RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900276 BOARD DATE: 20100325

SEPARATION DATE: 20050202

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SUMMARY OF CASE: This covered individual (CI) was an active duty enlisted soldier (Military Occupational Specialty (MOS) 13B, Cannon Crewmember) medically separated from the Army in 2005 after 3 years of service. The medical basis for the separation was post-traumatic stress disorder (PTSD). He presented to Behavioral Health services in 2004 after a 2003 combat deployment in Kuwait. Criterion A stressors were documented and an Axis I diagnosis of PTSD was confirmed by a psychiatrist. He was managed as an outpatient with individual/group psychotherapy and psychotherapeutic medications. He continued to suffer sleep loss and characteristic PTSD symptoms impairing military performance. He was placed on a permanent P3 profile and underwent a Medical Evaluation Board (MEB). PTSD was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other significant medical conditions were identified by the MEB or forwarded on the DA Form 3947. The CI was determined to be unfit for PTSD which was rated for mild social and industrial impairment, and he was medically separated with a disability rating of 10%.

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CI CONTENTION: The CI states: ‘I was assigned less than 50% disability rating by the military for my unfitting PTSD upon discharge from active duty. The PDBR should assign the highest final disability rating applicable consistent with 38 CFR 4.129 and DOD policy.’ He mentions no additionally contended conditions.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20041129** | | | **VA (3 Mo. after Separation) – All Effective 20050203** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 70% | 20050516 |
| ↓No Additional DA FORM 3947 Entries.↓ | | | Chronic Right Ankle Strain | 5271 | 10% | 20050523 |
| Hypertension | 7101 | 10% | 20050523 |
| Right Shoulder Strain | 5299-5201 | 10% | 20050523 |
| Non-PEB X 1 / NSC X 4 | | |  |
| **TOTAL Combined: 10%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 80%** | | | |

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ANALYSIS SUMMARY:

PTSD. The PEB decision referenced AR 40-501 and applied the language of DoDI 1332.39 in regards to its 10% rating determination for PTSD. This case preceded the promulgation of Veterans Administration Schedule for Rating Disabilities (VASRD) §4.129. IAW DoDI 6040.44 and DOD guidance (which applies current VASRD §4.129 to all Board cases), the Board is obligated to recommend a minimum 50% PTSD rating for a retroactive six month period of Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD §4.130 criteria at six months for its permanent rating recommendation. In this case the most proximate source of evidence on which to base the permanent rating recommendation is the VA psychiatric rating evaluation three months after separation, although the MEB evaluation serves as a reference point and carries relevant probative value.

The psychiatric narrative summary (NARSUM) described mild to moderate PTSD symptoms. The CI had responded to pharmacologic (three psychotherapeutic medications) and outpatient therapy but ‘continued to have insomnia, nightmares, daytime anxiety, and irritability’. Other than an ‘anxious and irritable’ affect, his mental status examination was normal. His impairment for military duty was opined as ‘marked’ and his social and industrial adaptability as ‘mild’ by the MEB psychiatrist. The Commander’s statement notes that he was an ‘adequate soldier’, but noted the limitations of his profile ‘combined with his mental capacity’ as rendering him incapable of performing in his MOS. At the time of separation he was an E-1 reduced from E-4 after a physical assault on an NCO. Although the PEB’s 10% rating could be defended under AR 40-501 and DoDI 1332.39, the Action Officer opines that an appropriate VASRD-based rating at separation would have been 30% (independent of the concession to a §4.129 rating of 50% as discussed above).

The CI’s symptoms at the VA evaluation three months later appear to be somewhat worse, although this may be due to the fact that they were elaborated in more detail than in the NARSUM. He continued to experience daily symptoms of PTSD and stated he was only averaging 3+ hours of sleep nightly. His anxiety level was heightened and he reported ‘daily’ panic attacks. The VA psychiatrist opined a significant element of depression including some vegetative symptoms (psychomotor retardation, fatigue, diminished concentration, decreased appetite). The exam noted ‘auditory hallucinations’ quoting the CI, ‘I still feel like at times I'm talking to my NCO on the radio on my headset.’ The Action Officer believes this to be a speculative basis for diagnosing hallucinations and that psychotic features of any sort are incongruent with the total picture in this case. These additional features were not documented in the service exam or in the service treatment notes. In spite of the additional symptoms, the mental status examination remained normal except for mood described as ‘solemn demeanor’. There was no suicidal ideation or objective cognitive deficits. At the time of the VA evaluation the CI was prescribed two psychotherapeutic medications. His social and recreational life was constricted, but he was not totally isolated. His marriage was intact. The Global Assessment of Functioning (GAF) score was 49, reflecting moderate to severe impairment. The VA psychiatrist stated that the GAF score was lowered on the basis of the hallucinations noted above. The CI was fully employed as a housekeeping supervisor in a nursing home. The only mental health interference with work activities noted was irritability with co-workers (not associated with physical or verbal outbursts). It was stated specifically that he had not lost any time at work because of the psychiatric condition. It should also be noted that the CI remained employed at the time of his re-evaluation by the VA 16 months after separation. The VA psychiatrist opined that PTSD had a ‘moderate negative impact on his occupational functioning’ and ‘moderate to severe negative impact on his social relationships’. The VA examiner also noted the coexistence of bipolar disorder and referenced a past history of it. The MEB exam listed a diagnosis of panic disorder at the age of 18 as the only past psychiatric history. This raises the question of some non-PTSD contribution to the VASRD rating, although that cannot be confirmed or quantified to an extent that would affect the Board’s recommendation.

The Board directs its attention to the permanent rating recommendation for PTSD. The VA rating decision did not offer a specific rationale for its relatively severe 70% PTSD determination in a fully employed veteran. Typically this rating is applied to unemployed or at least under-employed veterans with a history of psychiatric admissions and more severe symptoms. The 70% rating under §4.130 lists nine features or symptoms as examples for this level of impairment. This case displayed only one, i.e., difficulty in adapting to stressful circumstances. The Board therefore cannot support a recommendation of 70% as per the VA’s determination. It deliberated primarily between the 50% and 30% rating descriptions in §4.130. Although at the time of the VA rating examination there was not convincing ‘reduced reliability and productivity’ for the occupational impairment as described for the 50% rating, there was considerably more social impairment. As noted above for the 70% rating, the 50% rating lists nine examples of symptoms. Of these, five were documented features of the CI’s history. The CI’s case would easily meet the 30% rating description, even before the probable worsening after separation. After due deliberation, the Board agreed that there was enough reasonable doubt in favor of the CI to support a recommendation of 50% as the permanent PTSD disability rating in this case.

Other Conditions. The NARSUM did not document any additional medical conditions and none were forwarded for PEB adjudication on the DA Form 3947. The only other conditions mentioned in the MEB physical exam were a history of a broken toe and history of pilonidal cyst related by the CI. Neither was under active treatment at the time of separation. The toe condition received a non-compensable rating by the VA and the pilonidal cyst was not coded. Although it was not identified specifically in the NARSUM, there is evidence that the CI was being treated for borderline hypertension in the service. This received a 10% rating from the VA, but asymptomatic uncomplicated hypertension cannot be linked to fitness for additional rating at separation. There were no additional conditions noted in the Commander’s statement or in the physical profile. Right ankle and right shoulder conditions were rated by the VA at separation, but the Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the Disability Evaluation System (DES). The ankle and shoulder conditions and any contended conditions not covered above remain eligible for Army Board for Correction of Military Records (ABMCR) consideration.

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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. As discussed above, PEB reliance on AR 40-501 and by extension DoDI 1332.39 for rating PTSD was operant in this case and the condition was adjudicated independently of that regulation and instruction by the Board. In the matter of the PTSD condition, the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed; and a 50% permanent rating at 6 months IAW VASRD §4.130. In the matter of the toe fracture, pilonidal cyst 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.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows; 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 a permanent 50% disability retirement as below.

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Post-Traumatic Stress Disorder | 9411 | 50% | 50% |
| **COMBINED** | **50%** | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090331, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

