RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900192 BOARD DATE: 20100414

SEPARATION DATE: 20021205

19980101 entered TDRL

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SUMMARY OF CASE: This covered individual (CI) was a Petty Officer/E-5 medically separated from the Navy in 2002 after more than nine (9) years of service. The medical basis for the separation was Major Depressive Disorder (Severe without Psychotic Features, Chronic).

Initially Post-Traumatic Stress Disorder (PTSD) was determined to be medically unfitting and Major Depressive Disorder (MDD) was determined to be a Category II condition (not separately unfitting, but contributing to the PTSD). The CI was referred to the PEB, found unfit for the PTSD condition and placed on the Temporary Disability Retirement List (TDRL) in 1998 with a rating of 30%. She had periodic re-examinations in 1999, 2001, and 2002. After the first two evaluations she was continued on the TDRL. In 2002 the Physical Evaluation Board (PEB) determined she was unfit for continued naval service secondary to Major Depressive Disorder. The PTSD was now considered a Category II condition. She was then separated with a 10% disability 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: “When I was finally discharged in December 2002, I was already 70% disabled from the VA, from the same conditions I was given a 10% disability from the Navy”.

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (3 Mo. after Separation)** | | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Post Traumatic Stress Disorder (PTSD) | 9411 | 30% (TDRL)  Then CAT II | 19971031  20021010 | PTSD with Major Depression | 9411 | 70% | 20010227  20061108  20080819 | 20001229 |
| Major Depressive Disorder | CAT II  9434 | TDRL  Then 10% | 19971031  20021010 |  |  |  |  |  |
| Hyperthyroidism | CAT III  CAT III | PEB 19971126 (TDRL)  Then  PEB 20021010 | | Hypothyroid | 7903 | 10% | 20080506 | 20070724 |
| Asthma | CAT III  CAT III | PEB 19971127 (TRDL)  Then  PEB 20021010 | |  |  |  |  |  |
|  |  |  | |  |  |  |  |  |
| Degenerative Disc Disease Lumbar and Cervical Areas | CAT III | PEB 20021010 | |  |  |  |  |  |
| Post Menopausal S/P Hysterectomy | CAT III | PEB 20021010 | |  |  |  |  |  |
|  |  | Not in DES | | Status Post Nasal Septoplasty with Sinusitis (Formerly coded under 6511) | 6513 | 10% | 20061108  20070525 | 20001229 |
|  |  | Not in DES | | Temporomandibular Joint Syndrome Disorder (TMJ) of the Right | 9905 | 0% | 20081022 | 20001229 |
|  |  | Not in DES | | Severe Obstructive Sleep Apnea (Claimed as Secondary to Service-connected S/P Nasal Septoplasty with Sinusitus) | 6847 | 50% | 20081022 | 20070710 |
|  |  |  | | 8 X Conditions NSC | NSC | | | |
| **TOTAL Combined: 30% (TDRL) then 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **70% from 20001229**  **90% from 20070710** | | | | |

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ANALYSIS SUMMARY:

Timeline:

* AD from 19880125 to 19980101
* Narrative Summary (NARSUM) 19970731 and Informal PEB 19971031; GAF 55
* TDRL entered 19980101 with 30% for PTSD, MDD not unfitting
* 1st TDRL Evaluation 19990917, continue TDRL; GAF 50-60
* VA Compensation and Pension (C&P) 20010227 and initial VARD 20010817 70% PTSD with Depression effective 20001229; GAF around 45
* 2nd TDRL Evaluation 20010403, Continue TDRL; GAF 68
* 3rd TDRL Evaluation 20020903; GAF 65
* IPEB 20021010: Separated at 10% for Major Depression
* VARD 20030218 continue 70% for PTSD with Depression, was improved but “sustained improvement not shown”
* 20021205 discharged with 10% for Major Depressive Disorder, PTSD not unfitting
* VA C&P 20061108 and VARD 20070711 continue 70% PTSD with Depression; GAF 45
* VA C&P 20080819 and 20081022 and VARD 20081113 continue 70% PTSD with Depression; GAF 60

Mental Illness (PTSD and Depression)

The CI developed Post-Traumatic Stress Disorder (PTSD) and Major Depression after sexual trauma. A Medical Evaluation Board (MEB) was done and in 1997 the Physical Evaluation Board (PEB) determined she should enter the TDRL with a rating of 30%. It is not clear why she entered the TDRL instead of being separated. During the time on TDRL, the CI underwent three TDRL evaluations in September 1999, April 2001, and September 2002. She had an initial VA C&P examination in February 2001. She was separated from the TDRL in December 2002 with a rating of 10%. She also had three subsequent VA C&P examinations in November 2006 and August and October 2008.

The CI continued to have moderate symptoms throughout the entire TDRL period of almost five years and these symptoms continued through the VA C&P evaluation in October 2008. The CI’s functional limitations were essentially the same from the time she entered the TDRL in January 1998 until the time she was permanently separated from service in December 2002. Her symptoms waxed and waned over time but never became severe enough to warrant a 50% rating or improved enough to warrant a 10% rating. She was on medication at every evaluation performed by the VA and the Navy except for her third TDRL evaluation. She appears to have been between providers and her condition at the time warranted the use of medications. Her records show she resumed the use of medication soon after that evaluation.

The CI worked full time as a data analyst for the Army throughout her time on TDRL and at least until her VA C&P examination in October 2008. She also at times worked part time as manager at Denny’s or attended graduate school. She was able to work but her job does not appear to have been very demanding. She had periods of decreased functioning with inattention to hygiene and difficulty getting out of bed to go to work. It appears her daughter provided support during these times. The treatment records also document multiple episodes of inability to pay bills and the requirement of various types of social service assistance. While is it not clear how well the CI performed occupationally or academically, the fact that she remained employed (with periods of two jobs and one job in conjunction with graduate school) would preclude a rating of 50% or greater.

She had no apparent social relationships or hobbies, work and caring for her daughter appear to have been the limit of her capabilities. She had continued symptoms of both PTSD and depression the entire time on TDRL, and was later diagnosed as bipolar. No personality disorder was ever diagnosed.

Her overall function appears to have been at 30% level, although occasionally worse. The third TDRL evaluation appears to show her at her top end of functioning, but her condition at that time still easily meets the 30% criteria with continued symptoms of PTSD and depression. She demonstrated occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, persistent fear, nightmares, flashbacks, chronic sleep impairment, difficulty concentrating, intermittent suicidal ideation, occasional homicidal ideation, avoidance of any social interaction, marked apathy, fatigue, and exaggerated startle response.

Other Conditions

Hyperthyroidism, Asthma, Degenerative Disc Disease Lumbar and Cervical Areas and Post Menopausal S/P Hysterectomy: None of these conditions interfered with the satisfactory performance of the CI’s required duties and no limitations are attributable to these conditions.

Other Conditions Not in the Disability Evaluation System (DES) Packet

Status Post Nasal Septoplasty with Sinusitis, Temporomandibular Joint Syndrome Disorder (TMJ) of the Right, and Severe Obstructive Sleep Apnea.

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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. After careful consideration of all available information the Board unanimously determined that the CI’s condition is most appropriately rated at an initial TDRL rating of 50% for the first six months of the CI’s prior TDRL in compliance with VASRD §4.129 that was in effect at the time of separation; and a 30% permanent rating after the termination of her TDRL IAW VASRD §4.130 General Rating Formula for Mental Disorders.

The VASRD General Rating Formula for Mental Disorders is used to assign disability ratings based on functional occupational and social impairment caused by psychiatric symptoms. Even if more than one mental disorder is present, only one rating is used and it is based on the overall level of functional impairment. The CI entered the TDRL with a diagnosis of PTSD and VASRD §4.129 states that 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 and schedule an examination within the six month period following the veteran’s discharge to determine whether a change in evaluation is warranted. Therefore a minimum rating of 50% must be applied initially. The CI’s first TDRL evaluation was done in September 1999, twenty months after her entry into the TDRL. Her functional impairment warranted a 30% rating at the time of her entrance into TDRL and at her first TDRL evaluation. Therefore, although an initial 50% rating should be applied based on §4.129, the rating should be decreased to 30% after six months. The CI’s condition warranted no less than a 30% rating throughout the entire TDRL period and also for more than five years beyond her permanent separation in 2002. The CI continued to have moderate psychiatric symptoms and occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks due to a multitude of moderate psychiatric symptoms. At no point in time were her symptoms documented to be mild or transient nor were they controlled by continuous medication.

The Board also considered Hyperthyroidism, Asthma, Degenerative Disc Disease Lumbar and Cervical Areas, and Post Menopausal S/P Hysterectomy and determined none of these conditions were unfitting at the time of separation from service. None of these conditions interfered with the satisfactory performance of the CI’s required duties and no limitations are attributable to these conditions.

The other diagnoses rated by the VA (Status Post Nasal Septoplasty with Sinusitis, Temporomandibular Joint Syndrome Disorder (TMJ) of the Right, and Severe Obstructive Sleep Apnea) were not mentioned in the Disability Evaluation System (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 these conditions as unfitting.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows; TDRL at 50% for 6 months of the CI’s prior TDRL time (PTSD at minimum of 50% IAW VASRD §4.129) and then a permanent 30% disability retirement.

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| --- | --- | --- | --- |
| UNFITTING CONDITION | VASRD CODE | INITIAL TDRL RATING | PERMANENT  RATING |
| Post-Traumatic Stress Disorder with Major Depression | 9411 | 50% | 30% |
| COMBINED | 50% | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090223, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

XXXXXXXXXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 23 Apr 10

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (enclosure (1)).

2. 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 1 Jan 1998 thru 30 Jun 1998, and a disability rating of 30 percent for the period 1 Jul 1998 thru 4 Dec 2002.

b. Final separation from naval service due to physical disability rated at 30 percent with placement on the Permanent Disability Retired List effective 5 Dec 2002.

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.

Robert T. Cali

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)