RECORD OF PROCEEDINGS PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX CASE: PD-2017-05770 BRANCH OF SERVICE: ARMY SEPARATION DATE: 20051121

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E5, Journalist, medically separated for “traumatic brain injury” with a disability rating of 10%.

CI CONTENTION: “The initial Review Board did not assign any disability ratings for conditions related to traumatic brain injury…” The complete submission is at Exhibit A.

SCOPE OF REVIEW: The panel’s scope of review is defined in DoDI 6040.44. It is limited to review of disability ratings assigned to those conditions determined by the Physical Evaluation Board (PEB) to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the Medical Evaluation Board (MEB), but determined by the PEB to be not unfitting or non-compensable. Any conditions outside the panel’s defined scope of review, and any contention not requested in this application, may remain eligible for future consideration by the Board for Correction of Military Records. The panel’s authority is limited to assessing the fairness and accuracy of PEB rating determinations and recommending corrections when appropriate. The panel gives consideration to VA evidence, particularly within 12 months of separation, but only to the extent that it reasonably reflects the severity of disability at the time of separation.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **SERVICE PEB 20051003** | | | **VARD - 20060302** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Traumatic Brain Injury | 8045-9304 | 10% | Post Concussion Syndrome | 9304-8045 | 10% | 20060206 |
| Right Leg Weakness and Coordination Difficulty | Not Unfitting | | Right Lower Extremity Spasticity and Weakness | 8599-8521 | 0% | 20060130 |
| Depression/Adjustment | Depression With Adjustment Disorder Associated With Post Concussion Syndrome | 9435 | 10% | 20060206 |
| Intermittent Low Back Pain | Lumbar Disk Disease With Thoracic Spine Compression Deformity | 5243 | 10% | 20060130 |
| Detrusor Hyperreflexia | Hyperactive Bladder/Detrusor Hyperreflexia | 7542 | 20% |
| **COMBINED RATING: 10%** | | | **COMBINED RATING OF ALL VA CONDITIONS: 50%** | | | |

ANALYSIS SUMMARY:

Traumatic Brain Injury (TBI)*.* According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI was involved in a motor vehicle accident in December 2003 and reportedly had significant cognitive deficits that improved over time. He returned to duty in March 2004, and continued outpatient rehabilitation.

The 29 April 2005 MEB neurology addendum, 7 months before separation, noted complaints of right leg residual weakness, fine motor incoordination in the upper extremity (right greater than

left), memory and information processing cognitive deficits, and emotional lability. Neurological examination showed intact language comprehension, repetition and fluency, speech articulation, short and long-term memory, as well as normal execution functioning. Cranial nerves were intact, and upper and lower extremity motor strength was 5/5 throughout. There was some incoordination of the right upper extremity during rapid alternating movement testing, and mild proximal right lower extremity power deficits, but no muscle atrophy. Gait, station and posture were normal as were reflexes. At the 24 May 2005 MEB neuropsychological addendum examination, the CI reported difficulty with concentration. The provider noted that an initial assessment in April 2004 revealed no cognitive sequelae, and that the current evaluation showed essentially full recovery from the brain trauma. Left upper extremity motor slowing was present only during one task (improvement from previous tests), and all cognitive functions were within normal limits.

The 15 September 2005 MEB NARSUM examination, 2 months before separation, noted complaints of right leg weakness and decreased coordination. The CI stated that cognitive deficits and problems with focusing affected performance of his military specialty duties because he was unable to write articles. Physical examination was conducted 8 months before separation by a different examiner. The 30 January 2006 VA Compensation and Pension (C&P) examination,

2 months after separation, noted report of periods of emotional lability with cognitive impairment, and intermittent frontal headache (non-prostrating in nature).

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the TBI 10%, coded 8045-9304 (residuals of TBI-dementia due to head trauma). The VA rated post-concussion syndrome 10%, coded 9304-8045, based on the STR and C&P examination, citing “purely subjective complaints such as headache, dizziness, insomnia, etc., recognized as symptomatic of brain trauma.” The VARSD in effect at the time of separation captured brain injuries under the generic category of brain disease due to trauma (coded 8045), with two different scenarios for rating under this code: analogously with purely neurological deficits, or based on purely subjective symptoms. In the absence of associated neurological disabilities (seizures, nerve paralysis, etc.), rating of this condition under 8045-9304 is limited to 10%, and cannot be combined with any other rating for a disability due to brain trauma. Therefore, a higher rating is not possible under this code. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel concluded there was insufficient cause to recommend a change in the PEB adjudication for the TBI.

Contended PEB Conditions: Right Leg Weakness and Coordination Difficulty, Depression/Adjustment, Intermittent Low Back Pain and Detrusor Hyperreflexia. The panel’s main charge is to assess the fairness of the PEB determination that the contended conditions were not unfitting. With the exception of right leg weakness, none of the conditions were profiled or implicated in the commander’s statement, and did not fail retention standards. There was no performance-based evidence from the record that any of the conditions significantly interfered with satisfactory duty performance at separation. After due deliberation, the panel concluded there was insufficient cause to recommend a change in the PEB fitness determination for any of the contended conditions, so no additional disability ratings are recommended.

BOARD FINDINGS: In the matter of the traumatic brain injury and IAW VASRD §4.124a, the panel recommends no change in the PEB adjudication. In the matter of the contended right leg weakness and coordination difficulty, depression/adjustment, intermittent low back pain and detrusor hyperreflexia, the panel recommends no change from the PEB determinations as not unfitting. There are no other conditions within the panel’s scope of review for consideration. Therefore, the panel recommends no modification or re-characterization of the CI’s disability and separation determination.

ARXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXXXXXXX

The Department of Defense Physical Disability Board of Review (DoD PDBR) reviewed your application and found your separation disability rating and your separation from the Army for disability with severance pay to be accurate. I have reviewed the Board’s recommendation and record of proceedings (copy enclosed), and I accept its recommendation. I regret to inform you that your application to the DoD PDBR is denied.

This decision is final. Recourse within the Department of Defense or the Department of the Army is exhausted; however, you have the option to seek relief by filing suit in a court of appropriate jurisdiction.