RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD200900293 SEPARATION DATE: 20020514

BOARD DATE: 20110309

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

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty E-6/IC1 (Interior Communications Electrician) medically separated from the Navy in May 2002 after 12 years of active service. The medical basis for the separation was mood disorder (major depression, without psychotic features) due to multiple medical conditions with associated posttraumatic stress disorder (PTSD). CI was referred to mental health in December 2000 for evaluation and treatment of anxiety and depressive symptoms associated with complaints of chronic abdominal pain following recent surgery. Her chronic abdominal pain was further complicated by additional surgery for a pancreatic mass in July 2001. Her symptoms of depression, initially diagnosed as adjustment disorder, persisted complicated by the development of new onset PTSD symptoms relating to a childhood traumatic event. Her depression did not respond adequately to treatment to enable performance of duty within her military occupational specialty (MOS) and underwent a Medical Evaluation Board (MEB). Mood disorder (major depression, without psychotic features) due to multiple medical conditions was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. PTSD was associated with mood disorder. Adjustment disorder itself is considered an unsuiting condition that is usually not ratable; however, no deductions were made by the PEB. Four other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The informal PEB (IPEB) adjudicated the mood disorder (major depression, without psychotic features) due to multiple medical conditions as the single unfitting condition, rated 10%; with application of the SECNAVINST 1850.4E and DoDI 1332.39. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: CI requests a higher military disability rating for her unfitting mood disorder with the addition of all of her service connected conditions to her separation rating. In addition to major depression with anxiety disorder and PTSD, she cites continuous problems with her stomach, pancreatic tumor status post partial pancreatecomy with splenectomy and removal of ribs, laparscopic Nissen fundoplication surgery (“stomach reroute”), constipation, diarrhea, pain, and increased blood pressure. She states she has been diagnosed with diabetes since separation related to her pancreas surgery, and cites worsening of her conditions since discharge as a further basis for rating increase.

“Member was separated with 10% disability for major depression and anxiety disorders all due to PTSD from removal of ribs, spleen and part of her pancreas resulting from tumors. Since then member has had excessive depression, anxiety, and continuous problems with her stomach. Since her discharged with major depression, anxiety, & various stomach problems, member has had many problems contributing to all service connected situations. Member now has been diagnosed with diabetes which could be a major contributing factor for removal of her pancreas (part) and spleen. Member was devastated by the removal of her pancrectomy, splenectomy, stomach reroute and many other medical issues contributing to her prior and recent conditions. Currently, VA rating is 100% due to continued major depression, anxiety, pain, stomach problems constipation, diarrhea, increase blood pressure, blood sugar levels due to diabetes. Service member has had part of her pancreas removed, spleen and stomach reroute from hernia contributing to service connection. All problems occurred while in military. Member was discharged with 10% rating after major surgery as indicated above. After surgery of pancreatomy, spleenectomy, stomach reroute lap Nissen fundoplication surgery, service member went into a depression, anxiety and has never recovered. Medical problems have increased since discharge adding increase problems from service connected problems. Member has been diagnosed with Diabetes from pancreas”.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20020201** | | | **VA (7 Mos. Prior to Separation) – All Effective 20020515** | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | | **Rating** | **Exam** |
| Mood Disorder Condition… | 9435 | 10% | Major Depression Condition… | 9434 | | 100% | 20011013 STR  VTR |
| PTSD | Cat II | |
| Adjustment D/O Condition… | Not Unfitting | |
| Pancreas Condition… | Not Unfitting | | Distal Pancreatectomy… | 7347-7346 | | 60% | 20011017 |
| Splenectomy | 7706 | | 20% | 20011017 |
| Scars, Abdominal Surgery | 7804 | | 10% | 20011017 |
| Uterine Fibroids | Not Unfitting | | Endometriosis with Fibroid Tumor | 7629 | | 10% | STR  VA Tx: Aug-Dec 02 |
| Seasonal Allergic Rhinitis | Not Unfitting | | Maxillary Sinusitis and Rhinitis | 6513 | | 0% | 20011017 |
| Chronic Anosmia | Not Unfitting | | No VA Entry. | | | | 20011017 |
| ↓No Additional MEB/PEB Entries↓ | | | Cervical Spine Strain w/ DDD… | 5290 | | 20% | 20031015 |
| Thoracic & Lumbar Spine… | 5295-5292 | | 10% | 20011017 |
| Asthma & Bronchitis | 6602 | | 10% | 20011017 |
| Neck and Shoulder Condition… | 5290 | 20% | | VA Tx: Aug-Dec 02 |
| 0% X 6/Not Service Connected X 1 | | | | 2011017 |
| **Final Combined: 10%** | | | **Total Combined: 100%** | | | | |

ANALYSIS SUMMARY: CI requests that all of her service connected conditions be considered for military service disability rating. The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that her service-incurred conditions have had on her quality of life. However, the military Services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation, and not based on possible future changes. The Veterans’ Affairs (VA), however, can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations compared to Veterans’ Administration Schedule for Rating and Disabilities (VASRD) standards, as well as the fairness of PEB fitness adjudications. Furthermore, a ‘crystal ball’ requirement is not imposed on the service PEBs by the Board; and, the 12-month window specified in DoDI 6040.44 is appropriate for rating comparisons, but not for new developments after separation.

Mental Disorders; Mood Disorder (Major Depression, without Psychotic Features) due to multiple medical conditions; Adjustment Disorder, PTSD, Panic Disorder with Agoraphobia Conditions. The PEB rating, as described above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act 2008 mandate for Department of Defense (DoD) adherence to VASRD. Adjustment disorder is considered an unsuiting condition that is usually not ratable; however, no deductions were made by the PEB. In addition to major depression, CI was also diagnosed with PTSD. PTSD was adjudicated by the PEB as not separately unfitting, but contributing to the symptoms of the primary unfitting major depression.

The Board first addressed if the tenant of §4.129 (Mental disorders due to traumatic stress) were applicable. The Board agreed with the PEB adjudication that, absent the CI’s mood disorder, PTSD would not have been unfitting. The Board also determined that the mood disorder was not due to a “highly stressful event” as used in the VASRD. The Board determined that §4.129 is not applicable.

The Board then considered the most appropriate fit with VASRD §4.130 criteria for its permanent rating recommendation at the time of separation from military service. The most proximate sources of comprehensive evidence on which to base the permanent rating recommendation are the MEB psychiatry narrative summary (NARSUM) and the VA psychiatry compensation and pension (C&P) examination; both performed in October 2001, seven months before separation. There were also service and VA mental health encounter notes around the time of separation available for review. The CI presented for care of worsening symptoms of depression in late 2000, initially diagnosed as adjustment disorder related to medical issues, particularly chronic abdominal pain during the preceding year. She had undergone surgery for a hiatal hernia with gastroesophageal reflux disease (GERD) in March 2000. Post-operatively, she experienced problems with diarrhea, abdominal pain and fatigue. In addition, she had undergone other minor procedures that year, including excision of a lipoma off her back in June 2000 and hemorrhoid surgery in October 2000. Her symptoms of depressed mood worsened leading to diagnosis of major depressive disorder (MDD) related to medical problems.

An MEB was initiated in April 2001; however, evaluation in the Disability Evaluation System (DES) was suspended due to a new medical problem requiring two major abdominal surgeries in July 2001. Recovery from these two major surgeries required a few months, and general surgery progress notes reflected satisfactory progress. The MEB was reconvened in October 2001. The MEB psychiatry NARSUM, seven months before separation, characterized the CI’s depression as severe (DoDI 1332.39 “language” for 70%), although the CI had not been on anti-depressant medication since the time of her surgery three months before. CI reported continued problems with abdominal symptoms, neck pain (diagnosed as myofascial pain syndrome), and distress regarding the loss of control of her health, feelings of betrayal by her body, and disfigurement due to surgical scars.

At the time of the NARSUM, she was experiencing depressed mood, crying spells, anxiety with daily panic attacks, checking behaviors, loss of interest in activities, fatigue, sleep disturbance, loss of appetite, low self esteem, feelings of guilt and hopelessness, and difficulty concentrating. In addition, she had developed symptoms of PTSD related to a childhood trauma including nightmares, hypervigilance, and sensory illusions without hallucinations. On mental status examination, her mood was depressed, with congruent disturbance of affect. She was well-dressed and groomed, but tearful, and demonstrated psychomotor retardation. Cognitive abilities were judged intact, but the CI complained of difficulties with attention and concentration that interfered with occupational functioning. Speech was quiet, but otherwise without noted abnormalities. Thought processes were intact, without signs or symptoms of thought disorder or psychosis. Although previously there was passive suicidal ideation (SI) while hospitalized for the pancreatic surgery, there was no SI at the time of the NARSUM. She reported social withdrawal and difficulties with her relationship with her husband related to intimacy and lack of emotional support from her husband. The examining psychiatrist recorded, “With the re-initiation of fluoxetine, she again noted an improvement in her ability to read and reduction in the frequency of panic attacks to only two or three times a week. She is less easily tearful. Her anxiety symptoms improved in that she has a reduction in frequency and intensity of trapezius muscle spasms and grinding her teeth. Her mind no longer goes blank…At this time, she is able to work only four hours per day due to pain and fatigue.” Psychiatric diagnoses included: major depression, severe, without psychotic features due to multiple medical conditions, PTSD late onset, and adjustment disorder with anxiety. The examiner estimated the Global Assessment of Functioning (GAF) at 41 (serious symptoms, or any serious impairment in social, occupational functioning).

A VA mental health C&P evaluation performed nearly at the same time as the NARSUM, 13 October 2001, documented similar symptoms of depression, although there is no mention of PTSD symptoms or the related childhood trauma (specifically states that she denied symptoms of PTSD or panic disorder). The VA examiner had a similar opinion regarding functioning, assigning a GAF of 45 (serious symptoms), and commenting that the CI was unable to follow complex instructions, interact with co-workers, supervisors, and the general public, or tolerate the stress of a full work day. In the different context of the general medical C&P examination about one week later, the examining C&P physician documented normal mental status, with normal short term and long term memory. The examiner also recorded, “Behavior is normal. Comprehension is normal. The veteran is coherent, and emotional reaction is appropriate. Social and occupational capacity is not restricted. Mentally, the veteran can handle her own funds.” Service mental health clinic encounters leading up to the time of separation and VA mental health clinic encounters in the months following separation reflect generally similar symptoms and impairments in functioning as recorded in the NARSUM and psychiatric C&P evaluation. Records indicate the CI was not employed post-separation, continued ongoing medication and psychotherapy treatment, and that the VA rating for major depression remained at 100% through at least November 2005 when the 9411-9434 100% rating was specifically continued.

The Board directs its attention to its rating recommendations based on the evidence just described. Although CI’s PTSD symptoms were related to childhood trauma, they occurred in association with the dominant primary diagnosis of mood disorder (major depression). Both are considered service connected. Although the initial diagnosis of adjustment disorder was carried over in PEB documentation, the symptoms for which this diagnosis was initially rendered subsequently supported her later diagnosis of the unfitting mood disorder and were subsumed under that unfitting diagnosis. Adjustment disorder itself is considered an unsuiting condition that is usually not ratable; however, no deductions were made by the PEB. The mental health diagnoses are rated together as one condition under the primary diagnosis due to overlapping symptoms and impairments and IAW §4.126, Evaluation of disability from mental disorders. The Board members agreed that the §4.130 criteria for a 30% rating was exceeded and that a 100% rating was not approached. The Board’s deliberations were centered therefore on arguments for a 50% versus 70% permanent rating recommendation. All symptoms from mental disorder conditions were considered without deduction for any not-unfitting condition. It was clear that CI’s depressed mood, anxiety, disturbance in motivation, and subjective complaints of decreased concentration significantly impacted her ability to function. With regard to a 70% evaluation, “occupational and social impairment, with deficiencies in most areas” could be surmised from some of the documented symptoms at the time of the NARSUM and pre-separation C&P examination that reflected impairments in work and mood including the CI’s anxiety and frequent panic attacks, continuous depression affecting her ability to function effectively, and difficulty in adapting to stressful circumstances (including work or a work like setting). The Board noted the absence of symptoms reflecting deficiencies in family relations, judgment, or thinking that would otherwise support a 70% evaluation including suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; and neglect of personal appearance and hygiene. Although the CI’s depression caused social withdrawal and some strain on her marriage, Board members did not conclude the CI was unable to establish and maintain effective relationships at the 70% evaluation level. The NARSUM cited pain and fatigue as reasons she worked a four-hour workday along with frequent medical appointments cited by her commander. There were no details supporting inability to relate to coworkers and supervisors in either the NARSUM or C&P beyond listing her symptoms. The Board also noted the contrasting information in the general medicine C&P examination. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends 50% as the fair permanent separation rating for MDD (with PTSD) in this case.

Other Contended Conditions.

Gastrointestinal and Residuals of Related Surgeries. Hiatal Hernia with GERD Status Post Surgery, Microcystic Adenoma of the Pancreas Status Post Distal Pancreatectomy with Splenectomy and Exploratory Laparotomy with Lysis of Adhesions, Claimed Removal of Ribs, Irritable Bowel Syndrome (IBS), Uterine Fibroids, and Claimed Diabetes Conditions. The CI underwent surgery for a hiatal hernia with GERD in March 2000 (laparoscopic Nissen fundoplication; “stomach reroute”) and experienced problems with diarrhea and abdominal discomfort post-operatively that improved sufficiently for lifting of medical restrictions for duty with regard to the surgery and residual gastrointestinal symptoms. Persisting abdominal complaints prompted further evaluation a year later, and imaging discovered a small mass in the tail of the pancreas. Due to concerns regarding potential cancer, she underwent surgery in July 2001 to remove the involved portion of pancreas and the adjacent spleen. While recovering from this surgery, she required a second surgery due to bowel obstruction related to adhesions. Fortunately, the pancreatic mass was benign; however, recovery from the two major surgeries required several months. General surgery clinic notes in September 2001 reflected satisfactory healing. At the October 2001 general medical VA C&P examination, there was some residual abdominal tenderness on examination. The CI reported a history of intermittent constipation alternating with diarrhea for which she took a fiber supplement. She reported experiencing diarrhea three to four times per week. The examiner concluded with diagnosis of IBS, a common benign condition of altered bowel functioning. The CI also reported intermittent GERD symptoms that had improved since her surgery the year before and was not taking medications for that condition. At the time of a general surgery clinic follow up on 27 February 2002, the surgeon wrote that she was “doing very well in general,” and the recorded weight showed that she had regained lost weight back to her pre-operative level with a normal body mass index (22.5). CI, however, complained of episodic diarrhea following fatty or high sugar meals, resolving after three to four watery stools. She was advised to avoid foods causing her symptoms. There was no documentation referring to any symptoms or impairment due to any removal of ribs (not a routine part of the described surgeries). Following separation, CI continued to seek care for IBS. CI’s pancreatic mass and surgery was considered by the PEB and determined to not be a separately unfitting condition, and was therefore not ratable under the rules of the military disability evaluation system. The other conditions noted above were not referred to the PEB.

The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. Although the CI was unable to perform her duties while recovering from surgery, there is no indication her documented chronic symptoms consistent with IBS and GERD prevented performance of duties. These are common conditions that do not interfere with performance of duties at the level of objective documented symptoms in the CI. Although her depressive symptoms were attributed to her distress regarding her medical problems, the objective documented symptoms following recovery from the last surgery were not unfitting. Her distress and depression, however, were unfitting as previously discussed, and somatic symptom aggravation by depression itself is incorporated into the rating for depression. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the microcystic adenoma of the pancreas, surgically treated or uterine fibroids conditions. After due deliberation and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the above detailed remaining conditions as additionally unfitting for separate rating. With regard to CI’s claim for diabetes developing after separation, this condition was not present prior to separation or mentioned in the DES package. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

Myofascial Pain Syndrome of Neck and Shoulder Conditions. CI experienced chronic neck and shoulder area pain, affecting predominantly the right side, diagnosed as myofascial pain syndrome, a common soft tissue pain syndrome. Documentation reflects onset in 1997 or 1998 and evaluations by appropriate specialties and appropriate imaging, as well as treatment by physical therapy. Posture and developmental kyphosis with lordosis were identified as contributing factors. According to treatment records, CI experienced intermittent daily symptoms lasting 30 to 60 minutes, once or twice daily. At the time of the VA general C&P exam, CI reported limited physical functioning while experiencing symptoms; however, there were no duty limiting profiles and the condition was not referred to the PEB as a potentially unfitting condition. Although her depressive symptoms were attributed to her distress regarding her medical problems, the objective evidence of record regarding her myofascial pain syndrome did not support a separate finding of unfit (the VA provided ratings for several overlapping diagnoses remote from separation). Her distress and depression, however, were unfitting as previously discussed, and somatic symptom aggravation by depression itself is incorporated into the rating for the CI’s unfitting depression. After due deliberation and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the myofascial pain syndrome as additionally unfitting for separation rating.

Remaining Conditions. Other conditions identified in the DES file were chronic anosmia, seasonal allergic rhinitis, asthma and bronchitis, lordosis and kyphosis, anemia, hemorrhoids, and lipoma of back. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were a significant focus of clinical attention during the MEB period, none carried attached profiles, and none were implicated in the commander’s non-medical assessment. These conditions were reviewed by the Action Officer and considered by the Board. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the chronic anosmia condition. It was determined that none could be argued as unfitting and subject to separation rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of any of the other listed conditions as an unfitting condition for separation rating.

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 the DoDI 1332.39 and SECNAVINST 1850.4E for rating major depression was operant in this case and the conditions were adjudicated independently of that policy and regulation by the Board. In the matter of the mental disorder condition (mood disorder [major depression]), due to multiple medical conditions), the Board recommends, by a vote of 2:1, a rating of 50% coded 9435 IAW VASRD §4.130. The single voter for dissent (who recommended a 30% rating) did not elect to submit a minority opinion. In the matter of the microcystic adenoma of the pancreas, surgically treated, uterine fibroids and chronic anosmia conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. In the matter of the gastrointestinal conditions and residuals of related surgeries and myofascial pain syndrome of neck and shoulder conditions 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.

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 permanent disability retirement, effective as of the date of her prior medical separation.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Mood Disorder (Major Depression), due to Multiple Medical Conditions | 9435 | 50% |
| **COMBINED** | **50%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090328, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USN, XXX-XX-XXXX

Ref: (a) PDBR ltr of 17 Mar 11

(b) DoDI 6040.44

1. I have reviewed reference (a) pursuant to reference (b).

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 rated at 50 percent (increased from 10 percent) with placement on the Permanent Disability Retired List effective 14 May 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.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)