 1996 shows the CI intended to seek VA disability for migraine headaches, while a problem list in the medical record entered the diagnosis of migraine effective 1 February 1993. In his written appeal to the PEB the CI states that headaches began in 1992, but emphasized that headache severity was not disabling until 2003. A VA neurology examination on 6 July 2004 (one year prior to separation) reported that recent medication modifications resulted in a reduction in headache frequency from three to four per week to one per week. A VA internal medicine examination on 29 September 2004 (ten months prior to separation) stated that once the headaches began in 2003, they occurred almost every day and caused the CI to miss work about two days per week. The headaches were preceded by an aura consisting of scotoma, nausea and vomiting; a predominantly left sided throbbing headache then occurred. Improvement was experienced over the preceding six months, but he was still missing six days of work per month. Abortive medications were partially helpful for headache relief. The neurologic examination was entirely normal. With the exception of September 2004 when the occurrence of nine headaches was attributed to unusual stress, outpatient notes until December 2004 reported an improving condition due to titration of prophylactic medication. An outpatient clinic note on 8 December 2004 recorded that the CI stated he “cannot see being deployed overseas again.” He felt that his headaches were incapacitating. A case worker note on 13 December 2004 stated that his platoon sergeant indicated three to four headaches per month affected his ability to work. A note on 22 December 2004 indicated the CI’s unit would be deployed to Iraq, and since he felt he would be activated again within the next five years and would not be deployable due to his migraines, he requested an MEB. A VA note on 11 January 2005 reported the occurrence of three headaches in November 2004 and two in December. “Overall significant improvement” was documented. Acute headaches required a clinic visit for treatment on 16 February 2005 and required him to stay home from work on 30 March 2005. According to the narrative summary (NARSUM) examiner (22 April 2005, three months prior to separation), headaches could be brought on by stress or could be random, and they lasted hours to days. This examiner stated that the CI was missing about six days of work per month due to headaches, and that those lasting more than 48 hours usually required an emergency room visit. During a headache, the CI was able to take care of his basic needs such as using the bathroom or getting a glass of water, however he would have trouble caring for his children. Symptoms had improved over the preceding six months and the assessment was that he had a good prognosis. Radiological studies of the brain were normal. The commander’s letter (30 March 2004, one year prior to PEB) confirmed that the CI missed duty due to headaches and that they prevented him from fulfilling his duties, but the frequency of these occurrences was not noted. In a letter to the PEB dated 30 April 2005 the CI stated: “In the past five months, I have had only three headaches that lasted more than 72 hours.” These required emergency room visits. At a 17 May 2005 VA clinic follow-up, he reported one headache so far in May, two in April and none in March. The neurologist recorded there was good response to abortive medication treatment and that there was significant improvement in both frequency and severity of headaches. The CI presented for care for a headache on 26 May 2005. The VA rated the condition at 10% under the 8100 code (migraine headache), citing evidence that the CI received treatment for migraine headaches three times over a six-month span. In its adjudication using the same code, the PEB cited the headache frequency reported by the CI in his letter. The PEB noted that the condition existed prior to service, was not permanently aggravated by service, but was compensable. The Board debated whether the CI's headaches at the time of separation merited a 10% or a 30% disability rating. The Board noted that review of the treatment record finds five clinic encounters for acute exacerbation of headache during the 12-month period prior to separation. It was also noted that the NARSUM examiner’s statement that the CI was missing six days of work per month due to headaches was not consistent with the record, which showed three headaches in November, two in December, either zero or one headache in March and two in April. The 17 May 2005 VA neurology encounter documented report of three headaches in the prior three months but with good response to abortive medication treatment. The neurologist noted that there was significant improvement in both frequency and severity of headaches. The Board concluded that these headaches were not considered prostrating by the neurologist. In its 10% rating decision, the VA noted three medical encounters for headaches in the six-month period between December 2004 and June 2005. Board members further deliberated if difficulty taking care of his children during a headache, while capable of taking care of his basic needs, constituted a prostrating event (i.e. utter physical exhaustion or helplessness). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) the Board concluded that the chronic headache condition more nearly approximated the 10% rating under the VASRD code 8100. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the headache condition.

Other Contended Conditions. The CI’s application implies that a compensable rating should be considered for patellar tendinitis. He was rated by the VA at 10% for patellar tendinitis in 1996, but this was later reduced to 0%. Left and right knee tendinitis was noted in the DES file. The MEB history and physical examination reported normal lower extremity findings. The VA examiner on 29 September 2004 reported that he sometimes had pain with running but that the condition did not interfere with his daily life. 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. Other conditions identified in the DES file were low back pain and acne. Neither of these conditions was significantly clinically or occupationally active during the MEB period, neither carried attached profiles and neither was implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that neither could be argued as unfitting and subject to separation rating. Additionally costochondritis 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. As discussed above, PEB reliance on DoDI 1332.39 for rating migraine headaches was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the migraine headache condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the bilateral knee tendinitis condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the low back pain and acne 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. 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.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Migraine Headaches | 8100 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110328, 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)