

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXX  
CASE NUMBER: PD1200632  
BOARD DATE: 20130214

BRANCH OF SERVICE: MARINE CORPS  
SEPARATION DATE: 20020331

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an Active Duty LCpl/E-3 (4066/Small Computer System), medically separated for post-concussive migraine headaches (HA). The CI did not respond adequately to treatment and was unable fulfill the physical demands of her Military Occupational Specialty, meet worldwide deployment standards or satisfy physical fitness standards. The CI was placed on limited duty and referred for a Medical Evaluation Board (MEB). Mild traumatic brain injury (TBI) and post concussive migraine HA were forwarded to the Physical Evaluation Board (PEB) IAW NAVMED P-117, Chapter 15-5. No other conditions appeared on the MEB's submission. The PEB adjudicated the post-concussive migraine HA condition as unfitting, rated 10%, with application of the SECNAVINST 1850.4D and the Veterans Affairs Schedule for Rating Disabilities (VASRD). The mild TBI condition was determined to be Category II. The Navy defines CAT II conditions as contributing to the unfit. The CI made no appeals and was medically separated with a 10% disability rating.

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**CI CONTENTION:** The CI elaborated no specific contention in her application.

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**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 Board for Correction of Naval Records.

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**RATING COMPARISON:**

Service IPEB – Dated 20020206			VA (5 Mos. Post-Separation) – All Effective Date 20020401			
Condition	Code	Rating	Condition	Code	Rating	Exam
Post-Concussive Migraine Headaches	8045-9304	10%	Post-Concussive Migraine Headaches	8045-8100	30%	20020909
↓ No Additional MEB/PEB Entries ↓			Chronic Sinusitis w/ Sinus Cyst	6513	10%	20020909
			0% X N/A / Not Service-Connected x N/A			
Combined: 10%			Combined: 40%			

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**ANALYSIS SUMMARY:**

**Post-Concussive Migraine Headache Condition.** In March 2001 the CI was wearing her Kevlar helmet during drill when a rifle hit the forehead over the helmet and she developed an instant HA without loss of consciousness. She was evaluated in the emergency room for HA, nausea and vomiting and diagnosed with a concussion and released for further evaluation. She was then seen four times under the care of her primary care manager who was managing migraine

HA with multiple classic abortive and preventive medications which were ineffective. She was seen by neurology 6 months later and was diagnosed with migraine HA likely secondary to mild head trauma. The non-medical assessment documented the CI missed duty an average of 24 hours a week and she had been reassigned from her primary duties in communications, to working in the mail room because of her HA.

At the MEB exam, the CI reported experiencing HA approximately 3-4 times per week with the typical associated migraine symptoms, which increased in intensity in the past 3 months, she had to be released from work at least once a week because of severe HA. The MEB physical exam and magnetic resonance imaging of the brain obtained 20 August 2001 were normal. At the VA Compensation and Pension (C&P) exam, the CI additionally reported having mild HA 2 times per week which responded to Midrin. She had a severe debilitating HA once a week for which she took Imitrex injections, but noted the HA still lasted up to 8 hours and she was unable to function. The C&P exam was normal, but not complete. Furthermore, no physical exam findings were cited in the rating decision. The examiner opined her functional limitations were due to migraine HA.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition, which have significant implications on the rating for the Board to consider. The PEB chose to code analogously to 8045 code (Residuals of traumatic brain injury (TBI) which falls under §4.124a—Schedule of ratings—neurological conditions and convulsive disorders with the 9304 code (Dementia due to head trauma), which falls under §4.130 Schedule of ratings—mental disorders. The VA coded 8100 (Migraine HA) analogous to 8045 and assigned a 30% rating for monthly prostrating HA. The Board agreed while the VA used the analogous TBI code to subsume the concussion they primarily rated migraine HA as the diagnostic disabling condition. Furthermore, the VA examiner 9 years later opined current migraine HA were not likely related to brain injury during service. A lengthy deliberation ensued whether the evidence supports a significant head injury which clinically is synonymous to a TBI or whether in fact the HA condition is primarily a migraine condition for consideration of the DC 8100. By a 2:1 vote the Board majority agreed while the evidence clearly did not support dementia, the evidence did support a significant head injury which clinically is synonymous to a TBI. The Board majority agreed the PEB was consistent with applying the 8045 code to classify the disabling migraine HA and the Board notes that the maximum allowable for this code is 10% for the CI's separation date. The Board's rating recommendation for 8045 (TBI) in this case is subject to the following policy (established by precedent and prior legal opinion). As an implied extension of the DoDI 6040.44 and National Defense Authorization Act (NDAA) 2008 mandates, the Board will comply with applicable VA disability rating policy changes issued via "Fast" or Training Letters effective at the time of separation. The VA Training Letter, TL06-03 (dated 13 February 2006), specifically addressed the complexity of TBI and recommended coding "outside" of 8045 when a more favorable rating could be achieved under an alternate code. Additionally, the VA Training letter TL07-05 (dated 31 August 2007) went further in recommending separate ratings under the applicable codes for each ratable component of TBI in evidence; e.g., HA, tinnitus, dizziness, etc. Therefore the Board majority agreed based on the CI's date of separation (31 March 2002) that the 8045-9304 coding is correctly applied the 8100 code could not be considered for a higher rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board majority concluded that there was insufficient cause to recommend a change in the PEB adjudication for the post-concussive migraine HA condition.

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**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 post-concussive migraine HA condition and IAW VASRD §4.124a and the Board by a vote of 2:1 recommends no change in the PEB adjudication. The single voter for dissent (who recommended assigning the VA rating of 30% coded 8100) submitted a minority opinion. There were no other conditions within the Board's scope of review for consideration.

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**RECOMMENDATION:** The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Post-Concussive Migraine Headaches	8045-9304	10%
	<b>COMBINED</b>	<b>10%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXX  
Acting Director  
Physical Disability Board of Review

Minority Opinion:

The PEB reasonably applied the 8045 code to classify the disabling post-concussive migraine HA likely due to the persistence of this diagnosis even by the consulting neurologist, likely without consideration if the disabling HA were indeed primarily migraine in origin. The historical account of head trauma documented in the emergency visit for HA, for which there is a final diagnosis of concussion, is not consistent with significant head trauma, and at best supports mild head trauma that would not be expected to produce residuals deficits. The HA described were typical of migraine symptomatology responding to appropriate migraine treatment and the mild head trauma would be classified as a mild head injury that would not be expected to produce residual deficits. Clinically first time mild head injury usually resolves within 7-10 days and do not worsen. The service treatment record reflects Emergency Room visits for evaluation and treatment of recurrent migraines prior to separation and these visits were 4, 7 and 8 months after the original head injury. The Board's operative instruction, DoDI 6040.44, specifies a 12-month interval for special consideration to VA findings. This does not mean later VA evidence is disregarded, but the Board's recommendations are directed to the severity and fitness implications of conditions at the time of separation. The VA primarily coded the HA as migraines 5 months prior to separation and 9 years later the VA examiner opined the HA were not related to the mild head trauma in service. Therefore, based on all evidence and associated conclusions just elaborated, the minority recommended consideration of the 8100 code (migraine HA) for a higher rating and agreed the evidence did not support the 50% criteria for very frequent, completely prostrating, and prolonged attacks productive of severe economic inadaptability. The number of prostrating HA, once a week requiring her to leave work, was recorded in service by a neurologist for diagnostic confirmation. I respectfully submit that the Secretary consider the minority recommendation that the CI's prior determination be modified as follows; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Post-Concussive Migraine Headaches	8100	30%
	COMBINED	30%

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW  
BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44  
(b) CORB ltr dtd 8 Mar 13

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR that the following individual's records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy's Physical Evaluation Board:

- former USMC
- former USMC
- former USN
- former USMC
- former USMC
- former USN
- former USMC

XXXXXX  
Assistant General Counsel  
(Manpower & Reserve Affairs)