RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100482 SEPARATION DATE: 20090416

BOARD DATE: 20120113

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6, (31B, Military Police), medically separated for status post (s/p) cervical spine fusion C5-C6, and bilateral hearing loss after improvised explosive device (IED) explosion*.* When the CI returned to CONUS (Fort Campbell), he underwent further evaluation. Magnetic resonance imaging (MRI) revealed disc protrusion at C5-6 with foraminal narrowing. His treatment included medications, physical therapy, epidural steroid injections, and surgery (cervical discectomy and fusion of C5-6, May 2008) with incomplete relief. For his hearing loss, he underwent audiologic evaluation and hearing aids were recommended. He did not respond adequately to treatment and was unable to perform within his MOS or meet physical fitness standards. He was issued a permanent U3/H3/S3 profile and underwent a Medical Evaluation Board (MEB). Cervical radiculopathy with hardware placement and donor bone plug C5-C6, hearing loss and posttraumatic stress disorder (PTSD) were forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW AR 40-501. Three other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The IPEB adjudicated the cervical spine and hearing loss condition as unfitting, rated 10% and 0% respectively; with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI did not appeal for a Formal PEB, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I have been diagnosed with several significant injuries since discharge to include PTSD, tramautic brain injury (TBI), and spinal neuropathy affecting use of my left arm and cognitive skills impairment in daily activities. As of current date; I am a patient of VA Hospital, Memphis in Neurology. I have been issued orthopedic brace [sic] for left arm and issued a walker for mobility due to imbalance and frequent falls resulting in bruising and lacerations noted by current primary care providers.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20090105** | **VA (6 Mo. Pre Separation) – All Effective Date 20090417** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| S/P C-Spine Fusion C5-6 … | 5241 | 10% | S/P Cervical Spine Fusion … | 5241 | 10% | 20081001 |
| Bilateral Hearing Loss … | 6100 | 0% | Bilateral Hearing Loss | 6100 | 10% | 20090216  |
| PTSD | Not Unfitting | PTSD w/ Insomnia | 9411 | 30% | 20090221 |
| Hypertension | Not Unfitting | Hypertension | 7101 | 10% | 20081001 |
| Spondylosis L4-L5 | Not Unfitting | Minimal Spondylosis L4-L5... | 5240 | 0% | 20081001 |
| Right Hand Weakness | Not Unfitting | Decreased Strength R Hand | 5230 | 0% | 20081001 |
| ↓No Additional MEB/PEB Entries↓ | Bilateral Tinnitus | 6260 | 10% | 20090216 |
| 0% x 3/Not Service Connected x 1 | 20081001 |
| **Combined: 10%** | **Combined: 50%** |

ANALYSIS SUMMARY:

Cervical Spine Condition. There were two post-operative cervical spine examinations, both citing the same single goniometric range of motion (ROM) evaluation, in evidence, which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM – Cervical | VA C&P (PT) ~ 7 Mo. Pre-Sep | MEB ~ 6 Mo. Pre-Sep |
| Flex (0-45) | 45⁰ | 45⁰ |
| COMBINED (340) | 260⁰ | 260⁰ |
| Comment | Pain limited motion, decreased cervical lordosis, scarring, no TTP, no spasm, no guarding, gait normal, no swelling, no atrophy |
| Gait normal, with cane used as ambulatory aid for balance | Waddell neg, TTP |
| §4.71a Rating | 10% | 10% |

The narrative summary (NARSUM) and VA exam cited the same ROM data, recorded by physical therapy (PT) seven months pre-separation. These reports noted reduced ROMs meeting the 10% criteria IAW the General Rating Formula for Diseases and Inuries of the Spine, §4.71a. The PT examiner reported pain-limited motion, decreased cervical lordosis, and scarring. Specifically absent were tenderness, spasm, guarding, abnormal gait, swelling, and atrophy. Radiographs showed fusion at C5-6, with normal alignment, no fracture, and normal soft tissue. The VA examiner noted, in addition to the above findings, that the CI’s gait was “normal, with cane used as ambulatory aid for balance purposes.” The NARSUM, six months pre-separation, noted, in addition to the above data, that Waddell signs were negative and there was an ache on palpation of the anterior neck. The NARSUM also cited a pre-operative MRI showing degenerative disc changes at C5-C6 with focal protrusion into the left lateral recess narrowing the foramen. There were no reports of incapacitating episodes requiring bed rest prescribed by a physician and treatment by a physician, as required for rating under intervertebral disc syndrome, so the condition is most appropriately rated using the General Rating Formula for Diseases and Injuries of the Spine. The single goniometric evaluation and both exams proximate to separation would rate 10% IAW the general rating formula. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the IPEB’s rating decision for the cervical spine condition.

Neck Condition (Radiculopathy). There was no evidence of upper extremity unfitting peripheral nerve impairment in this case. The CI endorsed occasional radiation of his pain into his left arm, and weakness and numbness in his left hand. Any pain-radiculopathy is considered above under the CI’s primary unfitting cervical condition IAW the General Rating Formula for Diseases and Injuries of the Spine, “with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease.” The NARSUM reported grip strength testing revealed weakness on the right, at 47 pounds average, compared to 91 pounds on the left. This was most likely due to the CI’s right hand injury in 2004, where he smashed his hand in a .50 caliber machine gun. None of the exams in the record noted any sensory deficits, and upper extremity motor function was otherwise normal throughout the record, without atrophy. Electrophysiological studies (EMG/NCS) conducted five months pre-separation were normal, showing no cervical radiculopathy of the left upper extremity. This leaves no grounds for Board recommendation of an additionally unfitting neuropathy. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of any upper extremity radiculopathy as an unfitting condition for separation rating.

Bilateral Hearing Loss Condition. The PEB stated the CI’s hearing loss, which resulted from an IED explosion in Afghanistan in 2006, rated 0% IAW VASRD 4.85, Table VII, citing two October 2007 audiology evaluations (4 and 23 October) showing average pure tone thresholds of 55 dB on the left, 39 on the right (IPEB typographical error had both as “left”), with speech discrimination of 72% and 100% on the left and right, respectively. There were three audiological evaluations, including pure tone audiograms, proximate to separation, which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Audiometric Threshold (Hz) → | 500 | 1000 | 2000 | 3000 | 4000 | 6000 | Comments | § 4.85-4.86 Rating |
| Audio ~7 mos Pre-Sep | 0%\* |
| Right | 20 | 15 | 15 | 50 | 50 | 70 | Average R=33, L=50;SPRINT 35% (no Md CNC) |
| Left | 10 | 30 | 30 | 75 | 65 | 90 |
| MEB ~6 mos Pre-Sep | 0% |
| Right |  | 15 | 30 | 55 | 55 |  | Avg R=39, L=55; Word Recognition R=100%, L=72% |
| Left |  | 30 | 45 | 75 | 70 |  |
| VA C&P ~2 mos Pre-Sep | 10% |
| Right | 30 | 35 | 35 | 65 | 65 | - | Avg R=50, L=63; Md CNC Speech Descrim 80% bilat |
| Left | 30 | 40 | 50 | 80 | 80 | - |

\* Based on pure tone threshold averages only, using Table VIa, VASRD §4.85 (exam did not include Maryland CNC Speech Recognition scores)

The IPEB rated of the hearing condition IAW VASRD §4.85, except that the speech discrimination component was derived from “word recognition” scores on the MEB audiometry report (100% for the right ear, 72% for the left ear). VASRD §4.85 (a) stipulates that the examination for hearing impairment “must include a controlled speech discrimination test (Maryland CNC).” The puretone detection across all decibel ranges was worse (higher thresholds) in the VA versus the MEB audiometry exams (with no record of auditory trauma that would explain the increase). The VA, however, obtained Maryland CNC speech discrimination scores (80% bilaterally), while the MEB report did not. The Maryland CNC speech discrimination test is no longer in common use for diagnostic or therapeutic clinical decision making. More “modern” speech discrimination tests, although ideal for clinical diagnosis and treatment considerations do not clearly align with results from the older Maryland CNC test which is the VA-required standard for disability rating. Given that the probative value of the speech discrimination measurements by the MEB is compromised (almost certainly the incorrect disability test), reasonable doubt would favor the CI in relying on the VA audiometry exam for deriving a rating recommendation under §4.85. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the bilateral hearing loss condition.

Other IPEB Conditions. The other conditions forwarded by the MEB as failing retention standards and adjudicated as not unfitting by the IPEB were PTSD (VA 30%), hypertension (VA 10%), spondylosis L4-L5 (VA 0%), and right hand weakness (VA 0%). PTSD was profiled (S3), but the other conditions were not, and none were implicated in the commander’s statement. PTSD will be discussed separately below. The hypertension, spondylosis L4-L5, and right hand conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

PTSD. The Board’s main charge in respect to the PTSD condition is an assessment of the appropriateness of the PEB’s fitness adjudication. The PEB specifically noted that PTSD was not separately unfitting, stating:

There is no evidence from the Soldier’s NCO evaluation reports (NCOERs) or commander’s statement that this condition has adversely impacted Soldier’s duty performance. Psychiatric addendum to NARSUM shows excellent response to medication, with increased energy, decreased anxiety, and improved relationship with his wife. DA Form 3349 shows no functional limitations due to PTSD.

The psychiatric addendum to the MEB, five months pre-separation, characterized the CI’s PTSD as causing “definite” military impairment and “mild” social and industrial impairment (DoDI 1332.39 10% language). The examiner stated “symptoms of reexperiencing, avoidance and increased arousal have abated but would likely become more prominent if put back into position of responsibility” and assigned an S3 profile which included inability to deploy. The psychiatrist stated “we are of the opinion that the Soldier’s condition interferes with the performance of his duties and is medically unacceptable in accordance with AR 40-501, Chapter 3-33….” The PTSD symptoms included alcohol use and NCOER that covers this period gave him several ratings lower than he had previously enjoyed in his career with comments like, “slowing down” and “taking too much time” in performing his duties. The Soldier reports he was experiencing significant anxiety “in making sure things were right” which resulted in needing more time to accomplish his duties and planning. The examiner reported the CI’s post-deployment PTSD symptoms, which included anxiety, irritability, social isolation, avoidance, one episode of visual hallucinations, insomnia, and nightmares, had improved significantly with treatment (two psychotropic medications and psychotherapy), although his insomnia persisted. The CI was experiencing nightmares about two to three times per week, and sleeping about five hours per night, using Zolpidem two to three nights per week. His relationship with his wife was good, and he was “able to get out to do things he enjoys.” Mental status exam (MSE) revealed “fairly good” mood, with no suicidal or homicidal ideation (no other elements of the MSE were addressed). Global Assessment of Functioning (GAF) was 70, indicating some mild symptoms or some difficulty in social or occupational functioning, but generally functioning pretty well, having some meaningful interpersonal relationships.

The VA psychiatric exam, two months pre-separation, described more severe PTSD symptoms, and the examiner used §4.130 30% language to summarize that the CI’s PTSD symptoms caused occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal). In addition to the MEB-described symptoms, the VA examiner noted mild memory loss, difficulty concentrating, and hypervigilance with exaggerated startle response. The examiner also reported “impaired impulse control, some unprovoked irritability and periods of violence that affects motivation by ambivelance and that affects mood by having excessive guilt.” Obsessional rituals (such as keeping an eye on the door) were noted, but did not interfere with routine activities. The examiner noted the CI’s symptoms caused “major changes” in his daily activities and social functioning. He had a “rocky” relationship with his spouse, but good relationships with his children. At work, he reported having a good relationships with his supervisor and coworkers, and had not missed any work due to his condition. MSE was significant for depressed mood and flattened affect. GAF was assessed at 50-55, suggesting moderate symptoms or moderate difficulty in social or occupational functioning (51-60; the next lower category is 41-50, indicating serious symptoms or any serious impairment in social or occupational functioning). The VA assigned a 30% evaluation based on this exam.

A second VA exam, 11-months post-separation, described continued significant PTSD symptoms. In addition to the above-mentioned symptoms, the CI reported anger, aggression, confusion when dealing with finances, memory loss that impairs his ability to safely and efficiently cook in the kitchen, and nightmares that cause his spouse to sleep in another room due to his inadvertently striking her during nightmares. His wife handled the finances, and had quit her out-of-state job so she could be at home more with the CI. His reported a “fair” response to psychotherapy and three psychotropic medications (increased from two). He denied having any significant social relationships, although he did talk to his two brothers several times per month. MSE revealed anxious mood with appropriate affect, impaired attention/concentration (one error and slowness to respond with serial sevens), moderately impaired recent memory, and mildly impaired immediate memory. GAF was 51, the same (moderate) range as the two-month VA pre-separation exam. The VA continued their 30% evaluation based on this exam as well as VA treatment records (January through March 2010).

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 psychiatric addendum was clear in providing an S3 profile and indicating definite impairment for military duty. PTSD was listed on the DA Form 3349 and profile restricted deployment. The psychiatric recommendations comment that “symptoms… have abated but would likely become more prominent if put back into position of responsibility,” align with the IPEB disability description of “excellent response to medication,” but indicated a poor prognosis for return to duty. Nevertheless, the IPEB’s adjudication, commander’s statements, and NCOERs in the record did not provide evidence of significant occupational impairment prior to separation. The increased symptoms noted at the VA exam may be attributable to the highly stressful process of the CI’s impending military separation as the exam was after the IPEB separation determination. After due deliberation, and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the PTSD condition as additionally unfitting for separation rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for TBI, spinal neuropathy affecting use of my left arm (discussed above under radiculopathy) and cognitive skills impairment (included above with PTSD symptoms). TBI was not documented in the DES file. The CI reportedly did not lose consciousness after the IED blast, but the Board concedes the history is potentially consistent with TBI. Nevertheless, 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 two conditions were included in previous discussions, above. There was no evidence for concluding that any of the 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 service disability rating.

Remaining Conditions. Other conditions identified in the DES file were dizziness after prolonged standing (with use of cane for balance), chest pain after walking steps [stairs], dislocated finger (with hand and finger pain s/p surgery), and hyperlipidemia. 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 profiles, and none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board including considering overlap with IPEB adjudicated conditions. 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 twelve 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 IPEB 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 IPEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the cervical spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the IPEB adjudication. In the matter of the bilateral hearing loss condition, the Board unanimously recommends a rating of 10% coded 6100 IAW VASRD §4.85. In the matter of the PTSD, hypertension, spondylosis L4-L5, and right hand weakness conditions, the Board unanimously recommends no change from the IPEB adjudications as not unfitting. In the matter of 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Status Post Cervical Spine Fusion C5-C6 | 5241 | 10% |
| Bilateral Hearing Loss | 6100 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110701, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 President

 Physical Disability Board of Review

