RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900566 BOARD DATE: 20100728

SEPARATION DATE: 20050906

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SUMMARY OF CASE: This covered individual (CI) was an active duty and Air National Guardsman, TSgt/E-6 (1A251, Loadmaster) medically separated from the Air Force in 2005 after more than 10 years of active service. The medical basis for the separation was Depressive Disorder-Not Otherwise Specified (NOS).The CI continued to have significant mental health problems despite appropriate medication and psychotherapy and was referred for a Medical Evaluation Board (MEB). He was referred to the Physical Evaluation Board (PEB), found to be unfit due to Depressive Disorder--NOS, and separated with a 10% disability rating. The PEB assigned a rating of 30% but then deducted 20% for aggravating/contributory factors.

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CI CONTENTION: The CI states: ‘VA rating of 70% service connected. Social Security rating 100%.’

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RATING COMPARISON:

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| --- | --- |
| **Service Informal PEB – 20050506** | **VA (5 and 6 months after Separation)** **All Effective 20050907** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Depressive Disorder, Not Otherwise Specified, Definite Social and Industrial Adaptability Impairment | 9434 | 10% | Mood Disorder (claimed as depression)Schizoaffective Disorder, Depressed TypeReduced to 50% 20070116Increased to 70% 20070914 | 94359211 | 10%70% | 20060307DRO |
| Adjustment Disorder with mixed Anxiety and Depressed Mood | Cat III |
| Alcohol Dependence | Cat III |
| Chronic Right Knee Pain | Cat II | Right Knee Condition | NSC | 20060227 |
| Gastroesophageal Reflux Disease | Cat II | Hiatal Hernia with Gastroesophageal Reflux Disease | 7399-7346 | 0% | 20060307 |
| Subacromial Impingement Syndrome | Cat II | Sprain Left Shoulder | 5201 | 0% | 20060227 |
|  | Not in DES | Tinnitus | 6260 | 10% | 20060227 |
|  | Not in DES | Hypertension | 7101 | 0% | 20060228 |
|  | Not in DES | Erectile dysfunction associated with Hypertension | 7599-7522 | 0% | 20060228 |
|  |  | NSC X 4 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*):** **70% from 20050907****50% from 20070113** **70% from 20070914**   |

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ANALYSIS SUMMARY:

Mental Health Condition

The CI deployed in March of 2003, as a C-130 Loadmaster in support of Operation Iraqi Freedom and Operation Enduring Freedom. While deployed, he injured his left shoulder engaging in physical fitness activity and was given ibuprofen for pain. He was restricted from flight duties in theater for a short period of time but eventually resumed flight duties. On post deployment health assessment he reported that he was feeling down, depressed, and helpless. The reviewing medical officer at deployed location suggested that the CI report to his home station medical clinic for items listed on the health assessment upon return to home station.

The CI reported to branch medical clinic, NAS Joint Reserve Base Fort Worth, on 6 August 2003, where he was referred to see a psychologist. It was reported that he made good progress in counseling and he was motivated and redeployed with the unit to the Middle East. He re-injured his left shoulder while loading cargo in the combat zone and upon return to home station, required surgery to repair damage. While recovering from shoulder surgery the CI resumed counseling sessions and was diagnosed having major depression. In November 2004, the treating psychologist felt that CI's condition was worsening and referred him to a psychiatrist for medication evaluation. Before the evaluation with the psychiatrist, and while continuing therapy for the shoulder condition, CI was demobilized and released from title 10 status and returned to reservist status. The result of him being released from Title 10 orders and dropped from TRICARE, CI was unable to make his scheduled appointments. This was extremely stressful for him and only added to his depression. The CI discussed his thoughts with a senior NCO who brought the CI’s recent behavior and verbal expressions to their Commander’s attention. Out of fear of him hurting himself and or those around him, the Commander felt it was necessary to refer him for a mental health evaluation.

A command-directed mental health evaluation was completed in January 2005 and the IAW AFI 48-123 the CI was referred for a Medical Evaluation Board (MEB) for Depressive Disorder-NOS. An MEB narrative summary (NARSUM) was completed 20050311 after a psychiatric addendum was completed 20050218. The psychiatric addendum stated the CI’s degree of impairment for civilian social and industrial adaptability is Considerable. His degree of impairment for military service is Marked. The Informal PEB determined the CI was unfit because of Depressive Disorder Not-NOS, Definite Social and Industrial Adaptability Impairment. A rating of 30% was applied but 20% was deducted for aggravating/contributing factors of alcohol dependence and history of Adjustment Disorder. The final combined rating was 10%.

A VA Mental Health Compensation and Pension (C&P) examination was completed 20060307, six months after the CI separated from service. Initially a 10% disability rating for 9435 Mood Disorder was applied but the CI requested review by a Decision Review Officer (DRO). This review was completed and the initial rating was corrected to a 70% rating for 9211 Schizoaffective Disorder, Depressed Type. This rating was effective from the day after separation 20050907. This same review also resulted in a decrease in the rating to 50% effective 20070116 as VA treatment records showed significant improvement of symptoms with no evidence of depression and the CI was gainfully employed. The rating was subsequently increased back to 70% effective 20070914 based on a C&P exam 20071001 that documented the CI was not able to maintain employment due to worsening symptoms of his mental health condition.

At the initial VA C&P Examination 20060307, the examiner did not have the CI’s service treatment record (STR) for review. He reported the CI was very uncooperative and difficult to interview. Exaggerated responses were noted on psychological testing and malingering could not be ruled out. Nonetheless the examiner diagnosed Mood Disorder-NOS vs. Bipolar Disorder; Alcohol and Cannabis Dependency; possible malingering; Superior Intelligence; Personality Disorder-NOS, with Borderline and Antisocial Features; problems with primary support group; problems with social environment; and occupational problems. Global Assessment of Function (GAF) was 50.

The DRO reviewed both the STR and VA records through 20070116. While some of the evidence used to support the 70% rating was from a C&P examination of 20061229 which was more than twelve months after the CI separated from service, the evidence within the twelve month time period also supports a rating greater than 10%. This includes pre-separation (but post PEB) military treatment record of 20050721 along with VA treatment reports of 20060608, 20060720, 20060807, 20060824, and 20060828.

These records support a diagnosis of schizoaffective disorder, depressed type (as opposed to mood disorder NOS) as well as either personality disorder or traits. Multiple GAFs are recorded in the middle 40s prior to one year after separation. Although the initial VA C&P and psychological testing suggested exaggeration of symptoms (as did later psychological testing), the CI nonetheless had significant dysfunction due to mental illness. Traits or full personality disorder could explain the uncooperativeness and exaggeration on testing at the VA C&P exams. Also, even after his alcohol dependence was considered to be in remission, his significant dysfunction continued.

At a VA mental health intake assessment examination 20060608 (nine months after separation) the CI was very uncomfortable, especially at first, wringing his hands and looking around the room not making eye contact. He was cooperative but difficult to interview and was vague and distracted. His mood was irritable, watchful, and depressed. His speech included a lot of curse words and angry thoughts, not directed at the psychiatrist. His thought processes included delusional obsession and resentment and his paranoia was beyond what the psychiatrist normally saw with PTSD. For example, the CI felt other drivers were specifically targeting him with bad driving. The diagnoses included schizoaffective disorder, depressed type with alcohol abuse in partial remission (controlled use). Some features of personality disorder were present but no diagnosis was made at that time. His stressors were considered severe (Axis IV) and his GAF 41/47. The impression was the CI was functioning poorly with depressive and psychotic symptoms; not currently dangerous but anger and paranoia made him a long term risk for suicide or aggression. The CI had his medication adjusted and began psychotherapy. He continued to be dysfunctional and was fired from his job in August 2006.

Hospitalizations:

On 20050308 the CI was admitted to Red River Recovery Center for ongoing depression complicated by an alcohol use disorder. He was also admitted to Baylor All Saints Medical Center 20050622 for suicidal ideation. There were no admissions after separation but on 20060720 VA Psychiatrist recommended he be admitted but CI refused. He had the support of a friend and imminent danger was not high enough to support an involuntary commitment. He was fired from his job at that time.

Deduction for Alcohol and History of Adjustment Disorder

The NARSUM was completed by a flight surgeon and included alcohol dependence as a diagnosis. However, the CI was evaluated by (Alcohol and Drug Abuse Prevention and Treatment) ADAPT and neither alcohol abuse nor alcohol dependence was diagnosed. The psychiatric addendum was completed by a psychiatrist who did not diagnose alcohol abuse or dependence. However on 20050308 the CI was admitted to Red River Recovery Center for ongoing depression complicated by an alcohol use disorder. The VA C&P also diagnosed Alcohol Dependence. No provider determined what portion of the CI’s mental health disability was due to alcohol dependence. There is not sufficient evidence in the STR for the Board to make this determination and to do so would be speculation. Also, even after the CI’s alcohol dependence was in full remission he continued to have significant dysfunction. Therefore no deduction from the mental health disability rating is warranted.

A history of being seen in a mental health clinic for social stressors in 1994 was reported. However, a past history of adjustment disorder does not justify a deduction from the disability rating. Adjustment disorders are defined as the development of emotional or behavioral symptoms in response to an identifiable stressor(s) occurring within three months of the onset of the stressor(s). The symptoms or behaviors are in excess of what would be expected from exposure to the stressor or cause significant impairment in social or occupational functioning. The symptoms do not persist for more than six months after the stressor has terminated. Generally, after six months either the person has returned to full functioning or meets the criteria for mental health disorder such as depression. An Air Force psychiatrist determined the CI met the diagnostic criteria for Depressive Disorder-NOS in the NARSUM.

Without any deductions, the PEB’s rating was 30%. Although the psychiatrist felt the CI’s civilian social and industrial adaptability impairment was Considerable and his degree of impairment for military service was Marked, the Informal PEB determined his impairment was Definite and rated it 30% in accordance with DoDI 1332.39. A Considerable impairment would be rated at 50% IAW DODI 1332.39. The service and VA records show the CI did have a considerable impairment with reduced reliability and productivity and difficulty establishing and maintaining effective work and social relationships. Despite medication and psychotherapy, the CI had depression, was unmotivated, had suicidal and homicidal ideas and he was fired from his job secondary to his mental illness. He had been hospitalized twice (once for suicidal ideation) and a third hospitalization had been recommended but the CI refused.

Alcohol Dependence was not considered a disability and no rating can be applied.

Other Conditions

Shoulder, Gastroesophageal Reflux Disease (GERD), and Chronic Right Knee Pain

Shoulder

The CI initially injured his left shoulder while deployed to 0man summer 2003. He was restricted from flight duties for a short time but was able to return to flight duty and finish his deployment. He reinjured his shoulder while performing heavy lifting on a second deployment. He required left shoulder surgery (arthroscopic subacromial decompression and acromioplasty with bursectomy and arthroscopic resection of distal clavicle) on 13 August 2004 and had a long course of post-operative physical therapy. The NARSUM reported: As per orthopedic surgeon, member still has some "discomfort in his left shoulder when he does anything of significant strength or anything that is away from his body". In addition to the S4 profile, he also had a U4 profile for his shoulder. His limitations were: no lifting, pulling, and/or pushing with left arm; no fitness testing and/or training. No weight restrictions were noted. No shoulder examination is documented.

VA Joint C&P exam of 20060227 and 20061212 did not include a shoulder examination or a shoulder range of motion (ROM) examination. A VA general C&P examination of 20080520 included a ROM exam.

The nearest ROM examination in time to the CI’s separation is from 20040920. It shows decreased abduction and significant weakness. A letter from the same provider dated 20050110 stated the CI still had some symptoms. It states: ‘He still has some discomfort in this shoulder whenever he does anything of significant strength or anything that is away from his body.’

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| Left ShoulderMovement | Normal ROM | ROM Mil20040920 | ROM VA20060227 | ROM VA20080520 |
| Forward Elevation (Flexion) | 0 - 180 | NM | NM | 175 without pain |
| Abduction | 0 - 180 | 135 | NM | 180 without pain |
| External Rotation | 0 - 90 | NM | NM | 0-80 without pain |
| Internal Rotation | 0 - 90 | NM | NM | 0-80 without pain |
|  |  | (2 months after surgery) Motor-considerably weak: abduction 3/5, flexion 4-/5, external rotation 3/5, internal rotation 3/5 | Takes Naproxen bid for pain; no increased limitations with flare-ups or repetitive motion; no excess fatiguability, weakened movements; no pain on motion; normal x-ray (date?) | Neurologic: completely intact; Active ROM did not produce any weakness, fatigue, or incoordination. No additional loss of ROM with repetitive movements times 3 |

The duties of a loadmaster require heavy lifting, pushing and pulling and the CI was not able to perform this key and essential type of activity at the time of his separation from service.

GERD and Right Knee

There is no evidence either condition was unfitting at the time of separation from service. Neither condition interfered with performance of required duties and no duty restrictions are attributable to either condition.

Other Conditions Not in the Disability Evaluation System (DES)

Tinnitus, Hypertension, and Erectile dysfunction associated with Hypertension

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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 rated the CI’s mental health condition IAW with DoDI 1332.39 which was in effect at the time the CI separated from service and the condition was adjudicated independently of that instruction by the Board. After careful consideration of all available information the Board unanimously determined that the CI’s condition is most appropriately rated as 9211 Schizoaffective Disorder, Depressed Type at 50%.

The Board also considered Left Subacromial Impingement Syndrome and unanimously determined that this condition was unfitting at the time of separation from service and a 20% rating for painful motion is warranted IAW VASRD §4.59 Painful motion. Heavy lifting, pushing and pulling are essential tasks of a Loadmaster and this CI was not able to perform these types of activities at the time of separation form service.

The Board also considered the conditions of Gastroesophageal Reflux Disease and Chronic Right Knee Pain and unanimously determined that neither of these conditions was unfitting at the time of separation from service and therefore no disability rating is applied. Neither condition significantly interfered with performance of any required duties.

The other diagnoses rated by the VA (Tinnitus, Hypertension, and Erectile dysfunction associated with Hypertension) were not mentioned in the Disability Evaluation System package and are therefore outside the scope of the Board. The CI retains the right to request his Board of Correction for Military Records to consider adding these conditions as unfitting.

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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.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Schizoaffective Disorder, Depressed Type | 9211 | 50% |
| Subacromial Impingement Syndrome | 5201 | 20% |
| **COMBINED** | **60%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090915, 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-2009-00566.

 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-2009-00566

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 xxxxxxxxxxx are corrected to show that:

 a.  The diagnosis in his finding of unfitness was Schizoaffective Disorder, Depressed Type, VASRD code 9211, rated at 50% and Subacromial Impingement Syndrome, VASRD code 5201, rated at 20% with a combined rating of 60%; rather than Depressive Disorder, Not Otherwise Specified, VASRD code 9434, rated at 10%.

 b.  On 5 September, 2005, he elected Child Only coverage under the Survivor Benefit Plan (SBP) based on full retired pay.

 c.  He was not discharged on 6 September, 2005 with entitlement to disability severance pay; rather, on that date he was relieved from active duty and on 7 September, 2005 his name was placed on the Permanent Disability Retired List.

 Director

 Air Force Review Boards Agency