RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: USMC

CASE NUMBER: PD0900191 BOARD DATE: 20100624

SEPARATION DATE: 20050930

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This Covered Individual (CI) was a LCpl/E-3 Aviation Maintenance Administration Clerk (MOS 6046), separated from the Marine Corps Reserve in 2005 after 2 years, 7 months of military service. The medical basis for separation was the “Overall Effect” of three psychiatric diagnoses (Post-traumatic Stress Disorder (PTSD), Adjustment Disorder, & Personality Disorder). The Navy Informal Physical Evaluation Board (IPEB) determined that each of the three psychiatric disorders was not separately unfitting, but in combination, the “Overall Effect” of PTSD, Adjustment Disorder, and Personality Disorder rendered the CI unfit for continued military service. She was separated at 0% using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Navy and DoD regulations.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI’s CONTENTION (20090222): The CI states: “After review of my disability by the Department of Veterans Affairs I was rated at 50% for my unfitting condition and 70% overall for a combined rating.”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB 20050721** | | | | **VA (3 Mo. after Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| PTSD, Adjustment Disorder, & Personality Disorder not otherwise specified |  | 0% | 20050721 | PTSD | 9411 | 50% | 20060103 | 20051001 |
| Hearing Loss (CAT III) |  |  | 20050721 | Hearing Loss | NSC | N/A | N/A | N/A |
|  |  |  |  | Asthma | 6602 | 30% | 20060103 | 20051001 |
|  |  |  |  | Right Shin Splint | 5299  5262 | 0% | 20060103 | 20051001 |
|  |  |  |  | Left Shin Splint | 5299  5262 | 0% | 20060103 | 20051001 |
|  |  |  |  | Eczema of Feet & Hands | 7806 | 0% | 20060103 | 20051001 |
|  |  |  |  | deferred X 3 | N/A | N/A | N/A | N/A |
| **TOTAL Combined: 0%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **70% from 20051001** | | | | |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY:

Psychiatric Condition - CI deployed to Iraq in February 2004. Two months later while running with her friend, they suffered a mortar attack and her friend’s arm was severely damaged. The CI suffered hearing loss from the attack, but had no other apparent physical injuries. Following the attack, CI began having problems with crying spells, insomnia, nightmares, and intrusive thoughts. After she returned to CONUS, she started having more difficulties. She got into disciplinary trouble for underage drinking, alteration of her military ID card, failing to attend a mandatory function, and for alleged sexual misconduct. In December 2004 she began receiving care from Mental Health Services at Camp Pendleton, and she was started on medication for PTSD symptoms. On 20050201, CI was examined by a Navy Psychiatrist (Dr. S). He described her as manipulative, impulsive, and failing to take responsibility. He said she was physically fit for full duty, but unsuitable for ongoing military service in the Marine Corps. He diagnosed Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, & Personality Disorder-not otherwise specified (NOS). She had no medically boardable conditions, and he recommended Administrative Separation. The following month (March 2005), Medical Evaluation Board (MEB) action was initiated. A psychiatric Narrative Summary (NARSUM) was completed by Dr. F. CI was suffering from insomnia, recurrent thoughts and nightmares related to the mortar incident. CI complained that she was unable to enjoy fireworks. She reported difficulty completing tasks, and being easily distracted. Dr. F. determined that her Global Assessment of Functioning (GAF) score was 55 and the diagnosis was PTSD. He made no mention of her other two Psychiatric Disorders. The MEB referred CI to the Physical Evaluation Board (PEB). The PEB considered the evidence from both Psychiatric evaluations. They determined that none of her conditions were separately unfitting. However, the Overall Effect of her three psychiatric diagnoses made her unfit for military service. She was separated at 0%. Three (3) months following separation, she went to the VA and was rated at 50% for PTSD.

The Board carefully reviewed all evidentiary information available. The Board discussed her three primary Mental Health diagnoses, all of which were considered by the Navy IPEB to be not separately unfitting: PTSD, Adjustment Disorder, and Personality Disorder not otherwise specified. The Board also discussed CI’s anxiety, depression, insomnia, and other acute reactions to stress, as well as her difficulties with attention, distractibility, and task completion. IAW VASRD §4.129, when a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the veteran’s release from active military service, the rating agency shall assign an evaluation of not less than 50 percent. The Board unanimously recommends an initial 50% rating for PTSD in retroactive compliance with VASRD §4.129. The permanent PTSD rating should be based on the CI’s level of functioning six months following separation. An exam was not performed right at the six (6) month point (30 Mar 2006), therefore the Board must use the best evidence available. Treatment records from the Washington DC VA Medical Center show that CI was seen by multiple examiners during January 2006, approximately two months after separation. At that time, she reported symptoms of insomnia, nightmares, hypervigilance, increased startle response, intrusive thoughts, guilt, and inability to concentrate. She enrolled at Montgomery Community College, and had recently quit her job as a personal trainer, due to problems getting along with others. On exam, CI was alert and oriented, with no impairment of thought processes, no hallucinations or delusions, and no suicidal or homicidal ideation. All three of the VA Mental Health examiners agreed that CI was suffering from symptoms of PTSD. The level of her social and occupational impairment was described as moderate. GAF scores from the three evaluations were 60, 60, and 48. In determining the CI’s permanent PTSD rating, the Board carefully considered the results of the January 2006 Psychiatric assessments. The Board determined that, although CI was generally functioning satisfactorily (with routine behavior and self-care), her symptoms caused a moderate degree of social impairment with occasional decreases in efficiency and intermittent periods of inability to perform certain tasks. The Board unanimously recommends a permanent PTSD rating of 30%. It should be noted that reasonable doubt did exist in the mind of one Board member, who felt that a lower rating (10%) might be appropriate. However, after considerable discussion and lengthy deliberation, reasonable doubt has been resolved in favor of the CI (IAW VASRD §4.3).

Hearing Loss - As mentioned above, the mortar attack in Iraq (20040404) caused CI to lose hearing. On the Post-deployment Health Assessment (20040807), she did not report hearing loss, and she denied ringing of the ears. The IPEB determined that her degree of Hearing Loss was Category III (condition not unfitting, and did not contribute to any unfitting condition). When CI claimed Hearing Loss with the VA, a Hearing Evaluation was done (20060103). It showed normal hearing bilaterally, with excellent speech recognition. Service connection for Hearing Loss was denied. The Board has unanimously determined that Hearing Loss was not unfitting at the time of separation.

Asthma:- Treatment Records show that CI was diagnosed with probable asthma by Dr. G. (Windber, PA). He started treating her with Advair and she reported that it had helped significantly. There was no mention of Asthma in the MEB/PEB proceedings. After separation, Asthma was rated at 30% by the VA. The Board has unanimously determined that Asthma was not included in the Disability Evaluation System (DES) package, and therefore outside the scope of the Board.

History of Other Conditions (documented in DES package): Ear problems/ear infections, Bronchitis, Defective visual acuity, status post Lasik surgery, Eczema, Headaches, Ear trauma (age 15), and Spider bite were all discussed and considered by the Board. There is no clearly documented evidence that any of these conditions caused a significant adverse effect on the performance of required military duties. These other conditions are all judged by the Board to be not unfitting at the time of separation from service, and are not relevant for disability rating. The Board therefore has no reasonable basis for recommending any additional unfitting conditions.

History of Other Conditions (not documented in DES package) -

Shin splints (bilateral) were also considered by the Board. There is no clearly documented evidence that this condition was a matter of record in the DES package. Therefore, this condition is judged to be outside the scope of this Board.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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. Furthermore, PEB reliance on SecNavInst 1850.4e was operant in this case, and the CI’s conditions were adjudicated independently of that instruction by the Board.

In the matter of the Mental Disorder (coded 9411-9440), the Board unanimously recommends an initial Temporary Disability Retired List (TDRL) rating of 50%, in retroactive compliance with VASRD §4.129, as directed by DoD. The Board unanimously recommends a permanent rating of 30% at six months following separation, IAW VASRD §4.130. In the matter of the hearing loss, ear problems/ear infections, Bronchitis, defective visual acuity, status post Lasik surgery, Eczema, headaches, ear trauma, spider bite, or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. Asthma and shin splints, rated by the VA, were not mentioned in the DES package and are therefore outside the scope of the Board. The CI retains the right to request her service Board of Correction for Naval Records (BCNR) to consider adding this condition as unfitting.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION:

The Board recommends that the CI’s prior separation be recharacterized to reflect that rather than discharge with severance pay, the CI was placed on the TDRL at 50% for 6 months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then permanently retired by reason of physical disability with a final combined 30% rating as indicated below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| PTSD and Adjustment Disorder | 9411-9440 | 50% | 30% |
| **COMBINED** | **50%** | **30%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090222, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 8 Jul10

1. I have reviewed the subject case pursuant to reference (a). The subject member’s official records are to be corrected to reflect the following disposition:

a. Separation from the naval service due to physical disability with placement on the Temporary Disability Retired List with a disability rating of 50 percent for the period 30 September 2005 thru 31 March 2006.

b. Final separation from naval service due to physical disability effective 1 April 2006 with a disability rating of 10 percent and entitlement to disability severance pay.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid funds if appropriate, and notification to the subject member once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)