RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1200107 SEPARATION DATE: 20041231

BOARD DATE: 20121002

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (0352, Anti-Tank Missileman), medically separated for heat stroke. The CI suffered heat stroke with rhabdomyolysis and acute renal failure after a ruck march in September 2007. He remained intolerant to heat exposure and was not able to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards and was referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the heat stroke condition as unfitting, rated 0% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “I was not rated on all conditions. I was rated on residuals of Heat Stroke at 0%. I have been diagnosed with an Aortic deficiency which was listed on Medical Board. Since discharge the VA has determined that the Aortic Valve is leaking and has given me a 30% rating. I have also been diagnosed with Moderate to Severe PTSD and place on Medication.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (DoDI) 6040.44, Enclosure 3, paragraph 5.e.(2) 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 ratings for unfitting conditions will be reviewed in all cases. The heat stroke condition was the only condition requested for consideration that meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. 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.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20041004** | **VA (6 Months Post-Separation) – All Effective Date 20050101** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Heat Stroke | 7999-7900 | 0% | Residuals of Recurrent Heat Stroke/Heat Injury | 7999-7903 | 10%\* | 20050706 |
| ↓No Additional MEB/PEB Entries↓ | Residuals of Lumbar Strain | 5237 | 20% | 20050706 |
| Degenerative Joint Disease, Left Knee, Status Post Left Patella Syndrome | 5010 | 10% | 20050706 |
| Patellofemoral Pain Syndrome, Right Knee | 5099-5014 | 10% | 20050706 |
| 0% X 5 / Not Service-Connected x 7 |  |
| **Combined: 0%** | **Combined: 40%\*\*** |

\*Decreased to 0% effective 20081201.

\*\*With increases, decreases, and addition of additional conditions (all 20071010 or later), latest combined rating was 70% effective 20090401.

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 Disability Evaluation System (DES) operates. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a 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 all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should his degree of impairment vary over time. The Board utilizes VA 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. he Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Heat Stroke Condition. The CI suffered a heat stroke with rhabdomyolysis and acute renal failure after a ruck march in September 2003. He was admitted to the hospital for 3 days and had some abnormal liver function tests. All labs had normalized by the time of discharge. However, he continued to have significant problems with heat intolerance and frequently required intravenous fluids. As a result, his duties while deployed were severely restricted. The CI also was unable to perform usual physical training and remained intolerant to heat. After a full year on a rehabilitation plan he remained unable to tolerate full duty and was referred for a medical board. Both the MEB narrative summary (NARSUM) completed in October 2004, approximately 3 months prior to separation, and the VA Compensation and Pension (C&P) examination completed in July 2005, approximately 6 months after separation, reported a similar clinical history and examinations without objective evidence of sequelae of heat stroke. The VA C&P examination noted reports of shortness of breath and fatigue when working in heat and that the CI was currently working in a job that exposed him to an outdoor environment. A subsequent VA examination in September 2008 noted these complaints had resolved.

The PEB rated the condition analogous to hyperthyroidism and applied a 0% disability rating. The VA rated the condition as analogous to hypothyroidism and initially applied a 10% rating based on continued fatigability. After a subsequent examination, the VA lowered the rating to 0% effective December 2008, nearly 4 years after separation. The Board directs attention to its rating recommendation based on the above evidence. While the MEB NARSUM did not specify the symptoms or problems the CI experienced when exposed to heat, the outpatient notes in his medical record document intolerance to working in heat. The initial VA examination specified the symptoms as fatigue and shortness of breath. More likely than not, these symptoms were present prior to the date of separation. After due deliberation, considering all of the evidence and mindful of both VASRD §4.7 (higher of two evaluations) and VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the heat stroke 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 heat stroke condition, the Board unanimously recommends a disability rating of 10%, coded 7999-7903 IAW VASRD §4.120. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Residuals of Recurrent Heat Stroke/Heat Injury | 7999-7903 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120130, 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 3 Oct 12 ICO

 (c) PDBR ltr dtd 3 Oct 12 ICO

 (d) PDBR ltr dtd 12 Oct 12 ICO

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).

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

 a former USN, XXX-XX: Disability retirement with a final disability rating of 40 percent effective 18 June 2002.

 b. former USN, XXX-XX: Disability retirement with a final disability rating of 30 percent effective 17 November 2003.

 c. XXX XX former USMC: Disability separation with a final disability rating of 10 percent (increased from 0 percent) effective 30 December 2004.

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

 Assistant General Counsel

 (Manpower & Reserve Affairs)