RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1100487 SEPARATION DATE: 20090830

BOARD DATE: 20120503

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, LCPL/E-3 (0311/Rifleman), medically separated from the Marine Corps. The medical basis for the separation was a right hand condition (hypothenar hammer syndrome with failed vein graft). The CI developed right hand pain after firing a pop-up flare with recoil injuring his hand and wrist. He developed an arterial thrombosis of the ulnar artery in his right hand and the CI was medevaced from Iraq. He was treated conservatively until his symptoms worsened following a motor vehicle accident with trauma to the palms. Surgical repair of the right ulnar artery occlusion with vein graft surgery was not successful (occlusion of the graft) and the CI had persistent pain, weakness, sensitivity and occasional numbness in his right (dominant) hand. He did not respond adequately to therapy and medication 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). “Other peripheral vascular disease; pain in joint involving hand and muscle weakness (generalized)” were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the hypothenar hammer syndrome condition as unfitting, rated 10%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD); “hand pain and weakness secondary to the late effects of vascular surgery” was adjudicated as a related category II condition. The PEB adjudicated “depressive disorder, not otherwise specified” (NOS) as category III (conditions that are not separately unfitting and do not contribute to the unfitting condition). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20090511** | **VA (2 Mos. Pre-Separation) – All Effective 20090831** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Hypothenar Hammer Syndrome | 7199-7117 | 10% | Neuritis Ulnar Nerve RUE  | 8616 | 30% | 20090602 |
| Hand Pain and Weakness | Cat 2 |
| Painful Scars (R wrist, hand; + L arm) | 7804 | 20% | 20090602 |
| Depressive Disorder, NOS | Cat III | Depression NOS and ADHD | 9435 | 30% | 20090619 |
| ↓No Additional MEB/PEB Entries↓ | Impairment of Hand-Eye Coord. (2nd Medications) | 8099-8009 | 10% | 20090602 |
| Thoracic and Lumbar Strain | 5243 | 20% | 20090602 |
| L. Knee Patellofemoral Syndrome | 5299-5019 | 10% | 20090602 |
| R. Knee Patellofemoral Syndrome | 5299-5019 | 10% | 20090602 |
| L. Foot Plantar Fasciitis | 5099-5020 | 10% | STRs |
| R. Foot Plantar Fasciitis … w/ Toe | 5099-5020 | 10% | 20090602 |
| L. Ankle Strain | 5299-5024 | 10% | 20090602 |
| R. Ankle Strain | 5299-5024 | 10% | 20090602 |
| Cervical Strain | 5237 | 10% | 20090602 |
| Bilateral Tinnitus | 6260 | 10% | 20090615 |
| 0% x 8 / Not Service-Connected x 6 | 20090602 |
| **Combined: 10%** | **Combined: 90%** |

ANALYSIS SUMMARY: In opening, the Board wishes to clarify that the scope of its review is limited to those conditions which were contained in the DES file. The 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. However, the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate service-connected conditions 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.

Hypothenar Hammer Syndrome Condition. The CI was right hand dominate. The narrative summary (NARSUM) exam, completed 5 months prior to separation, indicated the CI had some improvement following occupational therapy for “extensive scar tissue as well as sensitivity in this area and to work on strength (right grip 50 pounds).” Exam documented improved, but still decreased right grip strength (65 pounds compared to left 100 pounds), some palpable scar tissue in the area of the palmar pillow, and “a decrease in the sensitivity about his scar.” The CI had continued pain with pressure and “occasional paresthesias secondary to compression or pressure applied to the area of his ulna.” Evaluation indicated an occluded right ulnar artery with good blood flow through the radial circulation and good capillary refill (less than 2 seconds) in all digits. Diagnoses were “hypothenar hammer syndrome with failed vein graft and hand pain and weakness secondary to the late effects of vascular surgery.”

The non-medical assessment (NMA) and commanding officer's comments, dated 4 months prior to separation stated, “(The CI) has an injury to his arm that affects his grip. Due to this injury, he cannot do pull ups, push-ups, carry heavy objects, or manipulate a machine gun.”

The VA Compensation and Pension (C&P) exam performed 2 months prior to separation, indicated a history of constant right hand pain (2-3/10) with exacerbations with physical activity, hand weakness, and “numbness in the fourth and fifth fingers. He has it about that comes for about three times a day and lasts for about 30 minutes to an hour.” Pain was constant and treated with medication including Neurontin. The examiner stated “there is sometimes coldness to the extremities,” but it was unclear if this was a symptom or an exam finding. Exam documented the two scars in the wrist were well healed and non-painful. The palmar scar was painful without limitation of motion. The right wrist was tender on palpation, with dorsiflexion to 50° (0-70°), palmar flexion to 40° (0-80°), radial deviation 10° (0-20°) and ulnar deviation to 20° (0-45°). “On the right (wrist), there is pain as the major functional impact, but also fatigue, weakness, lack of endurance, but no incoordination. No additional limitation of motion. No issues on the left.” “The Veteran can tie shoelaces with difficulty with right hand. He can fasten buttons with difficulty with right hand. He can pick up a piece of paper and tear it with difficulty with the right hand.” Hand strength “is severely reduced in the right but normal on the left.” Motor function is normal. Sensory function: numbness in the fourth and fifth fingers on the right; strength in the right hand is severely decreased.” Diagnoses were right hand strain, right wrist strain, neuritis of the ulnar nerve (R), and scars status post thrombosis.

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s 10% rating was analogous to code 7117, Raynaud’s syndrome, under the cardiovascular schedule of ratings for hypothenar hammer syndrome. The VA’s 30% rating was under code 8616, right ulnar nerve neuritis coding and included right hand strain and repair of right ulnar artery thrombosis. The VA additionally rated scars including the right hand (painful) and wrist surgical scars. The VA exam was closer to the date of separation, more detailed, and was considered to have a higher probative value for rating at separation. The Board considered that all symptoms related to the right hand ulnar artery graft surgery and occlusion were ratable including the associated hand pain and weakness. Deliberations focused on coding under the criteria of codes 7117 or 8616 and which was predominate. Under code 7117, the CI did not have any ulcers or skin changes. Characteristic attacks are defined as “note: for purposes of this section, characteristic attacks consist of sequential color changes of the digits of one or more extremities lasting minutes to hours, sometimes with pain and paresthesias, and precipitated by exposure to cold or by emotional upsets. These evaluations are for the disease as a whole, regardless of the number of extremities involved or whether the nose and ears are involved.”

The CI’s “characteristic attacks” of “pain and paresthesias” was attributed to compression and pressure rather than precipitated by exposure to cold or by emotional upsets and did not involve skin color change, so were not considered completely analogous. The history proximate to separation indicated these episodes occurred about three times a day, which if considered equivalent to a 7117 characteristic attack would support a 40% rating for “characteristic attacks occurring at least daily.” Under coding for 8616, ulnar nerve, there were no organic changes and the maximum rating is moderate IAW §4.123 (neuritis). Given the episodes of paresthesias with weakened and painful grip and functional loss, the Board adjudged that the CI’s condition was best rated analogously to the neuritis condition at the moderate (30%) rating level coded as 7117-8616, keeping 7117 as related to the vascular condition, while using the criteria of the peripheral nerve code. The painful palmar scar was not considered to be independently unfitting (IAW §4.14, Avoidance of pyramiding) as the painful hand symptoms are considered under the primary unfitting rating.

Other PEB Conditions. “Hand pain and weakness” was adjudicated as related to the right hand hypothenar hammer syndrome and was discussed above in rating the right hand condition. The PEB adjudicated depressive disorder, NOS as not unfitting. It was not listed on the NAVMED Form 6100-1; however, there was a separate medical board addendum (NARSUM) from psychiatry. The CI was engaged in psychiatric treatment for approximately 2 years and had been on medication and individual therapy with “modest improvement with intensive outpatient treatment.” The NARSUM indicated the CI had some short-term memory impairment and possible symptom overlap from alcohol use and/or a diagnosis of traumatic brain injury (TBI). The CI had a non-suicidal overdose of medication with excessive drinking and had attended alcohol treatment. The NARSUM assessment of impairment was, “The degree of industrial and military impairment is moderate. The degree of civilian performance impairment is mild.” The NARSUM/MEB disposition was, “The Board is further of the opinion that the patient has now received the maximum benefit of military medical treatment and that this has not restored the patient to a duty status.” No mental disorder condition was the basis for LIMDU or implicated in the commander’s NMA. Depressive disorder, NOS was reviewed by the action officer and considered by the Board. There was insufficient indication from the record that this condition significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there was not a preponderance of evidence in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the depressive disorder condition.

Remaining Conditions. Other conditions identified in the DES file were intermittent, chronic low back pain; h/o bronchitis and pneumonia; and insomnia. Several additional non-acute conditions or medical complaints were also documented. None of these were occupationally significant during the MEB period, none were the basis for limited duty and none were implicated in the commander’s 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 except the hand condition. There was not a preponderance of the evidence in the members favor for recommending any additional unfitting conditions for separation rating. Additionally, thoracic strain; bilateral knee patellofemoral syndrome; left foot plantar fasciitis; right foot plantar fasciitis with right little toe; left ankle strain; right ankle strain; cervical strain; bilateral tinnitus; impairment of hand-eye coordination 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 in the DES. These conditions remain eligible for future consideration by the Board for Correction of Naval Records (BCNR).

**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. In the matter of the right hand condition, the Board unanimously recommends a disability rating of 30%, coded 7117-8616 IAW VASRD §4.104 and §4.124a. In the matter of the depressive disorder condition, the Board unanimously recommends no change in the PEB adjudication. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as unfitting for additional disability rating.

**RECOMMENDATION:** The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Hypothenar Hammer Syndrome with Right Hand Pain and Weakness | 7117-8616 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110716, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 President

 Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

 COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 7 May 12 ICO XXXXXXXXXXXXXXX

 (c) PDBR ltr dtd 22 May 12 ICO XXXXXXXXXXXXXXX

 (d) PDBR ltr dtd 10 May 12 ICO XXXXXXXXXXXXXXX

 (e) PDBR ltr dtd 3 May 12 ICO XXXXXXXXXXXXXXX

1. Pursuant to reference (a) I approve the recommendations of the PDBR set forth in references (b) through (e).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

 a. former USMC: Placement on the Temporary Disability Retired List for the period 1 December 2003 through 30 November 2008 with a 60 percent disability rating (increased from 40 percent) with final disability separation on 1 December 2008 with a 20 percent disability rating.

 b. former USN,: Placement on the Permanent Disability Retired List with a 30 percent disability rating (increased from 20 percent) effective 31 October 2001.

 c. former USMC: Placement on the Permanent Disability Retired List with 30 percent disability rating (increased from 10 percent) effective 30 August 2009 .

 d. former USMC: Disability separation with entitlement to disability severance pay with a rating of 20 percent (increased from 10 percent) effective 31 October 2006.

3. Please ensure all necessary actions are taken to implement these decisions, included the recoupment of disability severance pay if warranted, and notification to the subject members once those actions are completed.

 Assistant General Counsel

 (Manpower & Reserve Affairs)