RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100315 SEPARATION DATE: 20080815

BOARD DATE: 20120228

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl/E-4 (7011, Expeditionary Airfield Systems Technician) medically separated for tension-type headaches. The condition began while doing pull-ups in 2005. 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 placed on limited duty and underwent a Medical Evaluation Board (MEB). Tension headache was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. 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 tension-type headache condition as unfitting, rated 10% with application of SECNAVINST 1850.4E. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “I believe that the rating I’ve been given should be changed to a higher percentage because the conditions that I was dealing with in the military have gotten worse. I deal with headaches daily and have been ever since the summer of 2005 during a P.T. exercise. My medical records show an extensive lay-out of the symptoms and worsening of conditions until I was discharged. The Veterans Administration granted me 30% disability and have [sic] been seeing a VA doctor ever since my discharge. I feel that the Board just [sic – *must*] take into consideration that I have 3 children that I must provide for and still dealing with these daily headaches. Some medications work and chiropractor works but there has not been a complete fix to this date. It seems to be getting worse. Thank you.” The CI also refers to a work record that shows he cannot consistently work 40 hours per week due to crippling headaches. He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20080616** | | | **VA (3 Mo. After Separation) – All Effective 20080816** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Tension-Type Headaches | 5299-5237 | 10% | Muscle Tension Headaches | 8199-8100 | 30% | 20081120 |
| ↓No Additional MEB Entries↓ | | | Cervical Strain | 5237 | 10% | 20081222 |
| 0% x 2 / Not Service Connected x 4 / Deferred x 2 | | | 20081120 |
| **Combined: 10%** | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, that the gravity of his condition and predictable consequences merit consideration for a higher separation rating. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans Affairs (DVA). The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Headache Condition. The CI initially presented for care of persistent headache in November 2005 that began while performing pull-ups. Although not indicated on his enlistment medical examination, the CI reported a history of headaches since age 10 during a neurology evaluation in January 2006, and reported a history of headaches since his teen years during a VA examination in May 2009. Over the course of two and a half years there were numerous entries in the service treatment record, including several emergency room or acute care visits, specifically for headaches. Outpatient notes generally described the headaches as throbbing, beginning in the upper neck and radiating to the temples bilaterally. Most entries refer to them as occurring daily, of waxing and waning severity, mild in the morning and more severe by the end of the day. They were not associated with nausea, aura or visual changes. Extensive evaluation included an unremarkable magnetic resonance imaging (MRI) and computed tomography-angiography. Numerous treatment modalities failed to bring the headaches under control and included prophylactic medications, limitation of caffeine intake and Botox injections. Abortive medications and acupuncture resulted in only brief benefit and the CI relied on analgesic medication. Because neck pain was intimately associated to the headaches, the CI was referred to chiropractic treatment. An MRI of the cervical spine showed small disc osteophyte complexes at C4-5 and C6-7. Chiropractic treatments provided “good control” but only when performed three times per week. Neurologic examinations were completely normal (neurologist and MEB examinations). Cervical spine examinations were noted for tender points but normal full range-of-motion (ROM) and absence of any radicular signs. One quarters slip for four days was in evidence from July 2006. Per the non-medical assessment (NMA) the CI missed work an average of three hours per week due to treatment, evaluation or recuperation. A 2 February 2008 neurology encounter records, “despite daily headaches (mostly in the afternoon after work) he can still function. Headache does not affect his work. Exercises and runs daily.” At the time of the last neurology appointment, 18 April 2008, the neurologist summarized “overall, compared to the past, his headaches are actually better but have not gone away. His headaches have been limiting his job but has not missed a lot of days from work.” Multiple clinic entries from encounters in the afternoon record pain ratings of two (mild) to four (moderate) between February 2007 and May 2008). The VA Compensation and Pension (C&P) examiner on 20 November 2008, three months after separation, reported that the CI experienced daily headaches since their onset in 2005, and that they were of the same “very severe” intensity as when they first began. However, the course since onset was described as “progressively worse.” Daily headaches were described as starting each morning on awakening. Neck pain was said to occur simultaneously with the onset of headache. Use of an over the counter analgesic alleviated the headache in 20 minutes but it would recur in four hours. The examiner indicated that the CI continued to work in spite of headaches but that they prevented his participation in sports. During the prior 12 month period, the CI missed one day from work. The use of different analogous codes by the PEB and the VA results from the fact that tension-type headaches are not specifically listed in the rating schedule. The PEB’s use of the 5237 code reflects that the headaches appeared to begin in the upper neck muscles, a common occurrence in tension-type headaches, and echoed in the language used in the VA rating decision (“muscle tension headaches”). Although the PEB used an analogous cervical spine VASRD code (5299-5237) for the unfitting headaches, the PEB notes made only passing mention of neck muscle tender points. With the non-compensable range of motion, it is not clear if the PEB applied VASRD §4.59 or §4.40 in arriving at its 10% rating, or applied service specific regulations in its adjudication. The VA choice to code the headache condition 8199-8100 analogous to 8100 (migraine) was an appropriate alternative, and the Board considered rating the unfitting tension headache analogously applying the VASRD rating criteria for migraine headache. When rating headaches under the diagnostic code 8100 migraine headaches, VA guidance uses the clear English definition of prostrating. The standard dictionary definition of “prostration” is “utter physical exhaustion or helplessness,” and does not indicate that seeking medical attention is required. The Board debated whether the CI’s headaches at the time of separation merited a 30% or a 10% disability rating. The Board considered that the headaches were consistently described as occurring daily, however service treatment records reflect the CI continued to perform duties, and although described severe headaches at the end of the day, did not describe headaches that were prostrating. During the year prior to separation, clinic visits were mostly for scheduled chiropractic treatment or neurology follow-up visits, but he was seen once or twice for urgent care. Review of service treatment records reflected CI pain report of mild (two) to moderate (four) including encounters in the afternoon. At the time of the C&P examination, three months after separation, the CI reported missing one day of work in the prior 12 months. The VA rating decision acknowledged that the evidence “did not meet the exact criteria for a 30% evaluation,” but that the CI’s description of the chronic daily headaches nevertheless “most closely” approximated that level of disability. Although continued headache complaints were noted at the C&P examination and a follow up examination on 21 May 2009 (six months later - mild to moderate headaches; working full time), these evaluations did not reflect the occurrence of incapacitating or prostrating headaches. In his application, the CI requests an increased rating because his headaches have worsened since separation and submits a work timesheet from 2010 as evidence of missed work due to “crippling” headaches. However, VA clinic entries from this time period do not corroborate severe or prostrating headaches. A 21 May 2009 VA clinic records mild to moderate headaches and that the CI was working full time. At the time of a 7 January 2010 VA clinic encounter, he reported feeling well and was without complaints, and denied significant headache. At the time of a 20 September 2010 VA clinic encounter, the CI reported that his headaches usually got better with caffeine or Excedrin. At the time of a 20 January 2011 VA clinic encounter, there was no complaint of headache, and he reported working full time. Pain ratings in the vital signs sections of these encounters were recorded as zero. As noted above, the separation rating is based on the condition at the time of separation not on future worsening. 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 providing no benefit to the CI. Although the Board prefers rating and coding as 8199-8100, no benefit results from a change. 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.

Cervical Spine Condition. Because neck pain was related to the unfitting headache condition and the PEB applied a cervical spine code in its rating, the Board considered whether the cervical spine condition associated with the tension headaches was a separately unfitting and ratable condition when de-coupled from the unfitting headache. In analyzing the intrinsic impairment of the neck condition; however, the Board is left with a questionable basis for arguing that the neck component was indeed separately unfitting. First, the neck pain was inextricably tied to the unfitting headache condition, and secondly, it was the headache not the neck pain that was cited as productive of limitation. While tenderness was noted on examinations, there was no limitation of motion or painful motion documented. The C&P examination for evaluation of the cervical spine documented completely normal ROM (flexion of 45⁰ (normal to 45⁰) and combined ROM of 340⁰ (normal to 340⁰) with no evidence of painful motion or limitation of motion after repetitive use. Imaging did document the presence of mild degenerative changes however such mild changes themselves do not demonstrate the presence of a disability. Further, due to the intertwined nature, any contribution the neck condition made to the unfitting headache was subsumed in the rating for the headache and any separate rating for the neck condition would be based on the same symptoms which is prohibited by VASRD rules (§4.14. avoidance of pyramiding). After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of the neck pain condition does not favor its recommendation as an unfitting condition for separation rating.

Remaining Conditions. Other conditions identified in the DES file were right knee pain, left testicular pain and microscopic hematuria. None of these conditions were significantly clinically or occupationally active during the MEB period, none carried attached duty limitations 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. Additionally left middle finger contusion, right flank scar 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.

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 SECNAVINST 1850.4E for rating the tension-type headaches was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the tension-type headache condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the cervical spine condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the right knee pain, left testicular pain and microscopic hematuria 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.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Tension-Type Headaches | 5299-5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100420, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB letter dtd 6 Mar 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR the following individuals’ records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

Assistant General Counsel

(Manpower & Reserve Affairs)