RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: USMC

CASE NUMBER: PD0900589 BOARD DATE: 20100616

SEPARATION DATE: 20080430

 TDRL: 20060829

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SUMMARY OF CASE: This covered individual (CI) was LCPL/E-3, 0352/Anti-Tank Missileman medically separated from the Marine Corps in 2006 after three years and four months of service. The medical basis for the separation was Post Traumatic Stress Disorder (PTSD). The CI was referred to the Physical Evaluation Board (PEB), placed on the Temporary Disability Retired List (TDRL) at 30% disability for the PTSD condition, and later removed from the TDRL and separated at 10% disability using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

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CI CONTENTION: The CI states: “Marine Corps and VA reduced my disability payments because they said I show improvement. That’s news to me. I am unemployed and I am hurting. Right after I reported to my TDRL Eval. I quit my job & have been out of work since. I have problems with my back that has kept me from doing most work, but I was declined disability for it from the VA”.

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RATING COMPARISON:

|  |  |
| --- | --- |
| Service PEB  | VA (7 Months After Separation from TDRL) |
| Condition | Code | Rating | Date | Condition | Code | Rating | Exam | Effective |
| Post Traumatic Stress Disorder  | 9411 | 30%10% | 20060713(TDRL)20080331 | Post Traumatic Stress Disorder | 9411 | 50%30% | 2006113020081201 | 2006083020090601 |
| Alcohol Dependence | CAT IV |  |  |  |  |  |  |  |
|  | NARSUM20080310 |  | Residuals, Right Shoulder Dislocation | 5203 | 10% | 20061130 | 20060830 |
|  | MEB H&P20060627 |  | Residuals, Right Wrist Strain | 5215 | 0% | 20061130 | 20060830 |
|  | NARSUM20080310 |  | Low Back Condition | NSC |  |  |  |
| TOTAL Combined: 10% | TOTAL Combined (*Includes Non-PEB Conditions*): 60% from 2006083040% from 20090601  |

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ANALYSIS SUMMARY:

IPEB 20080331 TDRL: Separated from TDRL

IPEB 20060713 Initial: Entered TDRL

The CI had two deployments to Iraq for about seven months each, the first one ending in February 2005 and the second in February 2006. While deployed to Iraq the first time the CI was involved in an IED attack in which he lost his best friend and everyone else in the vehicle was injured except for him. He subsequently had panic attacks that became worse to the point of happening at least once a week prior to his second deployment to Iraq. The first major panic attack occurred when he arrived home from his first deployment. The panic attacks usually happened when he became stressed or when other unpleasant things came back to him such as, “bad memories from his previous deployment”. He also had difficulty with sleep, feelings of isolation, emotional numbness, recurrent intrusive thoughts of past things he had seen, as well as nightmares about the day his best friend was killed. He reported that when he returned from his first deployment he started drinking large amounts of alcohol because he wanted to relax, forget about his unpleasant thoughts and thought it would help him sleep. He sought help at the Battalion Aide Station in Camp Lejeune and was prescribed Celexa to help his panic attacks. The Celexa did not help and he was switched to Zoloft which made him feel "happy", but did not help his panic attacks. He said he was also prescribed Benadryl which temporarily helped him sleep and he was switched to Ambien when he went to Iraq the second time but this only helped him get about four hours of sleep a night during that deployment.

The patient was having more and more difficulty with sleep while he was in Iraq during his second deployment at which point he bought Valium from a local pharmacy and overdosed. The Ambien was not helping him enough and he was worried he would be removed from his unit if he sought help from mental health. He became cognitively impaired after taking the Valium. Fellow Marines noticed and brought him in for help. He did not have any problems related to the overdose but was brought up on charges. The patient then returned to Naval Hospital, Camp Lejuene where he began being followed by Division Psychiatry.

On April 17th 2006, patient was brought intothe Inpatient Ward 4A at Naval Hospital, Camp Lejuene after making superficial cuts to the wrist while intoxicated. At that time he reported symptoms consistent withPTSD which had waxed and waned since his firstappointment and worsened since his return from Iraq in February 2006. He continued to report nightmares, difficulty initiating and maintaining sleep, hypervigilance, increased startle response, avoidance and isolation. After a brief inpatient stay, the patient was discharged under the care of Dr. L. as his outpatient psychiatrist and he had been continuing to follow weekly with Dr. L. Despite weekly therapy and medication management by Dr. L. which at that point included Zoloft 150 mg p.o. q hs, and Seroquel 100 mg p.o. q hs, as well as the patient's avoidance of alcohol, he continued to have difficulty with avoidance both emotionally and of others when not at work. He alsocontinued to have difficulty with sleep, recurrent nightmares, some flashbacks to events where he lost his best friend as well as being easily startled and feeling keyed up allthe time.

Although he attempted all interventions recommended with good compliance he had little if any reduction in symptoms. His treating psychiatrist thought that short-term time limited treatment would not be effective and that he would require long-term intensive treatment after discharge from the military. His GAF was 50 at the time of the original narrative summary (NARSUM) and the preceding year.

The CI entered the TDRL 20060829 with a 30% rating for PTSD and had his first TDRL evaluation 20080310. He had his first VA C&P evaluation in November 2006. A 50% rating was assigned by the VA for occupational and social impairment with reduced reliability and productivity. The VA noted a series of complaints of anxiety and depression which culminated with acute alcoholism and suicidal gestures. The diagnosis was later changed to PTSD. They also noted additional symptoms of nightmares and insomnia due to the nightmares along with symptoms of decreased concentration and hypervigilance. His acute alcoholism was in remission. He continued to have symptoms after he left active duty and he reported being non-compliant with his service prescriptions due to side effects. He remained unemployed and isolative and his Global Assessment Functioning Score was continued at 50 from separation.

At the time of the first TDRL evaluation in March 2008 he was registered with the Tuscaloosa AL VAMC but was not in any active on-going treatment. The most recent mental health appointment had been in October 2007. He had also been seen in March 2007. He had been unemployed from August 2006 until January 2007 when he began a job as the sports editor of a local newspaper. He reported this job was frequently stressful, especially in having to deal with the public, and he works as much as 60 hours per week. He says that keeping busy has kept him from thinking as much about his problems. He was not dating and had few social relationships but he did enjoy visiting his sister frequently and his parents less often. He lived by himself and he did not participate in any social activities outside the home or attend church.

At the TDRL evaluation in March 2008, the CI continued to experience mild or moderate chronic PTSD symptoms for which he had developed sufficient coping skills to allow him to maintain full time employment and slight social activity. He continued to have frequent distressing memories of combat incidents, especially the IED explosion that killed his friend. He preferred to be alone when not working and he has minimal social contacts except with his sister and parents, who live nearby. His mood was often mildly anxious and occasionally irritable or depressed. He no longer had suicidal thoughts and he had one panic attack in the previous six months. He had difficulty falling asleep and he had nightmares a few times per week. He displayed slight signs of mental illness on examination (anxious, depressed, or irritable mood). His mood was often mildly anxious and sometimes mildly depressed or irritable. His affect was wide ranging and not depressive. No GAF was reported but the psychiatrist opined his impairment for military duty was marked and he did not require hospitalization.

He was separated from the TDRL on 20080430 with a 10% rating for 9411 PTSD. This rating was likely determined IAW DoDI 1332.39 as this was in effect at that time. VASRD §4.129 was not applied.

The CI had a periodic review VA C&P evaluation done on 20081201 and this is approximately 7 months after he separated from the TDRL. After this examination, the VA proposed a reduction to 30% rating and this reduction was implemented in March 2008. At the time of this C&P evaluation he was unemployed. He continued to have frequent, chronic Mild PTSD symptoms:

 PERSISTENT RE-EXPERIENCING THE TRAUMATIC EVENT BY: Recurrent and intrusive distressing recollections of the event, including images, thoughts, or perceptions. Recurrent distressing dreams of the event. Acting or feeling as if the traumatic event were recurring. Intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event.

PERSISTENT AVOIDANCE OF STIMULI ASSOCIATED WITH THE TRAUMA AND NUMBING OF GENERAL RESPONSIVENESS: Efforts to avoid thoughts, feelings, or conversations associated with the trauma. Efforts to avoid activities, places, or people that arouse recollections of the trauma. Markedly diminished interest or participation in significant activities. Feeling of detachment or estrangement from others.

PERSISTENT SYMPTOMS OF INCREASED AROUSAL: Difficulty concentrating. Hypervigilance. Exaggerated startle response.

His activities and leisure pursuits were watching movies and playing Xbox. He was single and living alone. He reported satisfying social relationships. His current psychosocial functional status was evaluated as mildly impaired. He also complained of mildly impaired recent memory. He was no longer having panic attacks. His mood was depressed and his affect was normal. No mental health diagnosis other than PTSD was made. GAF was 61. He had occasional decrease in work efficiency and there are intermittent periods of inability to perform occupational tasks due to PTSD signs and symptoms, but with generally satisfactory functioning (routine behavior, self-care, and conversation normal) due to PTSD symptoms, to include avoidance behaviors and nightmares, cause an occasional decrease in work efficiency.

Based on the original NARSUM done in August 2006 and the original VA C&P evaluation in November 2006, the CI’s condition warranted a 50% evaluation based on frequent moderate to severe symptoms that persisted despite appropriate therapy and medications. His Commander noted mental struggles that prevented him from fulfilling his required duties while on active duty. He required inpatient treatment in April 2006. After entering the TDRL, he remained unemployed until January 2007. His Global Assessment of Functioning (GAF) was determined to be 50 for the year preceding the NARSUM through the time of the VA C&P in November 2006. The military and VA psychiatrists noted similar, moderate to moderately severe levels of impairment in occupational and social functioning despite appropriate therapy, medication, and a good compliance by the CI.

At the time of the first TDRL evaluation in March 2008 the CI had slightly improved but continued to have mild to moderate frequent symptoms of PTSD. Despite his symptoms he had obtained a job as a sports editor of a local newspaper and had held this job for over one year. The record contains no information on his performance in this position and he subsequently quit this job. He continued to be extremely socially isolated and limited social interactions to family members. He had ceased taking medication and attending therapy and this appears understandable as neither appeared to provide him any relief from his symptoms. While continued treatment may have eventually helped, this type of behavior is not uncommon in persons with mental illness. Therefore, lack of engagement in active treatment does not prove lack of need for treatment. He also continued to display objective signs of mental illness on mental status exam. These signs and symptoms support a 30% evaluation. Some elements of the 50% evaluation were present but the overall disability picture aligns more closely with the 30% evaluation.

The second VA C&P evaluation in December 2008 documents a level of functioning that was slightly improved but very similar to March 2008. He remained very socially isolated and continued to have frequent PTSD symptoms. He had quit his job and remained unemployed. It is not clear if this was related to his PTSD. At this time his GAF was noted to be 61. The VA applied a 30% rating based on this evaluation and this appears appropriate.

Other Conditions

Residuals, Right Shoulder Dislocation; Residuals, Right Wrist Strain; Low Back Condition

Shoulder and back conditions were mentioned in the 20080310 TDRL Evaluation/NARSUM and all three conditions were mentioned in the MEB History and Physical. However, none were mentioned in the original NARSUM of 20060601 and none were identified as a TDRL condition.

None appear to have been unfitting at the time the CI was placed on the TDRL. There is no evidence of any physical limitations or inability to perform required duties attributable to these conditions prior to entry onto the TDRL.

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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. The PEB did not apply VASRD §4.129 to the CI’s PTSD adjudication as mandated by NDAA 2008 in effect at the time. The PEB rated this condition IAW DoDI 1332.39 which was in effect at the time of separation from the TDRL but the Board adjudicated this condition independent of that instruction. After careful consideration of all available information the Board unanimously determined that the CI’s condition warrants an initial TDRL rating of 50% for 9411 PTSD in retroactive compliance with VASRD §4.129 and a 30% permanent rating at 6 months IAW VASRD §4.130.

The CI was on the TDRL for twenty months with a rating of 30% for PTSD and was then separated with a permanent rating of 10%. In compliance with VASRD §4.129, he should have had a rating of 50% while on the TDRL. When he separated from the TDRL, his functional impairment due to PTSD warrants a 30% permanent rating. Although he was employed and was generally functioning satisfactorily, he continued to have almost daily symptoms, remained extremely socially isolated, and displayed signs of mental illness on mental status examination.

The Board also considered the other diagnoses evaluated by the VA (Residuals, Right Shoulder Dislocation; Residuals, Right Wrist Strain; Low Back Condition) and unanimously determined that none were unfitting at the time the CI entered the TDRL. Only unfitting conditions that were included as TDRL conditions can be rated when the CI is separated from the TDRL. Therefore no rating can be applied to any of these conditions.

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RECOMMENDATION: The Board recommends that the CI’s prior separation be recharacterized to reflect that rather than placement on the TDRL at 30% for PTSD followed by discharge with severance pay, the CI was placed on the TDRL at 50% following his 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 30% rating as indicated below.

|  |  |  |  |
| --- | --- | --- | --- |
| UNFITTING CONDITION | VASRD CODE | TDRL RATING | PERMANENTRATING |
| 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 20090817, 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 XXXXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 25 Jun 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 percent for the period 29 August 2006 thru 28 Feb 2007.

 b. Final separation from naval service due to physical disability effective 1 March 2007 with a disability rating of 10 percent with entitlement to disability severance pay.

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)