RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200140 SEPARATION DATE: 20040630

BOARD DATE: 20120807

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SGT/E-5(21W, Carpentry & Masonary Specialist), medically separated for seizure disorder. The CI continued to have seizures with adequate treatment and was unable to meet the physical requirements of his Military Occupational Specialty (MOS). He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded epilepsy with breakthrough seizures on therapeutic levels of medications as medically unacceptable IAW AR 40-501. Hyperlipidemia, noted in the rating chart below, was forwarded on the MEB submission as a medically acceptable condition. The PEB adjudicated the seizure disorder with history of seizures occurring at nighttime while sleeping as unfitting, rated 0%, with likely application of the AR 635-40. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: The CI writes: “Epilepsy.” 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, 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. 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 Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20040325** | | | **VA (1 Mos. Post-Separation) – All Effective Date 20040701** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Seizure Disorder with History of Seizures Occurring at Nighttime While Sleeping | 8910 | 0% | Epilepsy, Grand Mal Seizures | 8910 | 20% | 20040504 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% X 1 / Not Service-Connected x 3 | | | 20040504 |
| **Combined: 0%** | | | **Combined: 20%** | | | |

Seizure Disorder. The CI hit his head without loss of consciousness during two parachute jumps, one in September 2001 and the other in September 2002 for which he did not seek treatment. A month after each incident he had a grand mal seizure while asleep witnessed by his wife. For each she described her husband as combative, confused in the postictal phase and incontinent of urine. After the first episode the CI underwent a computer tomography (CT) scan of the head which was normal and was seen by neurology. He was not placed on medications for this single seizure episode. After the second seizure he was loaded with the seizure medication Phenytoin, (DilantinTM) and hospitalized for a day for testing. He was placed on a temporary profile with significant duty restrictions and, in February 2003, was terminated from airborne status and permanently placed on head & headquarters duty (HHD). He had persistently low Dilantin levels with modifications in dosage and was therapeutic on 500mg in June of 2003. An EEG performed at this time was abnormal suggesting a focal disturbance of cortical function and hyper-excitability over the left temporal region, consistent with epilepsy. In August 2003, he had another grand mal seizure activity, although not as severe as the previous ones, woke up with left shoulder pain, left leg pain and oral trauma, but without incontinence. This was not witnessed. In October 2003 his Dilantin dose was increased to 600mg nightly and a P3 permanent profile was issued with the following limitations; no airborne operations, no heights greater than 10 feet, no heavy machinery, no driving, no weapons except to "qualify (can carry unloaded weapon), no assignment were loss of consciousness would be dangerous to self or others and no swimming alone. The commander’s statement corroborated the above historical review and limitations in addition documented that the profile impeded him from performing the basic soldiering skills.

At the MEB exam, the CI reported no prior history of seizure activity and was taking 600mg of Dilantin daily. The MEB physical exam demonstrated normal neuromuscular findings. The examiner documented the neurologist diagnosis as; rare generalized tonic-clinic seizures with a breakthrough on therapeutic levels of Dilantin. In the neurology consult, prepared for the MEB, the neurologist further opined he had a good prognosis for long seizure free intervals and on adequate doses most likely would go into remission; however, he may have an occasional break through seizure necessitating another P3 profile and for this reason recommended a referral to the PEB. The neurologist characterized the seizure as generalized tonic-clinic of approximately once per year and that his Dilantin level was 11 (10-20 is therapeutic range) on 600mg of daily Dilantin. The service treatment record (STR) reflected a value of 15.8 for that consult visit and further revealed he had therapeutic levels in January 2003 and June 2003, 11.2 and 10.4, respectively. At the Department of Veterans’ Affairs (DVA) Compensation and Pension (C&P) exam prior to separation, the CI reported no new seizure activity since August 2003, no modification of his Dilantin dose and had been permitted to drive for the last 5 months. The C&P physical exam demonstrated no abnormality in the central or peripheral nervous system.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were complete, well documented and similar in terms of ratable data and therefore the Board assign both exams equal probative value. The PEB and VA chose the same coding option, 8910 (epilepsy, grand mal), for the condition and both were IAW §4.124a—Schedule of ratings–neurological conditions and convulsive disorders. The PEB rated 0% based on non-ratable nocturnal seizures and there was evidence to support non-compliance with medical management citing the soldier's pharmacy record indicated intermittent medication compliance. The Board recognizes IAW VASRD note (3) under the general rating formula for major and minor epileptic seizures: “there will be no distinction between diurnal and nocturnal major seizures” and therefore agreed the CI’s seizures are ratable. The Board acknowledges the PEB’s position with regards to non-compliance of the seizure medication, however the Board agreed while the CI initially had low therapeutic levels of Dilantin, he did achieve a therapeutic range with dosing modifications to the point of being seizure free one month post separation which allowed him to drive. Further, the VASRD does not consider compliance in its rating criteria. The Board, therefore, agreed to disregard the influence of non-compliance for its permanent rating recommendation. The VA rated 20% based on at least one major seizure in the last two years, or at least two minor seizures in the last 6 months. A higher evaluation of 40 percent was not warranted unless there was evidence of at least a major seizure in the last 6 months or two in the last year, or averaging at least five to eight minor seizures weekly. The Board agreed there is no evidence of a seizure within 6 months of separation or evidence of minor seizures to warrant the 40% rating and also agreed the evidence reflects one major seizure a year. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the seizure disorder 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. As discussed above, PEB likely reliance on AR 635-40 for rating seizure disorder was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the seizure disorder condition, the Board unanimously recommends a disability rating of 20%, coded 8910 IAW VASRD §4.124. 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Epilepsy, Grand Mal Seizures | 8910 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120201, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

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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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXX, AR20120015483 (PD201200140)

1. 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 to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA