RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200171 SEPARATION DATE: 20040713

BOARD DATE: 20120913

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (62B20 / Construction Equipment Repairer), medically separated for migraine headache condition. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the migraine headache condition as unfitting, rated 0%, with application of the Department of Defense Instruction (DoDI) 1332.39. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “DAILY CHRONIC MIGRAINE HEADACHES.” “I still cannot understand how with all the medical evidence of my condition(s) at the time of my PEB Medical board they will find me unfit for duty, ending my military career, but yet they granted me 0% disability and no retirement. The Department of Veterans Affairs acknowledges the same condition(s) granting me a 30%disability. Is incredible to believe that one government agency can differ from another government agency on the same condition(s) and have total different outcomes. I strongly believe this was and is unfair. Through this form I appeal to you to do all the necessary investigations with my case. I have faith and trust that you will do so.

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. The migraine headaches condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The remaining conditions rated by the Department of Veterans Affairs (DVA) at separation and listed on the DA Form 294 application are not within the Board’s purview. 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 Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20040526** | | | **VA (1 Mos. Post-Separation) – All Effective Date 20040714** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Migraine Cephalgia w/ Tension Features | 8100 | 0% | Migraine Headaches w/Tension Features | 8199-8100 | 10%\* | 20040812 |
| No Additional MEB/PEB Entries | | | Tendonitis, Left Shoulder | 5201-5024 | 10% | 20040819 |
| Tendonitis, Right Shoulder | 5201-5024 | 10% | 20040819 |
| Lumbosacral Strain | 5237 | 10% | 20040819 |
| Hypertension | 7101 | 10% | 20040819 |
| 0% X 7 / Not Service-Connected x 1 | | | 20040812 |
| **Combined: 0%** | | | **Combined: 50%\*\*** | | | |

\*VARD 20050831 increased migraine headaches from 0% effective 20040714

\*\*VARD 20060926 rated migraine headaches 30% effective 20050630 for a combined total of 70%

ANALYSIS SUMMARY: The Board notes the current DVA ratings listed by the CI for his migraine headache and also of all of his service-connected conditions, must emphasize that its recommendations are premised on severity at the time of separation. The DVA ratings which it considers in that regard are those rendered most proximate to separation. The Disability Evaluation System (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. That role and authority is granted by Congress to the DVA.

Migraine Headache Condition. The CI experienced intermittent headaches since 2002 which were typical for migraine and diagnosed as such by Neurology. These would last for a couple of days and were reported as severe. He also had a daily headache as well which was constant and more diffuse. A brain MRI revealed a tortuous left vertebral artery, which was abutting the left brainstem. This was evaluated by Neurosurgery who determined it was a normal variant without needing surgical intervention. The neurosurgeon further opined it was unlikely related to his current headache symptoms. Several prophylaxis medications were tried without significant effect. Kevlar and physical exercise exacerbated his headaches. There was one emergency room encounter with rescue treatment of a migraine headache in evidence for the 12-month period preceding separation, which required quarter’s assignment. There were no outpatient encounters in evidence for acute treatment. The pharmacy log was reviewed for the year prior to separation, which reflected one entry for a common abortive migraine medication, Fioricet, filled for 40 pills in May 2004. There was also a narcotic pain prescription for 6 pills filled in January 2004. This correlates with the emergency room headache visit for which he received quarters. The commander’s statement was not in evidence yet, there was a memorandum for the President of the PEB from the CI’s Non-Commissioned Officer in Charge (NCOIC). In this case the NCOIC documented that the CI was not working in his MOS as his unit was deployed to Iraq and documented he had frequent chronic headaches that he endured throughout the day. His limitations included: unable to go to the field; fire his weapon; wear Kevlar; wear MOPP gear; wear a flak vest or LBE. Additionally, his medications prevented him from operating or working on machinery. He further documented these symptoms that prevented him from doing his PMOS, but his daily performance is one to emulate, which was also corroborated by his treating Neurologist.

At the MEB exam, the CI reported he took the well known migraine Prophylaxis medications, Elavil and Inderal LA and the common anti-inflammatory medication, Motrin. The MEB physical exam documented a normal neurologic exam. The neurologist diagnosed migraine cephalgia with tension features approaching chronic daily headache and assigned a pain assessment of slight and frequent. At the VA Compensation and Pension (C&P) exam the CI reported a similar headache historical account as in the MEB and additionally the use of Tylenol and Fioricet as needed for pain all of which provided good relief. The VA C&P exam documented a normal neurologic exam. The examiner diagnosed mixed headache with migraine without aura and tension type headache.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and DVA exams were complete, well documented and similar in terms of ratable data therefore, the Board assigns both exams equal probative value. The PEB and VA chose the same primary coding options for the condition and both were IAW §4.124a—Schedule of ratings–neurological conditions and convulsive disorders.

The VASRD §4.124a rating schedule for 8100 (Migraine) is excerpted below:

With very frequent completely prostrating and prolonged attacks

productive of severe economic inadaptability-------------------------------50

With characteristic prostrating attacks occurring on an average once

a month over last several months---------------------------------------------30

With characteristic prostrating attacks averaging one in 2 months over

last several months-------------------------------------------------------------10

With less frequent attacks------------------------------------------------------------0

It is clear that the rating under code 8100 hinges on the frequency of ‘prostrating’ attacks; and, it is incumbent on the Board to apply DoDI 6040.44-compliant and uniform criteria which would define a recurrent migraine episode as ‘prostrating’ and ratable. Under DoDI 6040.44, the Board is directed to: “Use the VASRD in arriving at its recommendations, along with all applicable statutes, and any directives in effect at the time of the contested separation (to the extent they do not conflict with the VASRD in effect at the time of the contested separation).” Since the VASRD does not provide a definition of ‘prostrating’, it can be argued that the Board is directed to apply the DoDI 1332.39 definition which requires evidence that medical treatment is sought for each rated episode. The Board, by precedence, has not required rigid proof of medical attention for each and every episode to characterize it as prostrating; but, does require reasonably convincing evidence that rated attacks force the abandonment of work or current activity to treat the migraine; although, self-management (medication and/or sleep) has been accommodated within this threshold. The PEB’s DA Form 199 reflected application of the DoDI 1332.39 for rating, but its 0% determination was consistent with §4.124a standards. The VA rating decision (VARD) which conferred an initial 0% rating based this on no evidence in the service medical records of lost time from work due to headaches. The CI appealed and the VA Decision Review Officer (DRO) increase this to a 10% rating based VA treatment reports from August 2004 through 2005 which documented on numerous and repeated occasions of treatment for migraines to include injections. These treatment records were not in evidence for review. The Board carefully considered the historical, subjective and objective data presented and was ultimately confronted with limited objective evidence or corroborating subjective evidence for supporting the 10% threshold and all Board members agreed the 30% criteria is not supported. The Board first considered the pharmacy log which reflects the abortive medications prescribed in January 2004 for 6 pills and then in May 2004 for 40 pills. The Board members speculated that the 6 pills fulfilled his need for abortive medication for self management during those four months which supports the 10% criteria and the fact that he filled another abortive prescription reasonably supports self management of his migraine episodes. In addition the Board considered the VA treatment records which were within the year of separation in which the VA rater cites the CI seeking abortive treatment numerous times and with injections which led to the 10% higher rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10%for the migraine headache 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 reliance on DoDI 1332.39 for rating 0% was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the migraine headache condition, the Board unanimously recommends a disability rating of 10%, coded 8100 IAW VASRD §4.124a. 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** |
| Migraine Cephalgia w/ Tension Features | 8100 | 10% |
| **COMBINED** | 10% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120216, 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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20120016888 (PD201200171)

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 10% 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 XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA