RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900484 BOARD DATE: 20100812

SEPARATION DATE: 20070611

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SUMMARY OF CASE: This covered individual (CI) was an active duty CPT (AFSC/12M3B, C-130 Navigator) medically separated from the Air Force in 2007 after 4 years of service. The medical basis for the separation was Post-Traumatic Stress Disorder (PTSD). The CI’s PTSD was associated with a Criterion A stressor of witnessing a fatal airplane crash in 2003 (stateside). During a subsequent deployment he experienced an incapacitating panic attack during a stressful in-flight situation. He was removed from flying status and began treatment. He responded to therapy and was able to function well as a staff officer, but was unable to resume flight status or deploy. Consequently he was placed on a permanent S-4 profile and referred for a Medical Evaluation Board (MEB). The PTSD was determined to be disqualifying IAW AFI48-123. No other conditions were included on the AF IMT 618, *Medical Board Report*. Additional conditions supported in the Disability Evaluation System (DES) packet are discussed below, but were not forwarded for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the PTSD condition as unfitting and rated at 10% IAW DoDI 1332.39 (E2.A1.5). The CI made no appeals and was thus medically separated with a 10% disability rating.

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CI CONTENTION: The CI states: “A representative from Air Force Wounded Warriors informed me that they were contacting all combat-related discharges with diagnoses of PTSD to let us know that the DOD has decided that 10%, is not acceptable and should be at least 50%, which is in line with the rating VA gives to PTSD. I was originally rated 10% by the DOD on 20 April 2007. I qualify for a PDBR reassessment based on Enclosure 3 Section 2 of DoDI6040.44. June 2008.” He also notes “TMJ Disorder – Tempormandibular {sic} dysfunction; Right Shoulder acromioclavicular degeneration; Right ankle pain.” This case is court remanded under the *Sabo et al v. United States* class action suit.

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RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20070420** | **VA (2 Mo. After to Separation) – All Effective 20070612** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD with Anxiety Disorder | 9411 | 10% | PTSD | 9411 | 50% | 20070724 |
| ↓No Additional AF IMT 618 Entries.↓ | Temporomandibular Dysfunction | 9905 | 10% | 20070724 |
| Right Shoulder Condition | 5099-5024 | 10% | 20070724 |
| Right Ankle Strain | 5271-5024 | 0% | 20070724 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 60%**   |

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ANALYSIS SUMMARY:

PTSD Rating Recommendation. The PEB rating, as noted above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DOD adherence to VASRD §4.129. IAW DoDI 6040.44 and DOD guidance (which applies current Veterans Administration Schedule for Rating Disabilities (VASRD) §4.129 to all Board cases), the Board is obligated to recommend a minimum 50% PTSD rating for a retroactive six month period of Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD §4.130 criteria at six months for its permanent rating recommendation. The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the VA psychiatric rating evaluation two months after separation. There is no VA or civilian provider evidence covering the six month interval. Since the VA psychiatric exam was still fairly close to separation, the MEB evaluation itself provides a useful baseline in the Board’s efforts to arrive at a fair permanent rating recommendation.

Both the MEB and VA psychiatrists made dual Axis I diagnoses of PTSD and anxiety disorder. It is clear that many of the CI’s symptoms were more attributable to the anxiety disorder than to PTSD. Since the history establishes that the anxiety disorder was not pre-existing and since psychiatric impairment cannot be apportioned between the two conditions, this issue does not affect the Board’s recommendations. The CI’s symptoms at the time of the MEB exam could best be described as mild to moderate. He endorsed symptoms such as anxiety, nightmares and panic attacks which were improving with medication. He reported being “terrified" of being closed into an aircraft, automobile, or other small space. He described considerable anxiety over the fate of his career and intermittent depressed mood. He presented a normal mental status exam with appropriate affect and cognition. Although he was restricted from flying duties, the CI performed at a very high level as a Squadron staff officer. He was newly married and very satisfied with his relationship. The examiner estimated his GAF (general assessment of functioning) score at 65 which connotes mild symptoms. The assessment at that time was that the CI was much improved but “still experiencing debilitating anxiety symptoms … prognosis is good with continued mental health treatment”. At the initial VA examination for PTSD two months after separation, the CI described symptoms that were very similar to those documented by the MEB examiner. He continued to endorse anxiety, nightmares and sleep disturbance. He likewise endorsed hypervigilance and intrusive thoughts, but denied panic attacks. He was attending school full time and did not miss class time because of psychiatric symptoms. His marriage was intact, but he was described as “emotionally distant” and his social life was somewhat constrained. He again presented a normal mental status exam (except for a “tense” mood) with appropriate affect and cognition. The examiner noted that the CI had continued his medications and assigned a GAF of 54 (connoting moderate symptoms).

The VA rating decision assigned a 50% rating based on §4.130 criteria, not on the basis of §4.129, but does not elaborate the rationale. The VA examination was most consistent with the general description for a §4.130 rating of 30%, “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal).” The general description for a 50% rating, “occupational and social impairment with reduced reliability and productivity”, may also be considered but was not reflected by the CI’s performance as a full time student at the time. The VA examiner did state that the symptoms “have interfered with social activities” and it possible that social impairment weighed more heavily in the VA decision. In addition to the general description of occupational and social impairment, the §4.130 general formula fleshes out each rating description with a list of features or symptoms as examples for this level of impairment. This helps to determine a potential level of psychiatric impairment regardless of how well or poorly the veteran is actually faring with work and social activities at the time. Of six such descriptors under the 30% rating, three were likely manifest at six months. Of the nine descriptors under the 50% rating, two were possibly manifest at six months. The deliberation was focused primarily on a 30% vs. 50% permanent rating recommendation. All members agreed that the 10% threshold was well exceeded and that the 70% threshold was not approached. The preponderance of the evidence in this case favors a 30% permanent rating recommendation based on both the MEB and VA examinations. The Board considered, however, that reasonable doubt arises from: 1) the true condition at six months remains speculative even though the consistency between exams suggests that the condition was likely stable; and, 2) the VA justified a 50% rating from §4.130 criteria and continued social impairment was documented. After due deliberation and in consideration of all the evidence, the Board recommends 30% as the fair permanent separation rating for PTSD in this case.

Other Conditions. Neither the narrative summary (NARSUM), MEB physical examination nor other documents in the DES identified any conditions other than those specified above. Three other conditions, i.e., temporomandibular dysfunction, a right shoulder condition and a right ankle condition, were service connected by the VA within twelve months of separation and listed in the application. Although it is noted that none of these conditions were profiled or covered in the Commander’s statement, 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. These three conditions and any contended conditions not covered above remain eligible for AFBCMR consideration.

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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. As discussed above, PEB reliance on DoDI 1332.39 for rating PTSD was operant in this case and the CI’s condition was adjudicated independently of that instruction by the Board. In the matter of the Post-Traumatic Stress Disorder with Generalized Anxiety Disorder condition, the Board unanimously recommends 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. 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.

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

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

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090806, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB, MD 20762-7002

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2009-00484.

 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-2009-00484

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 XXXXXXX, are corrected to show that:

 a. On 11 June 2007, he was not discharged by reason of physical disability; rather on that date he was relieved from active duty and on 12 June 2007 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 10 June 2007, spouse only coverage under the Survivor Benefit Plan (SBP) based on full retired pay was established.

 c. On 12 December 2007 he was removed from the TDRL and permanently retired with a final combined disability rating of 30%.

 Director

 Air Force Review Boards Agency