RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200026 SEPARATION DATE: 20020818

BOARD DATE: 20121102

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a SGT/E-5 (13M20/Multiple Launch Rocket System Crewmember) medically separated for complex partial seizures (CPS). He was treated but did not respond adequately and was unable to fully perform his required military duties. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). One single condition (complex partial seizures) was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. The PEB found the CPS condition unfitting, and assigned a rating of 20%. The CI accepted the PEB findings, and was medically separated with a 20% disability rating.

CI’s CONTENTION: “Should have been retired for medical condition. Please refer to attachment.” In addition to the statement in Block 3 of DD Form 294, the CI submitted a one-page memo which was reviewed and considered by the Board.

SCOPE OF REVIEW: The Board’s scope of review as defined in the Department of Defense Instruction (DoDI) 6040.44, is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The unfitting neurological condition (complex partial seizures) meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. No other conditions are within the Board’s purview. Any condition outside the Board’s defined scope of review may be eligible for consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army PEB – dated 20020701** | **VA (~11 mo. Pre Separation) – All Effective 20020819** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Complex Partial Seizures  | 8914 | 20% | Complex Partial Seizures | 8911 | 40% | 20011030 |
| ↓No Additional MEB/PEB Entries↓ | Left Knee Pain | 5260 | 10% | 20011030 |
| Right Knee Pain | 5260 | 10% | 20011030 |
| Not Service Connected (NSC) x 1 | 20011030 |
| **Combined: 20%** | **Combined: 50%** |

ANALYSIS SUMMARY:

Complex Partial Seizures. In April 2001, the CI presented with a history of spells during which he would have lightheadedness, one-sided weakness, and a “funny feeling,” sometimes, a spinning sensation. He was seen by Neurology and diagnosed with epilepsy. Shortly thereafter, a MEB was initiated. His MEB clinical exam was performed on 1 November 2001 at Fort Sill, OK. At that time, the examiner noted that seizures were occurring about 2-3 times per week. The seizure episodes were preceded by a prodrome of headache, left arm, and left leg jerking just prior to the seizure spell. The CI was taking anti-convulsant medication (Tegretol), and pain medication (Motrin) as needed for headache. His neurological exam was normal. Two days prior, the CI had been seen for a VA Compensation and Pension (C&P) exam. At that time, the examiner had noted that seizures were occurring about 3-4 times per week. In March 2002, the CI was seen by a civilian Neurologist and the CI’s carbamazepine blood level was found to be subtherapeutic. The CI increased his medication compliance, and the frequency of his seizures improved dramatically. On 18 June 2002, the CI was seen for follow-up by his neurologist. The seizures were still occurring, but had improved with the use of Trileptal. On 1 July 2002, the Army PEB found him unfit due to complex partial seizures. As noted above, he was medically separated with a disability rating of 20%.

The Board carefully reviewed all available evidence. Per the VA Schedule for Rating Disabilities (VASRD) §4.124a, a minor seizure may be a brief interruption in conscious control, sometimes associated with staring, blinking, or other motor activity. The CI’s seizure spells fell into that category. There is no evidence in the treatment record that he ever had a generalized, tonic-clonic (major) seizure episode. In a MEB Addendum dated 9 May 2002, it is documented that the CI’s seizures were occurring about twice weekly. Previously they had been more frequent (5-6 per week) but that was due to medication noncompliance. On 18 June 2002, the civilian neurologist wrote that the CI was having fewer spells with the use of Trileptal. According to the VASRD §4.124a General Rating Formula, a rating of 20% is warranted for a history of at least 2 minor seizures in the last 6 months. A higher rating of 40% is not warranted for minor seizures unless they are averaging at least 5-8 times per week. As noted above, the CI’s seizure spells were occurring approximately twice weekly, not 5-8 times per week. The evidence in the treatment record does not show sufficient justification for a rating greater than 20%. 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 complex partial seizure (CPS) 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. 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 complex partial seizure condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Complex partial seizures | 8914 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120106, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans’ Affairs Treatment Record.

 XXXXXXXXXXXXXXXXX

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXX, AR20120020007 (PD201200026)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA