RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900611 SEPARATION DATE: 20080317

BOARD DATE: 20100901

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a PO1/E6 (Aviation Electronics Technician) medically separated from the Navy. The medical basis for the separation was overall effect of somatoform disorder, posttraumatic stress disorder (PTSD) and major depressive disorder (MDD). He did not respond adequately to treatment, and was unable to perform within his rating. He underwent a Medical Evaluation Board (MEB) which forwarded cervicalgia and overall effect of somatoform disorder, PTSD and MDD to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the mental health condition as unfitting, rated 0%, with application of SECNAVINST 1850.4E, DoDI 1332.39 and the Veterans’ Administration Schedule for Rating Disabilities (VASRD). Cervicalgia was determined to be a category III condition. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “VA found service connection of posttraumatic stress disorder, somatoform disorder, and major depressive disorder which is 70% disabling. Also, numerous (attached) other conditions service connected the military never diagnosed me with.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20071130**  | **VA (2 Mo. Pre-Separation) Effective 20080318** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Somatoform Disorder | Overall Effect | 0% | Mood Disorder, Not Otherwise Specified and Somatoform Disorder | 9435 | 50% | 20080103 |
| MDD Moderate Recurrent |
| PTSD  | PTSD | 9411 | NSC\* | 20080103 |
| Cervicalgia |  CAT III | Cervical Strain | 5237 | 10% | 20080103 |
| ↓No Additional MEB/PEB Entries↓ | R Shoulder Impingement Syndrome w/Median, Ulnar, Radial Neuropathy | 8599-8513 | 30% | 20080103 |
| Diabetes Mellitus, Type II | 7913 | 20% | 20080103 |
| R Knee Sprain S/P Stress Fx Tibial Plateau | 5299-5024 | 10% | 20080103 |
| Lumbar Strain | 5237 | 10% | 20080103 |
| Residual R Chest Scar S/P Gunshot Wound | 7804 | 10% | 20080103 |
| Dyshidrotic Eczema | 7806 | 10% | 20080103 |
| Psoriasis | 7816 | 10% | 20080103 |
| 0% x 18 / NSC x 5 | 20080103 |
|  **Combined: 0%** |  **Combined (*Includes Non-PEB Conditions*): 90%**  |

\*VA added PTSD to mental condition and increased overall mental condition to 70%

ANALYSIS SUMMARY:

Mental Condition. The CI was first evaluated for PTSD symptoms on 2 February 2007. His symptoms included sadness, crying spells, irritability, anxiety, anhedonia, isolation from friends and family, insomnia with frequent nightmares, flashbacks of events witnessed in previous deployments, increased startle response, hypervigilance, restlessness, loss of energy, hopelessness, worthlessness, guilt, decreased concentration, and avoidance of anything that reminded him of the past. He reported some occasional thoughts of death and attempted suicide in 2005. His mental status examination was normal except for sad and worried mood with an appropriate, congruent affect. His Axis I diagnosis was PTSD with a global assessment of functioning (GAF) of 65, indicating mild symptoms. He was placed on Zoloft and Seroquel, and returned to full duty from the psychiatric standpoint. A follow-up visit on 1 March 2007 documented similar symptoms, with a diagnosis of delayed PTSD and GAF of 65.

The narrative summary (NARSUM) (psychiatry) of 25 October 2007, five months before separation, noted that he had been receiving psychiatric treatment for PTSD and MDD since February, 2007. His symptoms continued as noted above, but also included episodic amnesic episodes. He was compliant with treatment recommendations, but his condition worsened. The CI was hospitalized from 27 June 2007 to 2 July 2007 after presenting to the emergency department with inability to recall any events for the prior 10 years of his life. He improved and was discharged as psychiatrically fit for full duty. His GAF was 30 upon admission and 60 upon discharge. He continued to have staring spells and increasing headaches. He was referred to neurology for evaluation for possible seizures and management of headaches. An extensive medical workup was negative. The NARSUM noted the mental status exam was normal except for mild psychomotor retardation and sad mood with congruent affect. Diagnoses were cervicalgia, somatoform disorder, PTSD, and MDD, moderate, recurrent. The CI had multiple complaints including neck and back pain, numbness of the hands and feet, headaches, “zoning out” periods or possible absence seizures, vertigo, perceived hearing loss, and vision loss, all of which contribute to the diagnosis of somatoform disorder. The MEB determined that the CI suffered from a psychiatric condition that did not exist prior to entry into the service and required ongoing medications and psychotherapy. He had received maximum benefit from military treatment which was not able to restore him to full duty status. Due to the high degree of impairment of his condition (unable to drive, could not perform regular duties, and difficulty managing PTSD symptoms), the Medical Board recommend referral to the PEB.

The VA psychiatric examination on 3 January 2008, two months before separation, documented a history of two suicide attempts in June 2005 and reported symptoms of “zoning out” and panic attacks occurring less than once per week. Findings included flattened affect, impaired judgment and abstract thinking, and difficulty establishing and maintaining effective work and social relationships. The examiner felt that some of the CI’s history was consistent with a personality disorder. The Axis I diagnoses were mood disorder, not otherwise specified (NOS), somatoform disorder, and antisocial traits. His GAF was 60, indicating moderate symptoms or moderate difficulty with occupational and social functioning. The VA compensation and pension (C&P) examination (mental examination) on 30 September 2008, six months after separation, noted Axis I diagnoses of MDD, panic disorder without agoraphobia, and somatoform disorder. The history noted that he had been involved in combat and received three Combat Action Ribbons and two Purple Hearts. He reported that he was involved once with an improvised explosive device explosion, which caused traumatic brain injury (TBI), and was shot twice. The examiner commented that he presented a complicated diagnostic picture, with overlap of symptoms related to PTSD, TBI, depression, panic disorder, and somatoform disorder. His GAF was 48, indicating serious symptoms and impairment, and noted to have mental health conditions that had severe impact on his occupational and social functioning. The VA C&P examination (PTSD) on 29 October 2008, seven months post-separation, established a diagnosis of PTSD. Symptoms included nervousness in crowds, hypervigilance, and mild-to-moderate cognitive impairment due to memory deficits. It was felt that mild TBI, PTSD, and significant clinical depression were all interactive and linked. Axis I diagnoses were PTSD, MDD, and cognitive disorder NOS. The GAF was 50 indicating serious symptoms or serious impairment of occupational and social functioning. The original VA rating decision did not service connect PTSD; however the VA rating decision on 14 May 2009, 14 months post-separation, added PTSD with MDD and cognitive disorder (previously rated as mood disorder and somatoform disorder at 50%), continuing the 50% rating.

PTSD, somatoform disorder and MDD, moderate, recurrent were referred to the PEB for adjudication. The PEB rated these conditions for “overall effect” at 0%, with no code applied. The PEB rating 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

The PEB considered the manifestations of all mental conditions to overlap and rated these conditions for “combined effect,” with no code applied and a 0% rating, noting that the condition was not the result of combat related injury. IAW DoDI 6040.44 and DoD guidance (which applies current VASRD 4.129 to all Board cases), the Board is obligated to recommend a minimum 50% PTSD rating for a retroactive six-month period on the 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 C&P examination performed six months after separation. The VA examinations reflected the stress of transition to civilian life which is a core intent of §4.129, carrying the preponderance of probative value in the Board’s assessment of a fair permanent rating recommendation.

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 rating higher than 50% were not met at the time of separation, and therefore, the minimum 50% TDRL rating is applicable. The VA assigned a 50% rating for the mental condition based upon §4.130 criteria without relying on the provisions of §4.129. As regards to the permanent rating recommendation, all members agreed that the §4.130 threshold for a 70% rating was not approached. The Board’s deliberations were centered therefore upon arguments for a 50% versus 30% permanent rating recommendation. The VA rater’s rationale for a 50% rating was well-elucidated in the rating decision. The verbal descriptor of a 50% rating, “occupational and social impairment with reduced reliability and productivity,” was determined by the Board to fit the CI’s condition at the six-month post-discharge time frame, recognizing the CI’s significant deterioration during that period. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board, by simple majority, recommends a permanent PTSD disability rating of 50% in this case.

Cervicalgia Condition. On 7 February 2006 the CI presented with a three-month history of neck pain and paresthesias in both hands. Follow-up evaluation two weeks later noted additional complaints of burning sensations in the right arm and left leg, with a 45-minute episode of blurred vision in the left eye. He was referred to the neurology clinic where he underwent a cervical and brain magnetic resonance imaging, transthoracic echocardiogram, cervical magnetic resonance angiogram, electrodiagnostic testing and laboratory studies, which were all normal. He was referred to pain management and had epidural steroid injections at C7-T1. He was placed on his first six-month limited duty for cervicalgia on 14 November 2006 and a second limited duty on 12 May 2007. The NARSUM (neurology) of 9 October 2007 documented no abnormalities on examination. It was noted that the CI had numerous neurological complaints without any objective abnormalities identified. The MEB separation examination on 24 October 2007 did not document any physical findings, but reported cervicalgia as a disqualifying defect. Cervicalgia was referred to the PEB for adjudication and found to be a category III condition that was not separately unfitting and did not contribute to the unfitting condition. The VA C&P examination on 7 January 2008, two months pre-separation, noted no muscular pain, no weakness, no tender points, and no atrophy. Cervical range of motion (ROM) was decreased on left lateral flexion only and painful motion was documented. The VA assigned a 10% rating for cervical strain (code 5237) for a combined ROM of 325 degrees.

The Board gave careful consideration to all of the evidence for cervicalgia as an unfitting condition at separation. The non medical assessment, limited duty periods and the MEB documentation provide evidence for the unfitting nature of the condition. The lack of any objective evidence on physical examinations, electrodiagnostic studies, and imaging studies strongly supports the cervical symptoms, and paresthesias of the extremities as manifestations of his somatoform disorder. The manifestations of his mental health conditions are rated utilizing the general rating formula for mental disorders, as noted above. After extensive deliberation, the Board unanimously recommends no reversal of the PEB adjudication for the cervicalgia condition as a category III condition, not separately unfitting, since it is subsumed by the rating for the mental condition.

Remaining Conditions. The right shoulder impingement syndrome with median, ulnar and radial neuropathy; diabetes mellitus, type II; lumbar strain; cervical strain; right knee sprain status post stress fracture to tibial plateau; and residual right chest scar status post gunshot wound conditions were all noted in the Disability Evaluation System (DES) file and rated by the VA with at least a 10% rating. The status post left testicular varicocele stripping and torsion repair; status post right little finger bone lesion removal; allergic rhinitis; status post left ring finger bone lesion removal; migraine headaches; and hypertension conditions were noted in the DES file and were rated by the VA at 0%. Bronchitis; sinusitis; fibromyalgia; left eye condition; and ureterolithiasis, kidney stone conditions were noted in the DES file. None of these conditions were clinically significant during the MEB/PEB period, and did not result in limitations of duty. These conditions were all 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. Dyshidrotic eczema; psoriasis; residual, left testicular surgical scar; residual, left ring finger and right little finger surgical scars; left inguinal strain; residual, left inguinal region surgical scar; residual, right inguinal region surgical scar; right inguinal strain; erectile dysfunction; residual, right thigh scar; residual, left arm scar; left abdominal scar status post first degree burn; and residual, left back scar status post left shoulder gunshot wound conditions are 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.

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 mental health adjudication as mandated by NDAA 2008. In the matter of the PTSD/somatoform disorder/MDD combined effect condition, code 9411-9435, the Board, by simple majority, recommends an initial TDRL rating of 50% IAW VASRD §4.129, and a 50% permanent rating at six months IAW VASRD §4.130. The single voter for dissent (who recommended a 30% permanent rating) did not elect to submit a minority opinion. In the matter of the cervicalgia condition or any other medical condition eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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 constructive TDRL at 50% for six months following CI’s 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** |
| Overall Effect, Somatoform Disorder, PTSD, and MDD | 9411-9435 | 50% | 50% |
| **COMBINED** | **50%** | **50%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090930, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXXX, FORMER USN, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

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 retroactive disposition:

 a. Placement on the Permanent Disability Retired List with a disability rating of 30 percent effective 17 March 2008.

2. 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)