RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: bRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100637 SEPARATION DATE: 20070630

BOARD DATE: 20120508

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty GySgt/E-7 (7236, Tactical Air Defense Controller), medically separated for non-cardiac chest pain*.* Onset of pain began in 1997 when he was struck in the chest by a baseball during practice. The ball was thrown from fifteen feet away at an estimated speed of 75 to 80 mph and he absorbed the entire impact in the chest. There was no indication of cardiac symptoms or exercise intolerance. The CI also underwent treatments for esophageal spasm, a small hiatal hernia, grade 2 esophagitis, mild gastritis, duodenitis, and non-obstructing dilated Schatzki ring. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards due to his non-cardiac chest pain. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Other chest pain, anxiety, esophageal reflux, and other postsurgical status 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 Physical Evaluation Board (PEB) adjudicated the case on 13 December 2006, and found the CI fit for duty. The CI appealed and requested reconsideration. The reconsideration PEB on 16 January 2007 upheld the original findings. The CI subsequently requested a formal hearing. The Formal PEB (FPEB) adjudicated the non-cardiac chest pain condition as unfitting, rated 10%; additionally, history of trauma to sternum with arthritic changes condition was considered category II, related but not separately unfitting. Anxiety disorder, history of pathologic GERD, S/P Nissan fundoplication and migraine headaches were all considered category III, with application of SECNAVINST 1850.4E, DoDI 1332.39 and the Veterans Administration Schedule for Rating Disabilities (VASRD), respectively. The CI made no appeals, and was medically separated with a 10% disability rating.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20070306** | | | **VA (5 Mo. After Separation) – All Effective 20070701** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Non-Cardiac Chest Pain | 5099-5003-5321 | 10% | Costochondritis Right Sternal Border | 5399-5321 | 10% | 20080110 |
| History of Trauma to Sternum with Arthritic Changes | Cat II | |
| Anxiety Disorder | Cat III | | Major Depressive Disorder with Mood Disorder, Secondary to General Medical Condition | 9434 | 30% | 20080124 |
| History of Pathological GERD | Cat III | | Gastroesophageal Reflux with Dysphagia with Residual Scars | 7399-7346 | 10% | 20080110 |
| S/P Nissen Fundoplication | Cat III | |
| Migraine Headaches | Cat III | | Migraine Headaches | 8100 | 10% | 20080110 |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20080117 |
| 0% x 1/Not Service-Connected x 1 | | | 20080110 |
| **Combined: 10%** | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment implied by the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. 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 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 his degree of impairment vary over time. The Board further notes that the presence of a diagnosis, in and of itself, is not sufficient to render a condition unfitting and ratable. 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 6044.40, 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.

Non-Cardiac Chest Pain with History of Trauma to Sternum with Arthritic Changes. The CI had a long history of chest pain that began a few months after he was hit in the chest by a baseball in 1997. A chest contusion was noted during the initial evaluation. However, no specific etiology was found for the continuing pain despite complete evaluations by gastroenterology, cardiology, and psychiatry. Imaging studies did reveal some abnormalities. A chest CT in March 2003 noted findings highly suspicious for sternal fracture of unknown age. However, a bone scan in June 2003 was negative. A repeat chest CT in August 2005 noted, “a somewhat unusually angulated orientation to the sternomanubrial joint is seen but no acute or chronic fractures are depicted.” Some minimal arthritic changes were also noted. Cardiac causes for the chest pain were ruled out and although some significant gastroenterological conditions were noted, none contributed to the CI’s chest pain. The CI was also referred to psychiatry and a somatoform disorder was also ruled out. The CI was followed in the pain clinic and trials of various medications and intercostals nerve blocks failed to relieve the CI’s pain and he remained unable to perform his required duties as reported in the non-medical assessment (NMA). While the initial and reconsideration PEBs determined the CI was fit for duty, an FPEB determined he was unfit due to the non-cardiac chest pain condition and that the history of trauma to sternum with arthritic changes was a related category II condition, not a separately unfitting condition.

The MEB narrative summary (NARSUM) examination completed 9 months prior to separation noted a normal examination of the chest with no deformities and no tenderness to palpation along the sternal borders or with rib cage compression. Final diagnosis for this condition was non-cardiac chest pain, NOS. He was noted to be able to perform the duties of his MOS but not the daily strenuous activities required of Marines. A VA Compensation and Pension (C&P) examination was completed on 10 January 2008, approximately 6 months after separation, and it reported a similar history. The pain level was noted to be 7/10, and aching, sharp, cramping, and soreness. The pain was elicited by both physical activities and daily activities. The pain was noted to occur 4 times per month and each time it lasts for 5 days. The steroid injects reportedly brought relief for only a few hours. Physical examination noted tenderness with palpation of the right sternal border. Bilateral rib x-rays were normal.

Both the FPEB and the VA rated the condition analogous to 5321 Group XXI. Function: Respiration. Muscles of respiration: Thoracic muscle group. Each considered the functional impairment to be moderate, warranting a 10% rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the non-cardiac chest pain condition.

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 non-cardiac chest pain condition and IAW VASRD §4.73, the Board unanimously recommends no change in the PEB adjudication at separation or permanently.

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** |
| Non-Cardiac Chest Pain | 5099-5003-5321 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110810, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXX, DAF

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 29 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:

- XXX XX XXXX former USMC

- XXX XX XXXX former USMC

- former USN, XXX-XX-XXXX

- XXX XX XXXX former USMC

- former USN, XXX-XX-XXXX

Assistant General Counsel

(Manpower & Reserve Affairs)