RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900052 BOARD DATE: 20090910

SEPARATION DATE: 20060314

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SUMMARY OF CASE: This covered individual (CI) was an NCO placed on TDRL in January, 2002 for a psychiatric condition. She was medically separated in 2006 after 15 years of service. The CI had no mental health history until an abrupt psychotic break in 2001. This required a prolonged hospital admission, and she did not stabilize well enough for return to duty. She was placed on TDRL with an Axis I diagnosis of major depression with psychotic features. During the TDRL period she underwent 3 more psychiatric admissions, and was diagnosed specifically with bipolar disorder. Her condition was stabilized, but not medically acceptable for retention, and she was referred for final PEB determination. The CI’s other medical conditions included endometriosis, requiring laparoscopic surgery in 2001. She was diagnosed with a bilateral bunion disorder early in her military career, requiring surgeries on each foot in 1991 and 1993. She was being treated by Internal Medicine for iron deficiency anemia at the time of her placement on TDRL. All of these conditions were addressed by specialty addendums and forwarded as medically acceptable by the MEB. All of the non-psychiatric conditions were adjudicated as fit by the initial PEB, and were not reflected on her final DA 199 at separation. She was separated at 10% for the bipolar disorder.

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CI CONTENTION: The CI contends that the rating of her psychiatric condition was unfair. She does not specifically contend for a review of the fitness adjudications of her other conditions, although did so in a prior USAPDA appeal.

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RATING COMPARISON:

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| --- | --- |
| **Service PEB** | **VA (Pre-TDRL Placement )** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| BIPOLAR I DISORDER | 9432 | 10% | 20060120 | BI-POLAR DISORDER | 9432 | 100% | Predischarge | 20020315 |
| ENDOMETRIOSIS | NOT UNFITTING – PEB 20020107 | ENDOMETRIOSIS | 7629 | 10% | Predischarge | 20020315 |
| ANEMIA | NOT UNFITTING – PEB 20020107 | ANEMIA | 7700 | 0% | Predischarge | 20020315 |
| S/P BUNION REMOVAL, BOTH FEET | NOT UNFITTING – PEB 20020107 | BUNIONECTOMY (L)BUNIONECTOMY (R) | 52805280 | 10%10% | Predischarge Predischarge | 2002031520020315 |
| ACNE VULGARIS | NOT UNFITTING – PEB 20020107 | ACNE VULGARIS | 7806 | 10% | Predischarge | 20020315 |
| UPPER BACK PAIN | NOT UNFITTING – PEB 20020107 | UPPER BACK PAIN | NSC | - | Predischarge | 20020315 |
| NO ADDITIONAL DA 3947 ENTRIES. | 20020107 | NON-PEB X 2 | Predischarge | 20020315 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 100%**   |

ANALYSIS SUMMARY:

Psychiatric. The condition was rated at the minimum 30% for TDRL placement by the initial PEB. The VA rating decision for the initial 100% determination cited psychotic symptoms at the time of crisis and admission. There was a comprehensive psychiatric reevaluation on 6 Jan 05. This was the primary VA source for Board review of the condition at separation, and was compared to the final TDRL psychiatric exam by the Army dated 28 Nov 05. The Army exam noted that the CI had been employed at the same job since 2002, and this was noted as a key factor in assigning a 10% rating for mild impairment by the PEB. This was rebutted by the CI, and the PEB response stated specifically, ‘Despite ongoing mental health issues, you have been able to work and have been in the same job (currently GS-7) since 2002. This is consistent with 10% disability rating.’ At separation, the CI was on 5 psychoactive medications, and the Army examiner noted mixed episodes with ‘racing thoughts, increased goal-directed activity, pressured speech, depressed mood, decreased need for sleep, auditory hallucinations, paranoid delusions and irritability’. Social and industrial impairment was judged ‘considerable’. The VA examiner noted that the CI was functioning in a clerk capacity at the same employment where she had formerly been a supervisor, and that she had relatively frequent absences due to her condition. Specifically the VA psychiatrist opined that her bipolar disorder ‘has had a moderate negative impact on her occupational functioning due to her distractibility, difficulties concentrating, interpersonal wariness, reduced motivation, and reduced tolerance for frustration’.

The VA rating decision in 2005 acknowledged that the CI was ‘now capable of maintaining gainful employment’. It cited a poor GAF (Global Assessment of Functioning) score of 48 and ‘ongoing hallucinations and delusions’ as a basis for continuing the 100% disability rating. The PEB cited AR 635-40 (Appendix B-107, paragraph e.) as the basis for a ‘mild’ 10% rating determination. The case is not a good fit with the characterization ‘mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress’ for a 10% rating under VASRD §4.130. On the other hand, the VA’s 100% rating is difficult to reconcile with the VASRD language. Even the 70% rating provides 9 ‘due to’ descriptors for which the CI manifested only 1 (difficulty in adapting to stressful circumstances). The CI’s lowered responsibility and position at work does connote the ‘reduced reliability and productivity’ characterization for a 50% rating. She also manifested 5 of the 9 ‘due to’ descriptors for that rating. She met every requirement for the 30% rating, but IAW VASRD §4.3 (reasonable doubt), the higher 50% rating is warranted. A 50% permanent rating under 9432 for bipolar disorder is a fair Board recommendation.

Other Conditions. Of the CI’s 5 other medical conditions, only the endometriosis and podiatry conditions reasonably merit consideration as additionally unfitting. Both of these conditions were re-evaluated by specialty services during the TDRL period, and both were forwarded to the PEB as not meeting retention standards IAW AR 40-501. This is somewhat confusing, since both conditions had already been adjudicated as fit and there were no interim changes in acuity. The Ob/Gyn TDRL addendum noted a cesarean delivery and tubal ligation in 2003 (during TDRL), but did not indicate any active symptoms beyond those at placement on TDRL. The CI carried a permanent L3 profile for the foot condition, but the MOS Medical Retention Board had determined that she met the physical requirements for her MOS and she performed an alternate event for the Army Physical Fitness Test. Her Commander’s statement did not specify orthopedic limitations or pelvic pain as impeding performance. There is no firm basis for a Board recommendation contrary to the PEB’s fit adjudications for any of the CI’s non-psychiatric conditions.

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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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. As discussed above, PEB reliance on AR 635-40 for rating the bipolar disorder was apparent in this case and the condition was adjudicated independently of that regulation by the Board. In the matter of bipolar disorder, the Board unanimously recommends a permanent rating of 50% under 9432 IAW VASRD §4.130. In the matter of the endometrioses, foot conditions and all of the CI’s other medical conditions, the Board unanimously concluded that it cannot recommend any as additionally unfitting for separation rating.

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RECOMMENDATION: The Board recommends 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 following TDRL.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| BIPOLAR DISORDER | 9432 | 50% |
| **COMBINED** | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090122, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

