RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900029 COMPONENT: active

BOARD DATE: 20090616 SEPARATION DATE: 20070102

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SUMMARY OF CASE: This covered individual (CI) was an active Army SGT 11B medically separated from the Army in 2007. The medical basis for the separation was traumatic back injury and Post Traumatic Stress Disorder (PTSD). The back injury was from a Bradley rollover while in combat in Iraq in Jul 2004 and PTSD was from other combat situations in Iraq in 2004. CI was referred to the PEB, found unfit and separated at 20% disability. The PEB 10% back rating was similar to the VA back rating and was not contended. The PEB rated PTSD at 10% and specified that CI was only partially compliant with medical treatment for PTSD. The VA rated PTSD originally at 50% IAW §4.129 Mental disorders due to traumatic stress. On re-exam of 20070524 the PTSD rating was initially changed to 30%, but on reconsideration and re-exam of 20071023 was upgraded retroactively to 70%. The CI contends that ‘Rating for severe PTSD was much too low’, CI mentions NDAA, VASRD and his PTSD symptoms.

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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 PEB’s deduction due to CI’s ‘partial compliance’ may certainly be attributed to his primary PTSD versus personality traits, is mitigated as the CI accepted individual counseling at the session for his NARSUM psychiatry addendum (13 Sep 2006), the mixed prognosis provided in that addendum, as well as CI’s increased symptoms following service discharge. The NARSUM also stated ‘COMPLIANCE STATEMENT: There is no indication of noncompliance with medical treatment or recommendations.’ Therefore, the Board did not support decreasing any PTSD rating for noncompliance, even if the MEB exam were used for rating versus an extrapolation to CI’s condition post-discharge IAW §4.129 Mental disorders due to traumatic stress. If the MEB exam were rated IAW the DoDI, without deduction, it would rate between the 30% and 50% levels. The VA exam of 20070524, coupled with VA treatment notes, clearly rate at the 50% level which is the closest approximation to CI’s condition if reevaluated within 6 months following discharge. The 20071027 VA exam clearly showed CI at the 70% rating; however, the Board opined this as worsening of CI’s PTSD beyond the 6 month post discharge timeframe of §4.129. The Board did not agree with the VA rationale of a 70% rating at the first VA PTSD re-evaluation point based on granting retrospective suicidal ideation at the time of the prior exam, despite CI’s negative replies to suicidal ideation.

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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 |
| Traumatic back injury | 5237 | 10% |
| PTSD | 9411 | 50% |
| Combined | 60% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090115, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

