RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900470 BOARD DATE: 20091110

SEPARATION DATE: 20071130

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SUMMARY OF CASE: This covered individual (CI) was a 24 year old male, Cpl (combat engineer) medically separated from the Marines in 2004 after 3 years of service. The medical basis for the separation was post traumatic stress disorder (PTSD). The CI had a waiver to enlist in the Marine Corps for a history of anxiety disorder. MEPS psychiatric evaluation (20040315) noted the CI had taken medication for two 1-month periods for what sounded like adjustment problems. Impression was "I do not think this young man has ever met criteria for a psychiatric disorder." Recommendation was "At this time, I see no current psychiatric contraindications to active duty military service." The CI began experiencing symptoms of PTSD after his first deployment to Iraq. Symptoms became worse during and after his second deployment to Iraq. Appropriate therapy failed to alleviate his symptoms and he was referred to the Navy Physical Evaluation Board (PEB). The initial PEB (20070915) determined he was fit for duty. However, on requested reconsideration the PEB (20071016) found the CI unfit for continued military service and he was separated with a 10% disability for PTSD; with benign essential tremor and Panic disorder as CAT II, and Adjustment disorder, chronic with anxiety and depressed mood as CAT IV.

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CI CONTENTION: "It has been almost two complete years since my separation from the Marine Corps, and I still struggle on a daily basis with the events that will forever be with me. I still have nightmares and panic attacks that prevent me to carry on a normal lifestyle as I once had. I ask you to change my rating based on the traumatic events that have completely changed my life forever and will always be a constant reminder of what I went through to serve our great nation."

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA** (Exam 3 days post-discharge) | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| PTSD (MEB Dx 1-2) | 9411 | 10% | **20071016** | PTSD, WITH GENERALIZED ANXIETY DISORDER, PANIC DISORDER, AND A BENIGN ESSENTIAL TREMOR | 9411 | 50% | **20071203** | **20071201** |
| BENIGN ESSENTIAL TREMOR | CAT II | | **20071016** |
| PANIC DISORDER (MEB Dx 2-2) | CAT II | | **20771016** |
| ADJUSTMENT DISORDER, CHRONIC W/ANXIETY & DEPRESSED MOOD | CAT IV | | **20071016** |
| NO DA FORM 3947 ENTRIES | | | | 3 X NSC (BILATERAL KNEE DISABILITY; BILATERAL HEARING LOSS; TINNITUS) | NSC | |  |  |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*incl non-PEB Dxs)*: 50%** | | | | |

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**ANALYSIS SUMMARY:** The CI had clear stressors and a definitive diagnosis of PTSD. The CI contends only for his mental health rating, and no other diagnoses are either listed on the MEB/PEB or rated by the VA. The CI's Service entry waiver evaluation for history of anxiety disorder did not indicate any disability at the time of Service entry. There was a very positive Commander's statement of 20070710 relating that the CI was an excellent Marine and fully able to do his duties. The initial PEB (20070915) determined he was fit for duty. However, the CI asked for reconsideration and submitted multiple letters in support of his "unfitness" including a 20070920 statement from a civilian LCSW (Licensed Clinical Social Worker) that indicated a GAF of 50 and stated "(the CI's) symptoms of PTSD and his negative responses to them are in direct conflict to his personal safety and the safety of others. Therefore, it is recommended he not be put into situations that may cause his or others safety to be jeopardized." On requested reconsideration the PEB (2001016) found the CI unfit for continued military service for PTSD at 10% disability and did not rate any other condition, with benign essential tremor and Panic disorder listed as CAT 2, and Adjustment disorder, chronic with anxiety and depressed mood listed as CAT IV.

PTSD, WITH GENERALIZED ANXIETY DISORDER, PANIC DISORDER, AND A BENIGN ESSENTIAL TREMOR. (CI contention: …"change my rating based on the traumatic events that have completely changed my life forever.") The NARSUM (MEB Report 20070802) did note CI's past psychiatric history of being on Prozac. More specifically, the CI had a waiver to enlist in the Marine Corps for a history of anxiety disorder. MEPS psychiatric evaluation (20040315) noted the CI had taken medication for two 1-month periods for what sounded like adjustment problems. Impression was "I do not think this young man has ever met criteria for a psychiatric disorder." and recommendation was "At this time, I see no current psychiatric contraindications to active duty military service." The NARSUM (MEB Report 20070802) noted "HISTORY OF PRESENT ILLNESS: Endorses symptoms of ruminating memories and feelings as though he is back in Iraq; awakened by nightmares two to three times per night and in cold sweats (related to combat situations both that he saw and that he did not see; only getting approximately four hours of sleep awakening fifteen to twenty minutes each time; gets both psychologically and physically upset when he sees something that reminds him of his combat experience; actively avoids talking about or participating in activities that remind him of his combat experience; trouble remembering parts of his stressful experiences in Iraq; complains of apathy and anhedonia; feels distance or cut off from others; feels numb and has difficulty feeling close to others around him; has been angry with irritable outbursts consistently since he has been back from his second deployment; having difficulty concentrating; is hypervigilant and very jumpy. Experiences panic attacks up to three or more times per week where he begins to feel overwhelmed from anxiousness which is unprompted by any combat triggers or other stressors. These come at random times. He begins to experience subjective shortness of breath, upset stomach, sweating, dry mouth and trembling. The patient has been on Klonopin, Zoloft and Neurontin for his anxiety and his PTSD. He has required the addition of alternate sleep medications and additional Benzodiazepines for his extreme level of anxiety.

MENTAL STATUS EXAM: Noticeable tremor in both hands which is constant in nature; mood was anxious and affect was anxious; thought process was logical, linear and goal directed; thought content showed no suicidal or homicidal ideation and no evidence of psychosis; insight and judgment were intact and his cognition showed some distractibility but was otherwise grossly intact.

PTSD, Chronic, Combat Related; Panic Disorder. PTSD and Mental Health Stressors and current GAF 50-55. Duty Limitations (20070710): No deployment, no firearms, explosive or weapons, no combat training, no field duty. He must remain stationed within 50 miles of MTF psych services. However, he is psychiatrically stable for leave.

The LCSW memo from 20070920 (submitted to the PEB for CI's reconsideration) had Axis I diagnoses of: PTSD, Chronic Generalized Anxiety Disorder and Adjustment Disorder, Chronic with Anxiety and Depressed Mood. GAF was 50, and recommendations cited safety issues as above.

The VA exam of 20071203 (3 days post-discharge) was rated at 50% by VASRD criteria and IAW §4.129. The evaluating psychiatrist specifically noted that "The Veteran has three current Axis I diagnoses, all of which had its onset while he was in the military, and I cannot ascribe a specific degree of impairment of anyone, independent of the other two, with any medical certainty, without resorting to speculation." The examiner specifically noted "Impaired interpersonal interactions." The VA rating decision (20080110) otherwise summarized the exam well and stated: "During VA-sponsored exam December 3, 2007, you reported you are constantly anxious. As a result of your anxiety, you stated your hands constantly, "shake." You stated you also feel depressed. Your sleep is sporadic. Your ability to concentrate is poor. You also reported you experience nightmares, intrusive thoughts, an increased startle response, and hypervigilance. As a result of your symptoms, you stated you avoid large crowds. You also reported you no longer watch the news on TV. No relief has been obtained despite the use of medication. Despite your symptoms, you stated you did have a fiancé and have a few friends. The examiner stated you were alert, cooperative, and friendly. No loose associations or "flight of ideas," were noted. No bizarre motor movements or, "tics" were observed. Your mood was described as, "tense," but, "cooperative" and "friendly." Your affect was considered, "appropriate." No delusions, hallucinations, ideas of reference, suspiciousness, loss of memory, impaired judgment, or suicidal ideation was noted. You were, however, noted to have a mild tremor of your hands. The diagnoses were post-traumatic stress disorder, generalized anxiety disorder, panic disorder without agoraphobia, and benign essential tremor, very mild. A GAF of 54 was assigned. \*(deleted GAF explanation). The evidence shows this disability developed while you were on active duty. As such, service-connection is warranted and has been granted. We have assigned an initial evaluation of 50 percent for this disability. \*\*The law states an evaluation of 50 percent is to be assigned when a psychiatric disability that developed when a vet was on active duty, necessitates a medical discharge from such service. An evaluation of 50 percent is also assigned when the evidence shows occupational and social impairment with reduced reliability and productivity due to such symptoms as: a flattened affect, circumstantial, circumlocutory, or stereotyped speech, panic attacks more than once a week, a difficulty in understanding complex commands, an impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks), impaired judgment, impaired abstract thinking, disturbances of motivation and mood, and/or a difficulty establishing and maintaining effective work and social relationships. We did not assign a higher evaluation of 70 percent because the evidence does not show deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation, obsessional rituals which interfere with routine activities, speech intermittently illogical, obscure, or irrelevant, near-continuous panic or depression affecting the ability to function independently, appropriately and effectively, impaired impulse control (such as unprovoked irritability with periods of violence), spatial disorientation, a neglect of personal appearance and hygiene, a difficulty adapting to stressful circumstances (including work or a work-like setting), and/or an inability to establish and maintain effective relationships. *\*\*The law strictly prohibits conditions that cause similar symptomatology and affect the same anatomical region to be separately evaluated. Your PTSD, generalized anxiety disorder, panic disorder without agoraphobia, and benign essential tremor, all cause overlapping symptomatology, As such, separate evaluations may not be assigned. These disabilities have been evaluated as a single entity.*

The CI did not have any clear pre-existing disability and no deduction for EPTS was or is endorsed. The principle of rating all mental health symptoms under the predominate diagnosis is endorsed and there is no evidence in the record that CI's impairment due to different diagnoses can be specifically separated. The VA psychiatrist noted: "The Veteran has three current Axis I diagnoses, all of which had its onset while he was in the military, and I cannot ascribe a specific degree of impairment of anyone, independent of the other two, with any medical certainty, without resorting to speculation." The Military diagnosis of Adjustment Disorder, Chronic with Anxiety and Depressed Mood (CAT IV) would not be ratable; However, the diagnosis of Generalized Anxiety Disorder made by both the LCSW and VA psychiatrist appear to be predominate. Diagnoses were:

Military: PTSD, Panic Disorder, ADJUSTMENT DISORDER, Chronic with anxiety & depressed mood, Benign Essential Tremor. GAF 50-55

LCSW: PTSD, Chronic Generalized Anxiety Disorder and ADJUSTMENT DISORDER, Chronic with anxiety and depressed mood. GAF was 50

VA: PTSD, generalized anxiety disorder, Panic Disorder without agoraphobia, and benign essential tremor, very mild. GAF of 54

The three mental health exams were otherwise substantially in agreement regarding the CI's history, symptoms, and GAF. The Military exam noted good interpersonal interactions and friends. The LCSW noted a decrease in panic attacks to 1x/week, and the VA noted that the CI had self-discontinued medications as not helping and making him feel worse and noted impaired interpersonal interactions. The CI was discharged for PTSD and the CI's level of mental health disability at discharge was no higher than 50% by criteria. Therefore, the CI's PTSD should be rated at 50% for 6 months IAW §4.129 and DOD direction. The CI's permanent rating level should ideally be assessed using an exam at the 6 month post-discharge date of 20080530. However, there is nothing in the record to provide this assessment. Following additional requests for any existing documents concerning a medical evaluation for PTSD subsequent to Dec 2007, the VA indicated that following a search of all VA systems of record there were no documents found. The CI was contacted and indicated he has not had follow-on examinations for his PTSD condition subsequent to Dec 2007. Therefore the level of CI's disability at the 6-month point post-separation must be approximated by the contents of the record. The military evaluation, LCSW evaluation, and VA 3-day post-discharge evaluations were independently evaluated and the CI's application contentions of 20090803 were considered. Considering all of the information in the record it is opined that the CI met the 30% VASRD criteria at the time of discharge and this is the best estimate of his level of disability at the 6 month post-discharge timeframe for permanent rating under 9411.

Adjustment Disorder, Chronic w/Anxiety & Depressed Mood (Category 4). This condition is addressed above for considering all mental health diagnoses under a single rating. IAW DODI 1332.38, Encl 5 Adjustment Disorders are considered under "Conditions and Circumstances Not Constituting a Physical Disability." Of special note is that the LCSW and VA both diagnosed Generalized Anxiety Disorder, and that the CI's mental health symptoms and disabilities could not be separately apportioned to individual diagnoses (See above).

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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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The 10% PEB rating for PTSD appears to have been based on DoDI 1332.39 (E2.A1.5) and SECNAVINST 1850.4E, Department of the Navy Disability Evaluation Manual (Enclosure 9k Series 9000 Series Codes; and Table 7). Under those guidelines, the case was an appropriate fit with the 10% criteria. The Board unanimously agreed that as the CI would not have rated higher than 50% for PTSD and his other mental health diagnoses at the time of separation, that IAW DoDI 6040.44 and DOD guidance (which applies VASRD §4.129 to all PDBR cases), that the CI should be rated at 50% TDRL for 6 months following the CI's separation IAW §4.129. The Board also unanimously agreed that there was no ability to apportion the CI's mental health disability symptoms between PTSD vice his other mental health diagnoses and that there was no basis for application of any EPTS component or deduction to the CI's mental health rating. As often arises with the requirement IAW §4.129 for a final based on the disability picture at 6 months post-discharge on cases not originally adjudicated under those rules, there is no psychiatric clinical or rating exam information at the 6 month interval. The CI's permanent rating level for PTSD was extensively discussed given the total lack of subsequent treatment or evaluation documents. The Board determined that at the time of separation, the CI's clinical picture would have met criteria for a 30% rating under the VASRD §4.130 General Rating Formula for Mental Disorders. The Board considered all available mental health evaluation (20070802 NARSUM, 20070920 LCSW, and 20071203 VA) with consistent GAF scores of 50-55, and either stability or slight improvement from the earliest exam (CI was no longer taking medication). The CI's petition (~20 months post-discharge) also indicated ongoing subjective PTSD symptoms; however, there was no evidence of ongoing treatment or psychiatric therapy in the file. The preponderance of the evidence indicated the CI had weekly panic attacks, nightmares, avoidance, increased startle response, anxious and depressed mood, and feelings of isolation with generally functioning satisfactorily, with routine behavior, self-care, and conversation normal, but having occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks. It was adjudged that he did not rise to the level of constant, or near constant, reduced reliability and productivity at the time of separation. His symptoms were more than mild, were not transient only during periods of significant stress. Given the CI's chronic and fairly stable PTSD course during service and lack of any evidence in the record that he got better or worse following discharge, the Board adjudged that the CI more likely than not met the 9411 30% criteria at the 6 month post-discharge timeframe. After careful consideration of all available information, the Board unanimously voted that the CI’s condition is appropriately rated as an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed; and a 30% permanent rating at 6 months IAW VASRD §4.130.

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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 the CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction), and then a permanent combined 30% disability retirement as below.

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| Unfitting Condition | VASRD Code | TDRL Rating | Permanent  Rating |
| PTSD | 9411 | 50% | 30% |
| COMBINED | 50% | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090427, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE

AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 23 Nov 09

1. I have reviewed the subject case pursuant to reference (a) and accept the recommendation of the PDBR (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 50% with placement on the Temporary Disability Retired List effective 30 November 2007.

b. Final separation from naval service due to physical disability rated at 30% with placement on the Permanent Disability Retired List effective 1 June 2008.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid funds if appropriate, and that the subject member is notified once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)