RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX. BRANCH OF SERVICE: air force

CASE NUMBER: PD0900482 SEPARATION DATE: 20050620

BOARD DATE: 20110728

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Senior Airman (3P/Security Forces) medically separated for posttraumatic stress disorder (PTSD)*.* He did not respond adequately to treatment and was unable to perform within his Air Force Specialty (AFS) or to meet physical fitness standards. He was issued a permanent S4 and underwent a Medical Evaluation Board (MEB).PTSD was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123.Three other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the PTSD condition as unfitting, rated 10%, with application of DoDI 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “50% disability rating for PTSD by the VA.”

|  |  |
| --- | --- |
| **Service IPEB – Dated 20050505** | **VA (6 Mo. After Separation) – All Effective Date 20050621** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 50% | 20051219 |
| Chronic Low Back Pain | Cat II |  | Thoracic Muscle Strain | 5237 | 0% | 20050915 |
| Chronic Neck Pain | Cat II |  | Cervical Muscle Strain | 5237 | 0% | 20050915 |
| Obesity | Cat III |  | No Corresponding VA Entry |
| ↓No Additional MEB/PEB Entries↓ | L Knee Strain | 5260-5024 | 10% | 20050915 |
| R Knee Patellofemoral Synd | 5260-5024 | 10% | 20050915 |
| 0% x 1/Not Service Connected x 4 | 20050915 |
| **Combined: 10%** | **Combined: 60%** |

ANALYSIS SUMMARY:

Posttraumatic Stress Disorder. The CI initially developed PTSD symptoms after his last deployment, seeking medical treatment in June 2004. He served in Iraq where stressors included exposure to victims of combat trauma, people missing limbs, and a person whose head was crushed. Symptoms initially included depression, irritability, sleep disturbance, decreased energy, anhedonia, and marital issues. After some initial successful treatment he returned with worsening symptoms in December 2004. New symptoms included flashbacks, nightmares, anger, anxiety, paranoid thoughts, and suicidal ideation (with no plan at the time of the narrative summary [NARSUM], but with a period of time when he could not contract for his own safety). His initial diagnoses were occupational problem and adjustment disorder with mixed disturbances of emotions and conduct. By 20 December 2004 he had an established diagnosis of PTSD and was started on two medications (clonazepam, paxil). The NARSUM noted that the CI had received comprehensive care, regularly attending his appointments for individual and group therapy. His prognosis was poor with treatment efforts not effective in returning him to a mission-capable and deployable status. His global assessment of functioning (GAF) was 60. It was deemed in the best interests of the Air Force and the member that he be separated. The MEB forwarded PTSD and occupational problem to the PEB as unacceptable IAW AFI 48-123. The PEB on 5 May 2005 found the PTSD condition to be unfitting with a 10% rating. The occupational problem was not separately rated. The PEB did note that the PTSD was aggravated by continued military service, but his civilian social and industrial impairment was mild.

The VA rating decision of 22 August 2005, two months post-separation, service connected the PTSD condition, code 9411, with a 50% rating. This rating was based upon the MEB NARSUM showing “marked” impairment for military service and “definite” impairment of civilian social and industrial adaptability and a GAF of 60. This was considered to be consistent with occupational and social impairment with reduced reliability and productivity. There was a VA compensation and pension (C&P) examination for PTSD on 19 December 2005 six months after separation, noting that he was working in real estate. His symptoms were consistent with those previously noted including depression, irritability, sleep disturbance, anxiety, nightmares, fatigue, labile mood, hyper-alertness, and social withdrawal. Although he was prescribed both clonazepam and paxil the examiner noted that he stopped the paxil, because he did not feel it was doing any good. His GAF was 55. A subsequent VA rating decision on 24 February 2006 eight months after separation continued his 50% rating.

The Board directs its attention to its rating recommendations based upon the evidence just described. All members agreed that the §4.130 criteria for a 50% rating (occupational and social impairment with reduced reliability and productivity) were not exceeded at the time of separation; therefore, the minimum 50% Temporary Disability Retired List (TDRL) rating is applicable. As regards to the permanent rating recommendation, the deliberation settled on arguments for a 10% versus 30% permanent rating recommendation. It was noted that the NARSUM related a moderate level of social and occupational impairment, which is consistent with previous DoDI 1332.39 definite language at 30% (greater than mild at 10%). The post-separation evidence at six months noted that he was working as a realtor and did not reflect any worsening of his PTSD with transition to civilian life. The social and occupational impairment described in the NARSUM and VA C&P exam appeared to the Board to most closely approximate the 30% description IAW VASRD §4.30. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board, by simple majority, recommends 30% as the most representative of impairment and the fair and equitable permanent rating for PTSD in this case.

Other PEB Conditions. Chronic neck and back pain was forwarded by the MEB and adjudicated as not unfitting by the PEB. The NARSUM of 11 April 2005 noted full range of motion and no tenderness for the neck and back. Neither of these conditions were profiled, implicated in the commander’s statement, or noted as failing retention standards. The PEB adjudicated the conditions separately as chronic low back pain, code 5237 (lumbosacral strain) and chronic neck pain, code 5237 (cervical strain), with both being category II conditions. The VA rating decision on 24 February 2005 (eight months after separation) service connected both conditions with 0% ratings. 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 AFSC duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for either of the stated conditions.The PEB adjudicated obesity as a category III condition that was not separately unfitting. All evidence considered there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for this condition.

Remaining Conditions. Other conditions identified in the Disability Evaluation System (DES) file were left shoulder pain, intermittent paresthesias and weakness of the right hand, and bilateral plantar fasciitis. None of these conditions were clinically active during the MEB period, carried attached profiles, were the bases for limited duty or 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. Several other conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. 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.

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 that they were inconsistent with the VASRD in effect at the time of the adjudication. In the matter of the PTSD condition, the Board, by simple majority, recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD-directed and a 30% permanent rating at six months IAW VASRD §4.130. The single voter for dissent (who recommended a 10% rating, code 9411) did not elect to submit a minority opinion. In the matter of the chronic low back pain, chronic neck pain, obesity, left shoulder pain, intermittent paresthesias and weakness of the right hand, and bilateral plantar fasciitis, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows: TDRL at 50% for six months following 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.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| Posttraumatic Stress Disorder | 9411 | 50% | 30% |
| **COMBINED** | **50%** | **30%** |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090624, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews, NAF-Washington, MD 20762

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2009-00482.

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended your separation be re-characterized to reflect disability retirement, rather than separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

 As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at 1-800-531-7502 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 30 days from the date of this letter, you will not be enrolled in the SBP program unless at the time of your separation, you were married or had an eligible dependent child, in such a case, failure to render an election will result in automatic enrollment.

 Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2009-00482

MEMORANDUM FOR THE CHIEF OF STAFF

 Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) and Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:

 The pertinent military records of the Department of the Air Force relating to XXXXXX, are corrected to show that:

 a.  He was not discharged on 20 June 2005 with entitlement to disability severance pay; rather, on that date, he was relieved from active duty and on 21 June 2005, his name was placed on the Temporary Disability Retired List (TDRL), with a diagnosis of Post Traumatic Stress Disorder, VASRD code 9411, rated at 50%.

 b.  On 20 June 2005, he declined coverage under the Survivor Benefit Plan (SBP).

 c. On 20 December 2005, he was removed from the TDRL and permanently retired with a final combined disability rating of 30%.

 Director

 Air Force Review Boards Agency