RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900099 COMPONENT: ARNG

BOARD DATE: 20090723 SEPARATION DATE: 20050110

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SUMMARY OF CASE: This covered individual (CI) was an NCO medically separated from the Army in 2005 for PTSD and a back condition. The PTSD developed during an OIF mobilization in 2003. The CI was a truck driver engaged in multiple convoy operations with repeated exposures to combat and witness to death and severe trauma. He was treated in Iraq for typical PTSD symptoms, but eventually required medical evacuation from theater. His symptoms improved with outpatient management on medical hold after return, but remained severe enough to prompt a medical board. The CI’s unfitting back pain developed during the OIF tour, without specific trauma. It was treated conservatively, and did not require surgery or other interventions. He was referred to the PEB, found unfit for both conditions and separated at 20% combined disability.

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CI CONTENTION: The CI makes an open-ended contention for review of his case.

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service (PEB)** | | | | **VA ~ 3 Mos.** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| PTSD | 9411 | 10% | 20041129 | Depressive Disorder (Also claimed as PTSD)**\*** | 9440 | 30% | 20050412 | 20050111 |
| Chronic Low Back Pain | 5299-5237 | 10% | 20041129 | Lumbar Strain | 5237 | 10% | 20050412 | 20050111 |
| Chronic Neck Pain | Fit |  | 20041129 | Cervical Strain | 5237 | 10% | 20050412 | 20050111 |
| Chronic Knee Pain | Fit |  | 20041129 | PTS R Knee (early DJD)  PTS L Knee (early DJD) | 5260-5010 | 10%  10% | 20050412 | 20050111 |
| Hypertension | Fit |  | 20041129 | Hypertensive Heart Disease (Claimed as chest pain) | 7007 | 30% | 20050412 | 20050111 |
| Hearing Loss | Fit |  | 20041129 | Hearing Loss | 6100 | 0% | 20050412 | 20050111 |
| Varicocele | Fit |  | 20041129 | Varicocele | NSC |  | 20050412 | 20050111 |
|  |  |  |  | Non-PEB X 1 (Tinnitus) | 6260 | 10% | 20050412 | 20050111 |
| **TOTAL Combined: 20 %** | | | | **TOTAL Combined (*incl non-PEB Dxs*): 70%** | | | | |

**\*** Changed to PTSD 9411 after submission of evidence.

ANALYSIS SUMMARY:

PTSD. PDBR retroactive adherence to §4.129 makes rating at separation moot, but it would be difficult to defend a 10% rating independently. There was compromise of domestic relationships and accommodation for limiting work hours. Although his full VA rating exam was at about 3 months after separation, there are 3 detailed mental health clinical encounters around the 6 month point. These provide a good data base for a six-month permanent rating recommendation. At six months, the following facts are documented. The CI was fairly high functioning (state trooper), but noted difficulty with exposure to trauma and adherence to the training and rigorous requirements of the job. He was pursuing different employment and had been rejected for promotion. He was separated from his wife and unable to establish a desired closer relationship with his daughters. He was on three psychoactive medications, including a sleep aid. He had intermittent difficulty with sleep, trouble concentrating, hypervigilance, depression, panic attacks (frequency not specified) and anxiety. He suffered violent impulses, but had no lapses in controlling them. There was no suicidal ideation. Daily activities were not compromised; he maintained a neat, groomed appearance. There was no drug or alcohol abuse. The CI meets the general functional description for the 30% rating by the general formula. He displayed 5 of the 6 collateral symptoms specified under that rating. There was no evidence of the reduced reliability and productivity associated with a 50% rating and he displayed only 2 of the 9 collateral symptoms specified under that rating. The 10% rating confines to mild, transient symptoms precipitated by stress; a threshold clearly exceeded by the CI. The VA rated him 30%, and that rating has stood over time.

Low Back Pain. The MEB exam noted 70⁰ thoracolumbar flexion with documentation that movement was limited by pain. A full set of measurements for total range-of-motion (ROM) was not specified. The examiner did note ‘slight loss of lumbar lordosis’. The VA examination, 4 months after separation, documented 90⁰ of flexion and 170⁰ total ROM. Both the MEB and VA goniometric exams are appropriately rated at 10% IAW §4.71a, although the lordosis notation in the MEB exam can be argued as a basis for a 20% rating under the general spine formula. Lordosis was not noted on other entries in the service record, and was not present on the VA rating examination.

Consideration for Additional Unfitting Conditions. There are 5 other conditions forwarded as medically acceptable by the MEB and adjudicated as fit by the PEB. The only ones meriting a second look for fitness determination were the cervical and knee conditions. The neck pain began in OIF, was not associated with radicular pain and displayed normal ROM on the MEB and VA exams. There is no mention of flak or kevlar restrictions in profiles (all were U1). The knee conditions were diagnosed as tendinitis by the MEB examiner. Normal ROM’s are documented. No profiles mention squatting or kneeling. Hearing loss is profiled higher than MOS requirement, but is associated with a 0% rating of no benefit to the CI.

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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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. Regarding PTSD, the rating at separation was clearly lower than the default 50%. The severity at 6 months, as documented above, was easily consistent with the VA rating of 30% IAW §4.130. The Board unanimously accepted this as the permanent rating recommendation. Regarding the chronic back pain, consideration was given to assigning a 20% rating based on lordosis. It was agreed that there was not enough probative value in a single exam note to justify the higher rating, since lordosis was not severe or consistent. The Board unanimously recommended retaining the 10% rating assigned by the PEB. As discussed above, the board also unanimously agreed that none of the CI’s additional conditions merited a recommendation opposed to the PEB’s determinations.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows; TDRL at 60% for 6 months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then a permanent combined 40% disability retirement as below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| POST-TRAUMATIC STRESS DISORDER | 9411 | 50% | 30% |
| CHRONIC LOW BACK PAIN | 5237 | 10% | 10% |
| **COMBINED** | **60%** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090131, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

