

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200442
BOARD DATE: 20121119

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20061031

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (11B30 / Infantryman), medically separated for a generalized seizure disorder. The condition began in 2005 while deployed to Iraq and was not the result of an identifiable cause. The CI's medical condition was incompatible with the physical requirements of his Military Occupational Specialty. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded idiopathic generalized epilepsy to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB's submission. The PEB adjudicated the generalized seizure disorder condition as unfitting, rated 10% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "When I was separated from the military I was rated at 10% for only epilepsy. However, the VA has rated me at 40% for seizure disorder, grand mal. Additionally, I am rated 40% for traumatic brain injury and 10% for PTSD for an overall combined rating of 70%."

SCOPE OF REVIEW: The Board's scope of review is defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2). It is limited to those conditions determined by the PEB to be unfitting for continued military service and those conditions identified but not determined to be unfitting by the PEB when specifically requested by the CI. Ratings for unfitting conditions will be reviewed in all cases. The seizure disorder condition as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below. The other requested traumatic brain injury and posttraumatic stress disorder (PTSD) conditions, or any other conditions rated by the Department of Veterans' Affairs (DVA) at the time of separation, 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 the Correction of Military Records.

RATING COMPARISON:

Service PEB – Dated 20060828			VA (2 Mos. Pre-Separation) – All Effective Date 20061101			
Condition	Code	Rating	Condition	Code	Rating	Exam
Generalized Seizure Disorder	8910	10%	Seizure Disorder, Grand Mal	8910	40%	20060824
No Additional MEB/PEB Entries			Tinnitus	6260	10%	20060828
			0% X 1 / Not Service-Connected x 1			
Combined: 10%			Combined: 50%*			

*VA decision 20100529 added traumatic brain injury at 40% and PTSD at 10%, effective 20091211; combined 70%

ANALYSIS SUMMARY:

Generalized Seizure Disorder Condition. On 23 August 2005 while deployed to Iraq the CI experienced his first generalized seizure. A post-ictal state characterized by several minutes of somnolence and confusion ensued, and the CI had no memory of recent days or of events surrounding the seizure. On 31 August 2005, after medical evacuation to Kuwait, a second witnessed generalized seizure occurred and anti-seizure medication was begun. Laboratory evaluation, head CT scan and brain magnetic resonance imaging (MRI) were negative. A subsequent electroencephalogram (EEG) showed abnormal brief bursts of epileptiform activity in the frontal regions during onset of drowsiness and hyperventilation testing. In October 2005 the CI stopped his medication, and in January 2006 he experienced an unwitnessed episode of loss of consciousness. Anti-seizure medication was re-instituted on 5 January 2006, but due to side effects this medication was subsequently changed. On 9 February 2006, during the period of medication transition, a witnessed generalized seizure occurred during sleep. At the narrative summary (NARSUM) examination on 8 June 2006, 5 months prior to separation, the CI reported a 2-3 year history of very brief episodes of a fleeting “jolting” sensations lasting 1-2 seconds, and that these episodes continued while on medication. Their frequency was not described and the examiner was not certain if they represented simple myoclonic jerks or were a manifestation of an absence-type seizure. Examination revealed entirely normal neurologic findings. In a memo to the PEB dated 23 August 2006, the NARSUM examiner stated that the last witnessed generalized seizure occurred on 9 February 2006. The Department of Veterans’ Affairs (DVA) Compensation and Pension (C&P) examiner on 24 August 2006, 2 months before separation, referenced the grand mal seizures: “over the last 2 years, he has had 5 attacks in total, averaging 1 each month.” The dates of these events were not specified. The CI also referred to episodes of momentary “mental black-outs” without associated falling or physical problems, but the frequency of these was also not clarified. The CI did not keep a diary of events. The neurologic and mental status examinations were normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both used the 8910 code (epilepsy, grand mal), but assigned different ratings. The Board must correlate the above clinical data with the VASRD §4.124 rating criteria which, for convenience, is excerpted below:

General Rating Formula for Major and Minor Epileptic Seizures:

Averaging at least 1 major seizure per month over the last year.....	100
Averaging at least 1 major seizure in 3 months over the last year; or more than 10 minor seizures weekly.....	80
Averaging at least 1 major seizure in 4 months over the last year; or 9-10 minor seizures per week.....	60
At least 1 major seizure in the last 6 months or 2 in the last year; or averaging at least 5 to 8 minor seizures weekly.....	40
At least 1 major seizure in the last 2 years; or at least 2 minor seizures in the last 6 months.....	20
A confirmed diagnosis of epilepsy with a history of seizures	10

Note (1): When continuous medication is shown necessary for the control of epilepsy, the minimum evaluation will be 10 percent. This rating will not be combined with any other rating for epilepsy.

Note (2): In the presence of major and minor seizures, rate the predominating type.

The Board notes that although the CI described episodes suggestive of possible minor seizures (“... a brief interruption in consciousness or conscious control...”), these events were of

uncertain etiology and frequency. The Board therefore must premise its rating recommendation on the frequency of major seizures (i.e. generalized tonic-clonic convulsions with unconsciousness). The PEB's 10% rating appeared to be based on a conclusion that the condition was controlled with medication. Although the VA assumed the occurrence of five seizures during the year prior to the VA examination, this frequency was not deemed to average "at least 1 major seizure in 4 months over the last year," and thus did not justify a 60% rating. A rating higher than the VA's assigned 40% required "more accurate recording" of witnessed events, in reference to the fact the CI did not keep a seizure diary. The record shows that the first two seizures, which occurred in August 2005 while deployed, preceded any treatment, were more than a year prior to separation. There were two remaining generalized seizures reported. The first of these was unwitnessed and occurred in January 2006 while the CI was not taking prescribed anti-seizure medication. The second was witnessed and occurred in February 2006 while the CI was being transitioned from one medication to another. This was the last generalized seizure in evidence and occurred greater than 6 months prior to the PEB and 9 months prior to separation. The Board agreed that, during the year prior to separation, there was one seizure in evidence that constituted a ratable event (February 2006) under §4.124a. Because the event reported to have occurred in January 2006 took place 2 months after discontinuing medication and was unwitnessed, members debated at length its value in the rating. In this regard the Board was cognizant of §4.121 which, when determining seizure frequency, emphasizes the importance of lay testimony that notes convulsive activity and post-convulsive characteristics. Furthermore, the Board concluded that a rating recommendation should be premised on compliance with appropriate treatment. 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 generalized 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. In the matter of the generalized seizure disorder condition, the Board unanimously recommends a disability rating of 20%, coded 8910 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
Generalized Seizure Disorder	8910	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120523, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXXXXXX, AR20120021440 (PD201200442)

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

XXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA