RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: aRMY

CASE NUMBER: PD0900401 REMOVED FROM TDRL: 20050418

BOARD DATE: 20110913 ENTERED TDRL: 20030414

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Active Guard and Reserve (AGR) Major (38A/Civil Affairs), medically separated for bipolar disorder (type I)*.* The CI had a history of panic attacks prior to service, treated with medications and psychotherapy. His symptoms continued through his first term of service; he left the Army in 1990 after four years of service, reportedly due to his panic disorder. He later returned to the AGR program and was symptom-free for the next four years. Then, in 1999 his panic attacks returned with greater frequency and severity, and he was subsequently hospitalized three times for psychotic symptoms including paranoid delusions, depression, and mania. His treatment included medications and psychotherapy. He did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS). He was issued a permanent S3 profile and underwent a Medical Evaluation Board (MEB). Bipolar disorder, type I, and panic disorder with agoraphobia were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions were forwarded on the MEB submission as medically acceptable. The PEB returned the case to the medical treatment facility several times for additional information, then combined the psychiatric diagnoses and adjudicated the bipolar disorder, type I condition as unfitting, rated 30% with application of AR 635-40, derived from DoDI 1332.39. The CI was placed on Temporary Disability Retired List (TDRL), with ratings as reflected in the chart below. A second PEB after approximately 23 months of TDRL adjudicated the bipolar disorder, type I condition as unfitting, rated 10% with application of AR 635-40. The CI did not appeal, and was medically separated with a 10% disability rating.

CI CONTENTION: “The member has several job changes and has had difficulty in holding a job. During my TDRL time I was still undergoing psychiatric care and was not able to make certain decisions on certain benefits I was due. Feel that I was not truly able to seek employment at the end of my TDRL. Finally, the VA has rated me as 30% disabled for my psychiatric condition, why did the PEB rate me so low?” He elaborates no other contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service IPEB – Dated 20050330** | | | | **VA\* – All Effective 20070214** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20030219** |  | **TDRL** | **Sep.** |
| Bipolar Disorder, Type I [includes Panic Disorder] | 9432-9412 | 30% | - | Bipolar Disorder | 9432 | 30% | 20070821 |
| Bipolar Disorder, Type I | 9432 | - | 10% |
| Scrotal Lipoma and Varicocele (Benign) | | Not Unfitting | | No VA Entry | | | 20070821 |
| Allergic Rhinitis | | Not Unfitting | | No VA Entry | | | 20070821 |
| ↓No Additional MEB/PEB Entries↓ | | | | Left Hip Fracture Residuals | 5252 | 10% | 20070821 |
| 0% x 0/Not Service Connected x 0 | | | |
| **Combined: 10%** | | | | **Combined: 40%** | | | |

\* VA rating based on exam most proximate to date of TDRL exit.

ANALYSIS SUMMARY:

Bipolar Disorder. Although external stressors were noted to contribute to or exacerbate the CI’s mental condition, there was not sufficient evidence to suggest the CI’s mental condition was “due to a highly stressful event.” Therefore, it was not appropriate to apply the tenants of §4.129 (mental disorders due to traumatic stress), and retroactively increase the TDRL rating to a minimum 50%. The pre-TDRL evaluations arrived at different diagnoses for the CI’s mental condition, including brief psychotic disorder/reaction; psychotic disorder, not otherwise specified; and panic disorder with agoraphobia (without bipolar disorder). The PEB appropriately included any contribution from the panic disorder with the primary unfitting bipolar disorder IAW VA Schedule for Rating Disabilities (VASRD) guidelines. The TDRL evaluation diagnosed bipolar disorder, depressed. The multiple diagnoses do not impact the rating as all psychiatric symptoms are considered in the CI’s overall mental impairment, and are rated IAW §4.130. The Board considered the final PEB’s diagnosis as administratively final for rating purposes.

The CI’s pre-TDRL functioning is described in three psychiatric evaluations at 15, 13, and 3 months prior to TDRL entry. Those exams are summarized together here. His symptoms included daily panic attacks (reportedly ending in 2001, but later VA exam states 2003) and episodic depression, anxiety, and paranoid delusions resulting in three brief hospitalizations (May 2001, October 2002, January 2003). The CI was noted to have received two speeding tickets in October 2002 (six months pre-TDRL entry) attributed to his paranoia. The three-month pre-TDRL exam noted “borderline social adjustment,” and foresaw recurrence of symptoms (panic attacks, depression, mania) if the CI took a job with equivalent stress as his active duty Army position. His condition appeared to remit significantly between the exacerbations, with apparently good responses to adjustments in his 3-4 drug psychotropic regimen. Mental status examinations were variable, with paranoid feelings and blunted affect at 15 months, a normal exam at 13 months, and more severe abnormalities at 3 months pre-TDRL entry, including psychomotor retardation and agitation, anxious and depressed mood, “severely depressed, irritable, and moderately constricted” affect, and poor judgment. Global assessment of functioning (GAF) scores ranged from 55 at 3 months pre-TDRL entry (moderate symptoms or moderate difficulty in social or occupational functioning), to 75-80 at 13 months pre-TDRL (reflecting transient and expectable reactions to psychosocial stressors, and no more than slight impairment in social or occupational functioning). The three-month pre-TDRL examiner characterized the CI’s bipolar disorder as causing definite impairment for social and industrial adaptability (DoDI 1332.29 30% language).

The TDRL narrative summary (NARSUM), three months prior to exit from TDRL (21 months after TDRL entry) noted the CI’s response to treatment had been characterized by periods of remissions and exacerbations. The examiner had seen the CI for a number of evaluations from January 2003. The examiner stated the CI was feeling better, but remained depressed, had fewer mood swings, and had been compliant with his medications (a three-drug regimen). The examiner noted the CI was “still unable to tolerate stress and had started working as a dispatcher for a medical supply company,” a job where “he worked mostly on his own in an environment relatively free of stress.” The CI remained married to his wife of 19 years. The TDRL NARSUM was from a provider with a long history of treating the CI and did not describe a formal mental status exam. His GAF was 50, connoting serious symptoms or serious impairment in social or occupational functioning. The psychiatrist also indicated that “the patient has a permanent impairment rating (PIR) of 40-50%,” which is in the marked category of permanent impairment within the American Medical Association Guides to the Evaluation of Permanent Impairment (25-50% marked; 51-75% extreme; 76-100% maximum). Treatment notes during TDRL reflected the cyclic nature of the CI’s symptoms, with varying responses to medication adjustments; he experienced a gradual improvement over the first 7 months (GAFs increasing from 50 to 85), followed by a significant sustained deterioration (GAFs 50-60) over the remaining 17 months of TDRL.

At the VA compensation and pension (C&P) examination, approximately 28 months after TDRL exit, the CI’s condition had improved significantly. He was diagnosed with bipolar disorder, type I, and panic disorder with agoraphobia, both “showing response to treatment.” Depressed feelings were “in a range that is manageable,” and he reported “some feelings of anxiety from time to time.” His anhedonia and psychotic symptoms had resolved, and his last panic attack was reported to be in 2003. He continued outpatient psychotherapy and a three-medication psychotropic regimen. The CI was employed with the government as a humanitarian assistance planner for the past year, and he reported that he does well in his work. Socially, the CI remained married to his wife of 21 years, and reported spending time with his family without mention of conflict. It was noted that he was a geographic bachelor, his wife working in Maryland while he lived in Florida, and he was hoping to relocate to Maryland in his line of work. On mental status exam, the examiner noted the CI’s mood was euthymic with mild anxiety at times, and some disappointment with mild depressive feelings at times.” Other than manifestations of some anxiety, the remainder of the exam was normal, with no suicidal ideation, delusional or hallucinatory symptoms, cognitive impairment or other abnormalities. His GAF score was 50, connoting serious symptoms or serious impairment in social or occupational functioning. The VA rated the exam at 30% IAW VASRD §4.130.

The Board directs its attention to its rating recommendations based on the evidence just described. With regards to rating for entry into the TDRL period, the CI at least episodically exceeded the 30% criteria, with multiple hospitalizations for psychosis and difficulty adapting to stressful circumstances. The commander’s statement and three-month pre-TDRL entry exam clearly reflected occupational and social impairment with reduced reliability and productivity. The Board adjudged that the CI’s condition was not a result of a highly stressful event and that the provisions of §4.129 were not applicable. At the time of TDRL entry the CI’s impairment was closer to the 50% than to the 30% rating level.

The TDRL NARSUM of January 2005 was the only exam proximate to TDRL exit; other exams being over two years before or after. The CI’s condition was characterized by multiple remissions and exacerbations with history of job instability and provider assessment of serious symptoms/impairment by GAF and PIR in the marked category. However, the TDRL exit NARSUM was lacking in detail, with no formal mental status exam, and the Board considered the psychiatric outpatient treatment notes during the TDRL period. These exams suggest the CI’s level of functioning at TDRL exit appeared to be approximately equivalent to that described at TDRL entry, and closer to the 30% level of impairment than to the 10% or 50% level IAW §4.130. The VA exam was over two years remote from TDRL exit and although it indicated the CI’s condition had improved, arguably to the 10% to 30% level IAW VASRD §4.130, it was of decreased probative value. After due deliberation, considering the totality of the evidence, and mindful of VASRD §4.7 (higher of two evaluations) and VASRD §4.3 (reasonable doubt), the Board recommends 50% for entry into TDRL and 30% as the most representative of impairment and the fair and equitable permanent rating (TDRL exit) for mental health disorder in this case.

Other PEB Conditions. The other conditions forwarded by the MEB were scrotal lipoma and varicocele (benign); and allergic rhinitis. The CI took medications for his allergic rhinitis. Neither of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. Both were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the Disability Evaluation System file were left hip stress fracture status post surgery (VA 10%), surgical scar of left hip, sinusitis, cysts on body, and weight gain since taking medications. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant during the MEB period, none carried attached profiles, and none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. The Board therefore has no reasonable basis for recommending any additional unfitting conditions 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 AR 635-40 and DoDI 1332.39 for rating bipolar disorder was operant in this case and the condition was adjudicated independently of that regulation and instruction by the Board. In the matter of the bipolar disorder condition, the Board, by a vote of 2:1, recommends a TDRL-entry rating of 50% (9432-9412), and a permanent TDRL exit rating of 30% coded 9432 IAW VASRD §4.130. The single voter for dissent (who recommended TDRL-entry and TDRL-exit ratings of 30%) did not elect to submit a minority opinion. In the matter of the scrotal lipoma and varicocele (benign), and allergic rhinitis conditions, the Board unanimously recommends no change from the PEB adjudication as not unfitting. In the matter of the left hip stress fracture status post surgery condition 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 his prior medical separation:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Bipolar Disorder, Type I [Includes Panic Disorder] | 9432-9412 | 50% | - |
| Bipolar Disorder, Type I | 9432 | - | 30% |
| **COMBINED** | **50%** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090605, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

1. This memorandum amends my earlier decision pertaining to the individual named in the subject line above to constructively place the individual on the Temporary Disability Retired List (TDRL) at 50% disability for six months effective the date of the individual’s original medical separation for disability with severance pay and then following this period recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30%.

2. Given the individual concerned was on the TDRL in excess of the six month period ordered above, implementation of this decision may negatively impact his pay. As a result, I direct the individual concerned be constructively placed on the TDRL for the period 15 April 2003 to 17 April 2005 at 50% disability and then following this period recharacterize his separation as a disability retirement with a combined disability rating of 30%. All previous directives in this case remain unchanged.

3. I request a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

Deputy Assistant Secretary

(Army Review Boards)