RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: USMC

CASE NUMBER: PD0900495 BOARD DATE: 20100805

SEPARATION DATE: 20070115

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SUMMARY OF CASE: This Covered Individual (CI) was a USMC Staff Sergeant/E-6 (Combat Infantry/MOS 0369) medically separated from the Marine Corps in January 2007 after 11 years, and 3 months of service. The medical basis for separation was Post-traumatic Stress Disorder (PTSD). The psychiatric diagnosis (PTSD) was the only condition considered by the Physical Evaluation Board (PEB). The PEB determined that the CI was unfit for further military service, and he was separated at 10% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable USN/USMC and DoD regulations.

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CI’s CONTENTION (20090717): The CI states: ‘To qualify for TRICARE and other VA Benefits, also to change disability rating.’ (This case is court remanded under the *Sabo et al v. United States* class action suit)

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RATING COMPARISON:

|  |  |
| --- | --- |
| **USN/USMC PEB**  | **VA (at Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| PTSD | 9411 | 10% | 20061016 | PTSD | 9411 | 70% then 100% | 2006111420070417 | 2007011620070402 |
|  |  |  |  | 6 x 10% |  |  |  |  |
|  |  |  |  | 2 x 0% |  |  |  |  |
|  |  |  |  | 6 x NSC |  |  |  |  |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes non-PEB Conditions*):**  **9 0% from 20070116**  **100% from 20070402** |

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ANALYSIS SUMMARY:

Psychiatric condition: The CI’s history of psychiatric problems goes back several years. In March 2002, CI presented to the clinic complaining of a long history of irritability, getting angry too easily with his wife, and hyper-vigilance. He had been told by many people to calm down. He related being paranoid, but unsure of what he was paranoid about. He said he didn’t like being in a crowded area, because he had to look out for himself. He reported that symptoms had been going on for a very long time. The CI was referred to see a psychiatrist, and was seen by Dr. M. on 9 April 2002. Dr. M. elicited a lifelong history of anger, irritability, and being uncomfortable with people. Apparently, the CI’s father was the same way, and had been recently started on Zoloft with good results. The CI reported to Dr. M. that he had enlisted in USMC to get a chance to unleash aggression in combat. CI was started on psychotropic medication (Prozac and Klonopin), with good results. At follow-up, he reported much less irritability, more energy, and improved mood. He was seen again for psychiatric evaluation (by Dr. P.) in July 2002. In his clinical note, Dr. P. states: ‘Rule-out anxiety disorder, not otherwise specified.’ Dr. P. continued treating with Prozac, and increased the dose up to 40 mg per day (with good results). The CI deployed twice to Iraq (Feb-Jun 2003 and Mar-Oct 2004) as a Combat Infantryman, and he engaged in direct combat with the enemy. Twenty months after his return to CONUS, CI presented to Sick Call at Camp Geiger, complaining of problems with anger and problems with his marriage. On 23 June 2006 he was seen and evaluated by Dr. P. (a psychologist), and then on 13 July 2006, he was evaluated by Dr. V. (a psychiatrist). His psychotropic medication was re-started. Two weeks later, CI returned for follow-up and reported that his symptoms were worse. CI said that he was frequently thinking of killing others. He was admitted to the psychiatric ward, because of the possibility of harm to others. After 6 days, he was judged to be no longer dangerous to self or others, and he was released from hospital. At this point he was referred for a Medical Evaluation Board (MEB), and the MEB referred him to a Physical Evaluation Board (PEB). At the PEB, the CI was determined to be unfit for further military service. The diagnosis was PTSD (coded 9411), and it was rated at 10%. In February 2007, following separation from service, the PTSD was rated by the VA at 70% disability.

The Board reviewed all evidentiary information available. IAW VASRD §4.129, when a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the member’s release from active military service, the rating agency shall assign an evaluation of not less than 50 percent. The Board unanimously recommends an initial 50% rating for PTSD in retroactive compliance with VASRD §4.129. The permanent PTSD rating should be based on the CI’s level of functioning six months (26 weeks) following separation. An exam was not performed right at the six month point, so therefore the Board must use the best evidence available. Treatment records from the VA show that CI was seen for Mental Health evaluation on 26 April 2007 (14.5 weeks after separation), and again on 18 June 2007 (22 weeks after separation). When comparing these two contacts between CI and the VA Health Care System, both Mental Health evaluations were conducted by a psychiatrist (Dr. H.), and both exams have probative value. At both visits, CI reported that he was sleeping well, and was getting along better with his wife. Dr. H. noted less irritability, less agitation, and improved mood, no homicidal or suicidal ideation, and no hallucinations. The Global Assessment of Functioning (GAF) score was 45-50. In determining the CI’s permanent PTSD rating, the Board carefully considered the results of these two Mental Health assessments, as well as the other evidence. The Board determined the CI was experiencing significant occupational and social impairment with reduced reliability and productivity. He was experiencing rage attacks, and difficulty in establishing and maintaining effective work and social relationships. After lengthy deliberation, the Board unanimously recommends a permanent PTSD separation rating of 50% (IAW VASRD §4.130). For both the initial and permanent PTSD rating, the Board considered whether a higher rating (70%) would be appropriate. After considerable discussion, the Board unanimously determined that a higher rating of 70% would not be appropriate.

History of Other Conditions (documented in Disability Evaluation System package): Appendectomy, left shoulder pain, left shoulder numbness, pain in knees (bilateral), pain in hands (bilateral), back pain, hearing loss, fractured right ankle, pain and swelling of right ankle, defective visual acuity, gastro-esophageal reflux disease (GERD), and skin scarring were all discussed and considered by the Board. There is no clearly documented evidence that any of these conditions caused a significant adverse effect on the performance of required military duties. These other conditions are all judged by the Board to be not unfitting at the time of separation from service, and are not relevant for disability rating. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

History of Other Conditions (not documented in DES package) -

Right shoulder strain and left ankle strain were also considered by the Board. There is no clearly documented evidence that these conditions were a matter of record in the DES package. Therefore, these conditions are judged to be outside the scope of this Board.

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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. Furthermore, PEB reliance on DoDI 1332.39 and SECNAVINST 1850.4e may have been operant in this case, and the CI’s condition was adjudicated independently of those instructions by the Board.

In the matter of the PTSD condition (coded 9411), the Board unanimously recommends an initial Temporary Disability Retired List (TDRL) rating of 50%, in retroactive compliance with VASRD §4.129, as directed by DoD. The Board unanimously recommends a permanent rating of 50% at six months following separation, IAW VASRD §4.130. in the matter of the appendectomy, left shoulder pain/numbness, bilateral knee pain, bilateral hand pain, back pain, hearing loss, fractured right ankle, right ankle pain/swelling, defective visual acuity, GERD, skin scars, 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.

Right shoulder strain and Left ankle strain, rated by the VA, were not mentioned in the Disability Evaluation System (DES) package and are therefore outside the scope of the Board. The CI retains the right to request his 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 separation be recharacterized to reflect that rather than discharge with severance pay, the CI was placed on the 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 permanently retired by reason of physical disability with a final combined 50% rating as indicated below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| PTSD  | 9411 | 50% | 50% |
| **COMBINED** | **50%** | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090717, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 19 Aug 10

1. I have reviewed the subject case pursuant to reference (a). 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 with placement on the Temporary Disability Retired List with a disability rating of 50% for the period 15 January 2007 thru 15 July 2007.

 b. Final separation from naval service due to physical disability effective 15 July 2007 with a disability rating of 50 percent and placement on the Permanent Disability Retired List.

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)