RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD0900231 BOARD DATE: 20090708

SEPARATION DATE: 20050209

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SUMMARY OF CASE: This covered individual (CI) was a Technical Sergeant medically separated from the Air Force in 2005 after almost eighteen years of service and seventeen months on the temporary disabled retired list (TDRL).

The CI had some mental health related visits in the 1990s for anger management and stress management classes as well as part of a comprehensive work-up for premature ejaculation. However, he did not have a significant mental health problem until he deployed to southwest Asia in May 2002. While deployed he learned his wife was having an affair and he experienced both suicidal and homicidal ideations. He was evacuated to Germany for inpatient psychiatric care and was then sent back to CONUS. He was admitted to the Tucson VA hospital for inpatient psychiatric care and was readmitted to Wilford Hall psychiatric ward five days after he was discharged from the VA hospital. He was discharged two weeks later and continued to be seen in the mental health clinic regularly until he was placed on the TDRL at the end of September 2003. He was re-evaluated in November 2004 and it was determined that despite appropriate treatment he continued to have significant mental health problems that interfered with his ability to perform his job.

He was referred to the Air Force Physical Evaluation Board (PEB) and this board determined he was unfit for continued military service. He was then separated with a 10% disability for 9434 Major depression, social and industrial adaptability definite using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations. The PEB rated his disability at 30% and deducted 20% for aggravating/contributory factors of non-compliance and severe personality disorder. The PEB stated the CI waited five months after entering TDRL before being seen at the VA and that his severe personality disorder (a non-compensable condition) significantly affected his depression.

Using an evaluation completed prior to the time of separation from the Air Force, the Veterans Administration (VA) rated this disability as 9432 Major depression (bipolar disorder) at 50%. The VA also rated degenerative changes in multiple joints at 10% each (thoracolumbar spine, cervical spine, both shoulders, both knees, and left ankle) as well as fracture right 5th rib and residual scar form removal of lipoma each at 0% for an initial combined total of 80%.

The CI contends that he served almost eighteen years and his mental health problems should have been rated to allow for retirement.

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BOARD FINDINGS: IAW DoDI 6040.44, the Board used the Veteran’s Affairs Schedule of Rating Disabilities (VASRD) as the most favorable basis for rating. After careful consideration of all available information, the Board concluded by simple majority that the CI’s condition is appropriately rated at a 50% for 9434 Major depression using the VASRD general rating formula for mental illness.

The CI has difficulty in establishing and maintaining effective work and personal relationships and has reduced reliability and productivity due to impaired judgment and severe disturbances of mood. The Commander’s letter states his mood swings interfere with his ability to interact effectively with both subordinates and customers. He has continued to have marital difficulties. His repeated physical injuries, almost all related to playing sports appear to be related to the CI’s mental illness as evidence of impaired judgment and excessive risk taking behaviors.

The PEB deducted for both personality disorder and non-compliance during his time on the TDRL but his board determined that neither deduction is warranted. The CI did have a personality disorder but it was present the entire time he was on active duty. He had successfully served on active duty for approximately 16 years before he had any problems with performing his duties secondary to mental illness. The Air Force mental health evaluations state his personality disorder started during adolescence, existed prior to service, and was not service aggravated. So we can assume his personality disorder did not become more severe with time. If he was able to successfully serve for over sixteen years with his personality disorder it is inappropriate to use this disorder as an aggravating or contributory factor to deduct from his rating for depression. While the personality disorder may have contributed to his judgment impairment, it does not affect mood. There is no way to determine what portion of his impaired judgment could be attributed to his personality disorder and what part should be attributed to his depression so a deduction should not be made secondary to the personality disorder. Additionally, the VA compensation and evaluation exam did not list a personality disorder as a diagnosis. The VA examiner diagnosed bipolar disorder not major depression and with the benefit of hindsight, this diagnosis appears to be correct.

The PEB also deducted for noncompliance stating he did not seek care for five months after entering TDRL with a warning from the PEB that noncompliance would be cause for later deduction. However, he filed his VA claim 1 week prior to his separation and this claim along with an initial psychiatric evaluation is required before service connection can be determined. If mental illness is present and service connected, a veteran may then seek care for this condition form the VA. Claims can take over 12 months; however, claims filed while still on active duty tend to be processed more quickly. The CI’s first appointment at the VA was actually only three months after his entrance into TDRL and this does not seem like an unreasonable delay. It may have taken this long to get an appointment. There is no evidence the CI was noncompliant; although he did miss some appointments while on active duty, he kept almost all of them and was seen regularly during his active duty time and during his time on the TDRL. It appears unreasonable to deduct for noncompliance.

The Board also examined each of the other conditions rated by the VA and did not find any to be unfitting. The many joints with degenerative changes did not interfere with the CI’s performance of his duties.

The single voter for dissent (agreeing that no deduction was warranted but believing the CI’s disability is appropriately rated at 30%) elected not to submit a minority opinion.

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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 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 | 50% |
| Combined | 50% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090302, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

PDBR PD-2009-00231

**CORRECTED DIRECTIVE**

**DEPARTMENT OF THE AIR FORCE**

**WASHINGTON, DC**

MEMORANDUM FOR THE CHIEF OF STAFF

. Having received and considered the recommendation of.the Physical DisabilitY Board of .

Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) and.

Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:'

The pertinent military records of the Department of the Air Force relating to XXXXXXX be corrected to show that:

a. The diagnosis in his finding of unfitness for major depressive disorder, VASRD code

9434, was rated at 50% rather, than 10%.

b. On 9 February 2005 he was not removed from the Temporary Disability Retired List "

and discharged with severance pay, but on that date he was permanently disability retired