RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900080 SEPARATION DATE: 20070331

BOARD DATE: 20100914

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SUMMARY OF CASE: This covered individual (CI) was a reserve Sergeant (3531, Motor Vehicle Operator) medically separated from the Marine Corps in 2007 after over 10 years of combined service (over 6 years Active Duty). The medical basis for the separation was Major Depressive Disorder, Single Episode, Severe without Psychotic Features. A Medical Evaluation Board (MEB) determined he had received the maximum benefit of military medical treatment but it had not restored him to a duty status and he was referred to the Physical Evaluation Board (PEB). The PEB determined he was unfit for continued Naval service and he was separated with a 10% disability rating using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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CI CONTENTION: The CI states: ‘After review of my disability by the Department of Veterans Affairs I was rated at 50% for my unfitting condition and 80% overall for a combined rating.’

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RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20070212** | **VA (12 Months after Separation) – All Effective 20070401** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Major Depressive Disorder, Single Episode, Severe Without Psychotic Features | 9434 | 10% | Major Depressive Disorder | 9434 | 50% | 20080403 |
| Episode of Loss of Consciousness | Category III: Conditions that are not separately unfitting and do not contribute to the unfitting condition(s) |  |  |  |  |
| Not in DES | Degenerative Disc Disease, Lumbar Spine (FormerlyLumbar Strain | 5242 | 40% | 20080401 |
| Chronic Dally Headaches | 8199-8100 | 30% | 20080401 |
| Osteoarthritis, Left Knee (Previously Status-Post LeftKnee Injury ) | 5010-5260 | 10% | 20080401 |
| Tinnitus (effective 20010121) | 6260 | 10% |  |
|  | NSC X 3 |  |  |  |
| **TOTAL Combined: 10%** | **TOTAL Combined: 80%** |

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The Disability Evaluation System (DES) file was incomplete, missing the Commander’s Comments. Attempts were made to retrieve this from the Navy and from the CI, but they were unsuccessful.

Analysis Summary

Mental Illness: Depression/PTSD

The CI was an active duty Marine from January 1997 to December 2001 and then entered the Inactive Reserves. He was mobilized twice and during his second mobilization starting in March 2004 he was assigned to the Marine Casualty Services Branch in Bethesda, Maryland. In November 2005 he realized he was having some depression and sought help. He had disruptive personal feelings that he tried to deny in order to perform his duties of taking care of family members. This led to internal conflict and was not productive. He would sometimes become unexpectedly tearful in his work environment and would experience profound sadness. At other times he felt emotionally numb. These states were noted by some of his peers, his chain of command, and his wife. He also experienced guilt and hopelessness and had multiple neurovegetative symptoms including chronic sleep disturbance, decreased appetite, decreased energy, no interest in previous hobbies such as golf and physical fitness, and significantly decreased libido. The MEB Narrative Summary (NARSUM) stated he had remained compliant with the recommended medications and actively participated in the recommended Behavioral Health appointments but records of these appointments were not available for Board review.

Although the military and VA exams were completed sixteen months apart they documented some similar findings and roughly similar levels of functional impairment. The level of functional impairment appeared to be slightly worse on the VA Compensation and Pension (C&P) examination. In addition to the symptoms of depression documented in the NARSUM, the VA examination also documented a history of deployment related traumatic experiences and some symptoms specific for Post-Traumatic Stress Disorder (PTSD) that were not mentioned in the military examination. The military examination noted traumatic experiences related to the CI’s duty in Marine Casualty Services but not related to his previous deployments. However, these additional symptoms noted on the VA C&P examination did not significantly increase the CI’s level of functional impairment. The CI had a moderate level of impairment at the time of both examinations and a global assessment of functioning (GAF) of 55 reported on the military examination and 50 on the VA C&P examination. The VA C&P stated while both depression and PTSD were present, the symptoms and adverse impact due to each diagnosis individually could not be separated because there was too much overlap. The VA C&P also documented increased severity of findings on mental status examination. His affect was noted to be tearful and dysphoric while on the military exam his affect was mildly constricted when discussing loss themes but was otherwise stable, mood congruent, and reactive to themes discussed. While these findings indicate a more severe depression and contain some of the rating criteria for a 50% rating under VASRD 9434, the CI’s overall disability picture more closely approximates the 30% criteria at that time.

The NARSUM stated his degree of military impairment was Severe. His degree of social and industrial impairment predicted to be Mild. Mild social and industrial impairment is rated at 10% IAW DoDI 1332.39 which was in effect at the time the CI separated from service but has since been rescinded. After separating from service, the CI was employed by the VA as a case manager. He had significant difficulties with this job because he would get upset when the veterans he works with start to tell him about their combat experiences and about their PTSD symptoms. No information about his performance or effectiveness at work is available for Board review. The VA C&P examination noted a substantial and persistent interference with work, social, and family role functioning as well as with recreation and leisure pursuits. It also noted an occasional interference with physical health.

The CI’s condition at the time of separation from service warrants a 30% based on the military NARSUM. He had been diagnosed with major depression, was on two antidepressant medications, was undergoing outpatient treatment, and was not able to perform his required duties as a Marine due to depressed mood, feelings of guilt and hopelessness, chronic sleep impairment, anxiety, and neurovegetative symptoms. He also had impaired social functioning, withdrawing from and ignoring his family and was not engaged in any type of social or leisure activity as a result of his symptoms. The VA C&P examination completed twelve months after separation shows a slightly worsening clinical and functional impairment picture and it supports the 30% rating.

Other Conditions

Episode of Loss of Consciousness

The CI had a syncopal episode while driving and was involved in a motor vehicle accident. A thorough cardiac and neurologic work-up resulted in multiple normal tests and failed to find a cause. The condition was determined to be within standards by the PEB, and no duty restrictions can be attributed to it. There is no evidence this condition interfered with performance of any required duties.

Other Conditions Not in the DES

Degenerative Disc Disease, Lumbar Spine; Chronic Dally Headaches; Osteoarthritis, Left Knee; Tinnitus

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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 Navy PEB apparently relied on DoDI 1332.39 for rating the CI’s condition of Major Depressive Disorder as it was in effect at the time of separation. The condition was adjudicated independently of that instruction by the Board. After careful consideration of all available information the Board determined by simple majority that the CI’s condition of Major Depressive Disorder is most appropriately rated at 30%.

The CI’s condition at the time of separation from service warrants a 30%. He had major depression, was on two antidepressant medications, was undergoing outpatient treatment, and was not able to perform his required duties as a Marine due to depressed mood, feelings of guilt and hopelessness, chronic sleep impairment, anxiety, and neurovegetative symptoms. The VA C&P examination completed twelve months after separation shows a slightly worsening clinical and functional impairment picture and it supports the 30% rating at the time of separation.

The single voter for dissent (who recommended no recharacterization) did not elect to submit a minority opinion.

The Board also considered the condition of Episode of Loss of Consciousness and unanimously determined that this condition was not unfitting at the time of separation form service.

The other diagnoses rated by the VA (Degenerative Disc Disease, Lumbar Spine; Chronic Dally Headaches; Osteoarthritis, Left Knee; and Tinnitus) were not mentioned in the Disability Evaluation System package and are therefore outside the scope of the Board. The CI retains the right to request the Board of Correction for Naval Records (BCNR) consider adding these conditions as unfitting.

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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 his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Major Depressive Disorder | 9434 | 30% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090128, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 **DEPARTMENT OF THE NAVY**

SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
 720 KENNON STREET BE STE 309
 WASHINGTON NAVY YARD DC 20374-5023

IN REPLY REFER TO

1850 CORB:003 25 Nov 2010

From: Director, Secretary of the Navy Council of Review Boards

. To:

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

Ref: (a) CORB ltr of 19 Nov 10

(b) Do0 I 6040.44

(d) PDBR ltr of 15 Oct 10

1. This letter is issued in lieu of reference (a) which erroneously noted that the PDBR had recommended no change in your disability rating.

2. Pursuant to reference (b), the PDBR reviewed your case and forwarded its recommendation (reference (c)) to the Department of the Navy for appropriate action. The PDBR recommended that you be retired on the Permanent Disability Retired List, effective the date of your discharge, with a 30% disability rating.

3. On 18 November 2010, the Assistant Secretary of the Navy (Manpower & Reserve Affairs) took action on your case. The Secretary did not accept the recommendation of the PDBR and directed that no change be made to the characterization of separation or disability rating previously assigned by the Department of the Navy's Physical Evaluation Board. The Secretary determined your condition was appropriately rated at 10% given your employment history and lack of evidence in the record documenting significant occupation impairment.

4. The Secretary's decision represents final action in your case by the Department of the Navy and is not subject to appeal or further review by the Board for Correction of Naval Records.

Copy to:
 PDBR