RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900255 COMPONENT: regular

BOARD DATE: 20090708 SEPARATION DATE: 20070124

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SUMMARY OF CASE: This covered individual (CI) was a SSG Cavalry Scout medically separated from the Army in 2007 after over 7 years of service. The medical basis for the separation was Post Traumatic Stress Disorder (PTSD). CI had multiple combat stressor events in the AOR. CI was hospitalized for 1.5 months and treatment decreased, but did not resolve, CI’s PTSD symptoms. CI was referred to the PEB, found unfit and separated at 10% disability. The VA initially rated CI’s PTSD at 50%, and the 50% rating was reaffirmed on VA follow-up evaluation and rating. The CI contends for a higher rating including rating for sleep apnea (OSA), asthma, ‘Orchidectomy’ (orchiectomy), and addition of post concussive syndrome and traumatic brain injury (TBI) as he had a ruptured ear drum and concussion due to a blast injury in Afghanistan.

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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 Board carefully considered MEB/PEB-listed conditions other than PTSD and depression, along with all other initial VA-rated conditions, and determined that they did not rise to the unfitting level. Despite a comprehensive VA TBI evaluation in Apr-Jun 2008, CI was never diagnosed with TBI and symptoms from that evaluation could not be retrospectively applied to the time of discharge. Board members opined that CI had in-service blast trauma that could have led to TBI, but TBI or post-concussive syndrome symptoms were not noted at the time of service discharge, nor were those conditions mentioned in the DES package, and could therefore not be added as unfitting condition(s). Therefore, no conditions other than PTSD and depression were considered to be unfitting.

The MEB/NARSUM exam for PTSD and depression was independently rated IAW the VASRD; meeting criteria for at least a 30%, and more likely a 50% rating. Although the Action Officer could contend as more likely than not meeting 50%, the Board unanimously voted that IAW §4.129 Mental disorders due to traumatic stress, CI should be placed on TDRL at a 50% rating until a follow-up evaluation ‘within the 6 month period after discharge’. The first PTSD evaluation following discharge was the VA exam of 20070305-08 (2 months post discharge). The VA rated that PTSD exam at 50% by VASRD criteria versus use of §4.129. Independently rating that evaluation’s symptoms more closely approximated the criteria for a 50% evaluation than a 30% evaluation. The VA follow-up PTSD evaluations of Jan-Jun 2008 (1 year post discharge) supported a definitive 50% rating by the Board, and matched the VA 50% PTSD rating. The Board unanimously voted to recommend the permanent disability level for PTSD at 50%.

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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 a period of 6 months (PTSD at 50% IAW §4.129 and DoD direction) and then permanently retired by reason of physical disability with a final 50% rating as indicated below.

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| Unfitting Condition | VASRD Code | TDRL Rating | Permanent  Rating |
| PTSD with depression | 9411 | 50% | 50% |
| COMBINED | 50% | 50% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090324, w/atchs.

Exhibit B. Service Treatment Record.

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

