RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100363 SEPARATION DATE: 20061115

BOARD DATE: 20120412

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, CPL/E4, 1833, Assault Amphibious Vehicle Crewman, medically separated for bilateral exercise induces compartment syndrome with bilateral four compartment releases. The CI’s symptoms of pain in both legs and bilateral foot numbness associated with running began in late 2001. Compartment pressure measurements after exercise were elevated. He underwent surgery on both legs (four-compartment fasciotomies; left in February 2005, right in November 2005). Post-operative medications and physical therapy provided improvement in his running distance from 1/4 mile to 2 miles. 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 (LIMDU) and underwent a Medical Evaluation Board (MEB). “Health examination of defined subpopulations” and “other early complications of trauma” were 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 are discussed below. The PEB adjudicated the bilateral exercise induced compartment syndrome conditions as unfitting, rated 10% for each side, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI did not appeal, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “I was more disabled than the military rated me for and my leg conditions are more disabling. I had a TBI injury while I was on active duty and am diagnosed with Post Traumatic Stress Disorder. I also was diagnosed with asthma and gastroesophageal reflux disorder while on active duty.” He additionally lists “DD of lumbar spine” as an additional service-connected VA condition as per the rating chart below. A contention for its inclusion in the separation rating is therefore implied. All service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060915** | | | **VA (1 Mo. Pre Separation) – All Effective Date 20061116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| B Exercise Induced Compartment Syndrome w/ B Four Compartment Releases | 5399-5312 | 10% | RLE Exercise Induced Compartment Syndrome w/ Scars | 5299-5262 | 0%\* | 20061006 |
| B Exercise Induced Compartment Syndrome w/ B Four Compartment Releases | 5399-5312 | 10% | LLE Exercise Induced Compartment Syndrome w/ Scars | 5299-5262 | 0%\* | 20061006 |
| ↓No Additional MEB/PEB Entries↓ | | | PTSD, … Anxiety d/o … Depression … | 9411 | 50%\* | 20061010 |
| DDD Lumbar Spine | 5242 | 10%\* | 20061006 |
| Asthma | 6602 | 10% | 20061006 |
| 0% x 3/Not Service-Connected x 1 | | | 20061006 |
| **Combined: 20%** | | | **Combined: 60%** | | | |

\* Lumbar spine 5242 increased to 20% effective 20100806; bilateral compartment syndromes 5299-5262 increased to 10% each effective 20110509; PTSD 9411 increased to 70% effective 20100127, then 100% effective 20110509.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the DES operates. 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 (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

The Board makes note that some of the CI’s contended conditions (TBI, asthma) were not addressed by the PEB. 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 narrative summary (NARSUM) (including any addendums or referenced examinations), the MEB physical exam, the non-medical assessment (NMA), the LIMDU documents, and any written appeals or internal DES correspondence. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Board for Correction of Naval Records (BCNR).

The Board further notes that the MEB conditions forwarded to the PEB were “health examination of defined subpopulations” and “other early complications of trauma.” These are codes from the international classification of diseases, and the Board interpreted these to be related to the bilateral compartment syndrome conditions, as described in the NARSUM.

Bilateral Exercise Induced Compartment Syndrome. The PEB rated the bilateral leg condition, for each leg separately, analogously under 5312, the code for injury to the anterior muscles of the leg (ankle dorsiflexors) at “moderate,” 10%. The VA rated these conditions under 5262, impairment of tibia and fibula, at 0% for less than “slight knee or ankle disability” for each leg. The Board’s charge is to consider all options and recommend the most appropriate one, while remaining adherent to the DoDI 6040.44 “fair and equitable” standard.

There were two post-operative leg examinations in evidence, with one goniometric range-of-motion (ROM) evaluation and documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM –  Bilat Ankles | NARSUM ~ 3 Mo. Pre-Sep  (20060807) | | VA C&P ~ 1 Mo. Pre-Sep  (20061006) | |
| Left | Right | Left | Right |
| Dorsiflexion (0-20) | “…foot & ankle ROM is normal… in all planes…” | | 20⁰ | 20⁰ |
| Plantar Flexion (0-45) | 45⁰ | 45⁰ |
| Comment: Surgery  Left 20050215;  Right 20051118  Separation 20061115 | Neurovascular intact; scars well healed | | ROM “full and pain free,” gait normal, no swelling/effusion, no TTP, no instability, no additional limitation w/ repetition | |
| §4.71a Rating | 0-10% (PEB 10%) | 0-10% (PEB 10%) | 0% | 0% |

There were two post-operative physical therapy (PT) evaluations proximate to surgery (at a month and 2 months after the right leg surgery, respectively), that only evaluated the right leg. These showed limitation in dorsiflexion only, and noted gradually decreasing swelling. In addition to being incomplete, both exams were considered too proximate to surgery to accurately reflect the CI’s condition at separation, and were therefore omitted from the above table. The NARSUM, dated 3 months prior to separation (9 months post-operative) stated the CI’s “foot and ankle ROM is normal with good strength in all planes bilaterally, and his compartments are soft.” The CI was taking no medications for the condition. The examiner stated the CI was unable to accomplish the three-mile run in the allotted time, and opined that the CI’s medical condition interfered with reasonable performance of his assigned duties.

The VA Compensation and Pension (C&P) exam, performed a month prior to separation, reported ankle ROM was “full and pain free,” with normal gait, and no tenderness, swelling, effusion, instability, or additional limitation with repetitive motion. Radiographs of bilateral mid- and distal- tibias and fibulas were normal. Examination of the bilateral knees found full and pain free ROMs, and no effusions, instability, or other abnormalities. The VA assigned non-compensable ratings to the CI’s leg conditions based on this exam.

Although remote from separation, a VA C&P exam at 39 months after separation reported normal compartment pressures in both legs, although the report did not state that manometry was conducted after exercise. The CI complained of symptoms onset after walking 1/2 mile. Another VA C&P exam at 45 months after separation reported full painless ankle ROM, but knee ROM was slightly reduced (120 degrees flexion; normal is 140 degrees) and there was pain with motion of the right knee, and pain with repetitive motion of the knee or knees (unspecified side). The VA increased the CI’s rating for both legs to 10% based on pain on motion testing and sensitivity and numbness of the surgical scars.

The CI’s functional impairment proximate to separation was an inability to run greater than two miles. The Board considered rating options, including leg and ankle codes (§4.71a.; used by the VA), muscle injury codes (§4.73 used by the PEB), and neurological impairment codes (§4.124a). The exam most proximate to separation, and having the only complete goniometric ROM evaluation, would rate 0% under any of the appropriate VASRD codes based on ROMs or joint function (§4.71a). There was complaint of pain and numbness with running, but there was no fixed neurologic deficit. The Board considered the PEB’s rating based on muscle disability as predominate and assessed the record with attention to VASRD §4.55 (principles of combined ratings for muscle injuries), §4.56 (evaluation of muscle disabilities) and the CI’s cardinal signs of muscle injury under VASRD §4.73—schedule of ratings–muscle injuries. Although not a direct correlate to §4.56 note (c) cardinal signs, the CI had decreased endurance and pain and numbness on running equating to a lowered threshold for fatigue or fatigue pain. The PEB ratings of 10% corresponded to “moderate” disability of group XII muscles. There was no evidence in the record for prolonged hospitalization, infection, or intermuscular scarring or other findings that would support a muscle rating higher than “moderate disability of muscle.” Alternate coding under other muscle groups of the leg of 5310 (Group X) or 5311 (Group XI) muscles would rate no higher than the PEB’s 10%.

All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the left and right leg conditions.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD), traumatic brain injury (TBI), asthma, degenerative disc disease (DDD) of the lumbar spine, and gastroesophageal reflux disease (GERD). TBI and asthma 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 other three conditions were reviewed by the action officer and considered by the Board.

The service treatment record indicates the CI was treated for PTSD symptoms since approximately 2004, with medications and psychotherapy. His symptoms included anxiety with panic attacks, insomnia, nightmares, social withdrawal, anhedonia, and depression. At 21 months prior to separation, Global Assessment of Functioning (GAF) was 72, indicating if symptoms are present they are transient and expectable reactions to psychosocial stressors; no more than slight impairment in social or occupational functioning. Two mental health treatment notes at 4 and 2 months prior to separation noted the CI’s PTSD symptoms had improved, and psychotropic medications were continued. The NMA provided no indication of psychiatric impairment, and the record did not evidence duty limitation due to the PTSD condition.

The VA exam performed a month prior to separation reported symptoms of anxiety, panic attacks (three to four times per day, with feeling of elevated heart rate, sweating, and dizziness), insomnia, nightmares, flashbacks, hyper vigilance, social withdrawal, avoidance symptoms, suspiciousness, anhedonia, and depression. He was divorced since 6 months prior to separation, and his relationship with his fiancé was affected by his reduced sexual desire. His relationship with his father and siblings was good. His treatment included two psychotropic medications and counseling. On mental status exam (MSE) the examiner first stated, “his affect and mood seemed to be normal,” then reversed, saying, “There was somewhat of flattened affect and depressed mood.” There was no suicidal ideation, delusional or hallucinatory symptoms, speech disturbance, cognitive impairment or other abnormalities. GAF was 55-60, suggesting moderate symptoms or moderate difficulty in social or occupational functioning. The examiner noted the CI’s difficulty driving due to panic attacks caused occasional interference with activities of daily living. The examiner stated the CI’s symptoms caused “occupational and social impairment with occasional decrease in work efficiency and intermittent inability to perform occupational tasks, although generally the person is functioning satisfactorily, with routine behavior, self-care, and normal conversation,” VASRD §4.130 30% language. The examiner diagnosed PTSD, anxiety disorder with panic attacks, and depression, and the VA assigned a 50% evaluation for PTSD based on this exam.

Although remote from separation, VA exams at 41 and 55 months after separation showed increasing severity of the CI’s PTSD symptoms. The CI was treated at an inpatient PTSD unit for two weeks at 53 months after separation. GAFs were 47 (severe) at 41 months and 52 (moderate) at 55 months after separation. The CI had a temporary job with the census bureau at 41 months, having left his previous job working with his father (painting contractor) due to panic attacks, and was unemployed at the 55 month exam. The VA granted individual unemployability effective 53 months post-separation. The examiner at the 55 month exam opined the CI was experiencing total occupational and social impairment due to PTSD symptoms, and the VA increased the CI’s PTSD rating to 100% based on that opinion. The CI’s PTSD symptoms clearly increased in severity at these exams; this was considered a worsening, not indicative of the CI’s condition at separation.

Although the PEB did not specifically adjudicate the PTSD condition, it was presented in the MEB evidence before the PEB. The Board must thus approach this issue as a de facto service determination that PTSD was not an unfitting condition. The Board’s threshold for countering DES fitness determinations 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. The established DES (and Board applicable) principle for fitness determinations is that they are performance-based. The Board could not find evidence in the NMA or elsewhere in the service file that documented any interference of the PTSD condition with performance of duties. The Board noted that the severity of the CI’s mental health symptoms apparently increased proximate to separation as indicated by the VA exam during the high-stress period of disability processing, to the point that they might have been considered as unfitting. However, the CI’s mental condition was not a cause for limited duty or implicated in the NMA (who recommended retention in a permanent limited duty status), and there was no indication of occupational impairment.

Low back pain (LBP) and GERD were noted on the DD Form 2807-1, although no treatment was noted. At his VA exam a month prior to separation, throracolumbar ROMs were mildly reduced (flexion 65 degrees) and the CI denied any functional impairment due to his low back or GERD conditions. There was no evidence for concluding that any of the DES documented conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to disability rating.

Remaining Conditions. Other conditions identified in the DES file were “respiratory allergies,” bronchitis, chronic cough “from smoking too much,” tuberculin skin test (PPD) conversion on medication (INH) prophylaxis, and hearing loss. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant 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. No other conditions were service-connected with a compensable rating by the VA within 12 months of separation or contended by the CI. 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 bilateral (left and right) exercise induced compartment syndrome conditions and IAW VASRD §4.73, the Board unanimously recommends no change in the PEB adjudication. In the matter of the PTSD, LBP, and GERD 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, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Right Exercise Induced Compartment Syndrome with Four Compartment Releases | | 5399-5312 | 10% |
| Left Exercise Induced Compartment Syndrome with Four Compartment Releases | | 5399-5312 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110503, 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 ltr dtd 16 May 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:

- XXXXXXXXXXXX XXX XX 4593

- XXXXXXXXXXXX XXX XX 9519

- XXXXXXXXXXXX XXX-XX-2098

- XXXXXXXXXXXX XXX XX 6408

- XXXXXXXXXXXX XXX-XX-6333

Assistant General Counsel

(Manpower & Reserve Affairs