RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900377 BOARD DATE: 20100526

SEPARATION DATE: 20061212

TDRL: 20030929

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SUMMARY OF CASE: This covered individual (CI) was a Chief Aviation Maintenance Administrationman placed on Temporary Disability Retired List (TDRL) in 2003 then medically separated from the Navy in 2006 after over 16 years of service. The medical basis for the separation was Major Depressive Episode. After the second periodic TDRL Re-Evaluation, the CI was referred to the Physical Evaluation Board (PEB), determined unfit for the condition, and separated at 0% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

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CI CONTENTION: The CI states: “The rating for my condition that rendered me unfit should be changed because my service connected disability of major depressive disorder was rated by the VA on December 18, 2003 at 30 percent effective September 30, 2003. My first TDRL evaluation found my condition as unfit per VA diagnostic code reference at a disability rating of 30 percent, hence I stayed on the TDRL until my second evaluation where I was found unfit at zero percent effective September 6, 2006 and released from the TDRL as unfit and separated from the naval service with a combined disability rating of zero percent effective December 12, 2006. On the very same day the VA re-evaluated my unfitting service condition and was found to be rated at 30 percent effective December 12, 2006. On February 13, 2006 the VA found my migraine headaches to be rated temporataly [sic] at 50 percent. I was re-evaluated for my migraine headaches with a permanent disability rating at 50 percent effective march 10, 2009. I included the condition for the migraine headaches because I believe this condition contributed to the unfitting condition.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (2 Mo. Pre-Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Major Depressive Episode  Major Depressive Episode (to TDRL) | 9434  9434 | 0%  30% | 20060906  20030325 | Major Depressive Disorder | 9434 | 30%  30%  30% | 20030522  20060829  20090918 | 20030930  20060213 |
| Headaches | Category III: Conditions that are not separately unfitting and do not contribute to the unfitting condition | | 20030325 | Migraine Headaches | 8100 | 0%  50%  50%  50% | 20030522  20060829  20090127  20090903 | 20030930  20060213 |
|  | Not in DES Package | | | Irritable Bowel Syndrome | 7319 | 30%  30%  30% | 20030322  20060829  20090903 | 2003093020060213 |
|  | MEB H&P 20030225 | | | Right Patellofemoral Pain Syndrome | 5260 | 10%  10% | 20030322  20090903 | 20030930  20060213 |
|  | MEB H&P 20030225 | | | Left Patellofemoral Pain Syndrome | 5260 | 10%  10% | 20030322  20090903 | 20030930  20060213 |
|  | MEB H&P 20030225 | | | Left Carpal Tunnel Syndrome | 8515 | 10%  10%  10% | 20030522  20060829  20090903 | 20030930  20060213 |
|  | MEB H&P 20030225 | | | Right Carpal Tunnel Syndrome | 8515 | 10%  10%  10% | 20030522  20060829  20090903 | 20030930  20060213 |
|  | MEB H&P 20030225 | | | Degenerative Disc Disease L5-S1 | 5242 | 0%  10%  40%  40% | 20030322  20080715  20080715  20090903 | 20030930  20070522  20080528 |
|  | MEB H&P 20030225 | | | Residuals of Gallbladder Removal | 7318 | 0%  0% | 20030322  20090903 | 20030930  20060213 |
|  |  | | | 7 Other Conditions NSC | | | | |
| **TOTAL Combined: 0%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **70% from 20030930**  **(Bilateral Factor 3.4% for 8515, 8515, 5260, 5260)**  **90% from 20060213**  **(Bilateral Factor 3.4% for 8515, 8515, 5260, 5260)** | | | | |

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ANALYSIS SUMMARY:

Major Depressive Disorder

The CI was referred to mental health for psychotropic medications evaluation in Jun 2000. She had reported depressed symptoms in an escalating pattern since late March early April 2000 following being placed on report on March 08, 2000 for an incident that happened in February. She was started on Elavil and had temporary mitigation of her headache symptoms, nightmares, and insomnia. Her depression, which she reported was the most serious of her symptoms, continued to worsen despite the Elavil and she attempted suicide by drinking alcohol with the intent of killing herself when she got drunk.

The patient had two psychiatric hospitalizations, the first of two days, the second of eight days. She achieved a significant psychotherapeutic breakthrough as a result of the latter one, helped along considerably by the medication regimen of Nortriptyline 75 mg, Zoloft 100 mg, Trazodone 150 mg and Sonata 10 mg. She was promoted to chief in the course of her treatment, and transferred out of the command where she had experienced her conflicts, and worked for a time at the chaplain's office. Her depressive symptoms abated, she returned to work, and a weaning of some of her medications was started, with the goal of getting them down to a level compatible with sea duty.

At a Limited Duty (LIMDU) Medical Board in March 2001 the CI was well groomed with normal speech and psychomotor activity. Her mood was described as "good" and her affect was euthymic. Her thought processes were normal and her thought content was remarkable for denial of suicidal and homicidal thoughts, and there was no evidence of psychosis. A diagnosis of major Depressive Episode, single episode was made. Additional time on LIMDU was recommended to allow for modification of medication regimen compatible with world wide deployment. The prognosis for return to full duty was considered excellent.

The CI subsequently had a precipitous decline in her mood and was admitted to the hospital after a suicide attempt in December 2001. She had received orders to the USS Nimitz and was having side effects from her medication and had decreased her dose. After this she continued with therapy on the ship and her medication was changed and adjusted. She had a partial response and with accommodation from her command she was able to perform attenuated military duties. However, she followed up with the shore psychiatrist prior to a planned six month deployment feeling depressed and incapable or performing her required duties.

At the time of the 20030224 narrative summary (NARSUM) the CI had already been on LIMDU for depression for sixteen months. The psychiatrist opined that while the CI could benefit from continued treatment on a limited duty status and likely be returned to full duty, she had already been on limited duty for this condition for sixteen months, and was still unfit for full duty. An Informal PEB determined she was unfit. The CI requested a permanent LIMDU but this was denied in June 2003. She was placed on the TDRL with a 30% rating for 9434 Major Depressive Episode on 20030929.

An initial VA Compensation and Pension (C&P) evaluation was done 20030522, two months after the initial NARSUM and four months prior to entering TDRL. It documented a massive improvement with medication and therapy but a continued risk for serious depression. The psychiatrist opined that if she were to stop medication she would slip right back into a deep depression and might require re-hospitalization.

On 20050317 the CI underwent her first TDRL evaluation and was noted to have the same symptoms as documented in the NARSUM of 2003. She was working full time. She had been taking some college classes but she cut back to taking electives only as she felt overwhelmed.

She had her second TDRL evaluation on 20060808 and a follow-up VA C&P evaluation three weeks later. On the TDRL evaluation she denied feeling depressed and her mood was described as very good. While on the VA C&P evaluation she complained of occasional depressed mood, anxiety and a tendency to bite her nails and occasional crying spells. Her mood was reported as mild ongoing depression. The TDRL evaluation concluded her Major Depressive Disorder was in full remission but there was still a significant risk of relapse and the provider recommended another year on TDRL. The VA C&P evaluation concluded she was currently stable. Both evaluations reported she was working at the VA and attending classes but there is no information about the quality of her work or school performance other than the CI’s report at the TDRL evaluation that both were going well.

The Navy PEB determined she was unfit and should be separated at 0% disability as her depression was in remission. The CI requested a reconsideration and asked to be found fit for duty. The Reconsideration PEB determined she was unfit for continued service and she was separated with 0% disability.

It appears that at the time of separation from the TDRL in December 2006, the CI’s depression was controlled with medication and therapy and there was no evidence of any decrease in work efficiency or intermittent periods of inability to perform occupational tasks. People with depression may have periods of time that relatively symptom free intermingled with periods of more severe symptoms. It appears that at the time of the second TDRL and C&P evaluations, the CI’s symptoms were controlled with medication and therapy. The military disability rating must be determined by the CI’s condition at the time of separation from the TDRL and her condition at that time warrants a 10% rating. There was a risk for worsening symptoms and this did occur in 2008. However, these were not present at the time of separation from the TDRL.

The VA continued the 30% rating after the C&P evaluation in 2006 and this is consistent with the policy of not lowering a rating unless there is evidence of sustained improvement. The next C&P evaluation was not done until 20090918 and at that time the CI had had increased symptoms since 2008 and was having some problems with both work and school so the 30% rating was continued at that time.

Migraine Headaches

Headaches were listed as a diagnosis in the medical history of the NARSUM completed 20030224 and determined to be not unfitting by the PEB. The CI was placed on TDRL for depression only. If a condition is not listed on TDRL, no rating can be applied for it when the CI is separated from the TDRL.

There is no evidence this condition was unfitting when the CI entered the TDRL and there were no limitations attributable to this condition that interfered with the CI’s ability to perform the required duties of her rank and specialty. Therefore, this diagnosis was appropriately not a TDRL diagnosis. As the CI was on the TDRL for mental illness only, no rating can be applied for headaches at the time she separated from the TDRL. Only conditions the CI was on the TDRL for can be rated when the CI is separated from the TDRL.

Other Conditions

Bilateral Patellofemoral Pain Syndrome; Bilateral Carpal Tunnel Syndrome; Degenerative Disc Disease L5-S1; Residuals of Gallbladder Removal

None of these conditions were determined by the PEB to be unfitting at the time when the CI entered the TDRL in 2003. There is no evidence that support a change in this determination. None of these conditions required limitations that interfered with the CI’s ability to perform the required duties of her rank and specialty.

Other conditions Not in the Disability Evaluation System (DES) Package: Irritable Bowel Syndrome

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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 as 9434 Major Depressive Disorder at 10% IAW the VASRD General Rating Formula for Mental Disorders.

At the second TDRL evaluation, the CI denied feeling depressed and reported she was performing well both at work and at school. Her depression was determined to be in complete remission. However, the psychiatrist opined she was at significant risk of relapse. At the VA C&P evaluation a few weeks later, she did report some mild, ongoing depression but while this evaluation did include that she was working and attending school it did not include any information about her level of functioning at work or school. There is no evidence that her mental health condition caused any occupational or social impairment at the time of her separation from the TDRL. Nor was there any evidence of a decrease in work efficiency or intermittent periods of inability to perform occupational tasks at that time. Her symptoms were controlled with medication and therapy and this warrants a 10% rating.

The Board also considered the conditions of Migraine Headaches; Bilateral Patellofemoral Pain Syndrome; Bilateral Carpal Tunnel Syndrome; Degenerative Disc Disease L5-S1; and Residuals of Gallbladder Removal. The Board unanimously determined that none of these conditions were unfitting at the time the CI entered the TDRL in 2003. Only those conditions for which a service member is placed on the TDRL can be considered for final disability ratings when the service member is subsequently separated from the TDRL. Therefore no disability rating can be applied to any of these conditions when the CI separated from the TDRL in 2006.

Irritable Bowel Syndrome was not mentioned in the Disability Evaluation System package and is 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, effective as of the date of her prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Major Depressive disorder | 9434 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090521, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR COMMAND, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USN, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 11 Jun 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 rated at 10 percent (increased from 0 percent) effective 29 September 2003.

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)