RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900641 SEPARATION DATE: 20070915

BOARD DATE: 20101216

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was a Reserve Lance Corporal (3381, Food Service then working in Motor Transport) medically separated from the Marine Corps in 2007 after 3 years of service. The medical basis for the separation was Major Depressive Disorder, Single Episode, and moderate in severity (MDD). The CI was deployed to Iraq from 20050801 to 200603061 as a cook, but functioned more in mortuary affairs. During inactivation, the CI was referred for treatment of symptoms including constant nightmares, from working with dead bodies, depression, depressed affect, anxiety, increased irritability, flashbacks, anger, and insomnia. The CI was initially diagnosed with Adjustment Disorder, which was changed to MDD and Post-Traumatic Stress Disorder (PTSD). The CI was granted two periods of Limited Duty (LIMDU), and reassigned to work in motor transportation. The CI did not respond adequately to perform within his military occupational specialty (MOS) and was referred to a Medical Evaluation Board (MEB). The MEB found that the CI “suffers from a psychiatric illness that precludes his rendering any further useful military service.” The MEB listed MDD and PTSD as separate diagnoses on the NAVMED Form 6001/1. The informal Physical Evaluation Board (PEB) adjudicated the “MDD, Single Episode, Moderate in Severity” as unfitting, rated 10%; and PTSD as Related Category 2 (Conditions that contribute to the unfitting condition) with likely application of SECNAVINST 1850.4E and/or DoDI 1332.39 (E2A1.5) which were in effect at the time. The CI made no appeals, and was thus medically separated with a 10% disability rating.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: The CI states: ‘’I was separated with severance pay at 10% for PTSD in September 2007. Due to the changes in the January 2008 NDAA regarding PTSD, I feel as though my condition more appropriately warrants disability retirement.”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – 20070713** | **VA (4 Mo. after Separation) – All Effective 20070916** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| MDD  | 9434 | 10% | PTSD and MDD  | 9434-9411 | 50% | 20080129 |
| PTSD  | CAT 2 |
| ↓No Additional MEB Entries↓ | L & R Knee Conditions | NSC |
| L & R Foot conditions w/ PES Planus; Astigmatism; Hearing Loss; Recurring Strep Throat | NSC |
| Crohn’s Disease with ano in Fistula |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 50%**   |

\*PTSD rating increased to 70% effective exam of 20090911

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY: The PEB found MDD as unfitting with PTSD as a related Category 2 diagnosis. The CI’s MDD developed in service as a result of a highly stressful event (mortuary affairs) and symptoms were severe enough to bring about separation from service. Therefore, even were PTSD not considered unfitting, the provisions of §4.129 would still be applicable. There were no evaluations in the record which distinctly delineated the CI’s mental health related impairments separately for the two psychiatric diagnoses (MDD versus PTSD). The VA examination at four months post-separation stated “The Veteran has two Axis I diagnoses (PTSD and Depressive disorder, NOS) that mutually aggravate one another, and I cannot ascribe a specific degree of impairment of any one, independent of the other, with any medical certainty, without resorting to speculation.” The CI’s symptoms that would typically be attributable to PTSD, exclusive of any depressive component, were adjudged to have contributed to the unfitting MDD diagnosis at the time of original separation, and PTSD was nearly certainly unfitting at the end of the constructive Temporary Disability Retired List (TDRL) period IAW §4.129; therefore, all mental health related disabilities and symptoms that the CI exhibited were considered for rating under his unfitting mental health condition(s).

Mental Health Rating Recommendation (MDD and PTSD): The PEB 10% rating for Major Depressive Disorder (with PTSD as a Category 2 diagnosis), as described above, was likely derived from SECNAVIST 1850.4E and/or DoDI 1332.39. IAW DoDI 6040.44, the Board applied the Veterans Administration Schedule for Rating Disabilities (VASRD) in effect at the time of the adjudication, including VASRD §4.129 which was specifically adjudged as applicable in this case. IAW VASRD §4.129, the Board is obligated to recommend a minimum 50% mental disorder rating for a retroactive six month period of TDRL for the CI’s unfitting MDD condition. The Board must then determine the most appropriate fit with VASRD, 38 CFR 4.130, criteria at six months for its permanent rating recommendation. The MEB exam and civilian mental health treatments and evaluations proximate to separation would not rate higher than 50% IAW §4.130 criteria; therefore the 50% minimum TDRL rating is justified. The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case are the VA PTSD Compensation and Pension (C&P) evaluation four months post-separation (20080129) and the VA psychiatric examination six months post-separation (20080331). At the 4 month post–separation exam, the CI had a diagnosis of PTSD, Depressive Disorder (NOS), and AXIS IV “Some impairment of interpersonal interactions.” The CI was not employed, but going to school to learn to be a truck driver. He was taking some medication sporadically with symptom relief and was separated from his wife and living alone. Symptoms were not significantly worse than those documented at the MEB (three months prior to separation) and included tense mood, avoidance, feeling distant, isolation, hyper vigilance, intrusive thoughts, decreased energy, nightmares, sleep disturbance, sporadic appetite and poor concentration. The CI had no impairment of thought processes or communication, nor did he have homicidal or suicidal thoughts. The Global Assessment of Functioning (GAF) was assessed in the range of moderate symptoms (GAF=54; MEB GAF=30-50). The VA rated this exam at 50% by criteria of §4.130 and with application of §4.129 (independent rating would be closer to 30% than 50%). At the six month post-separation VA Psychiatric treatment examination (non-C&P), the CI had worsening of symptoms, was still unemployed, but attending school and was separated from his spouse. The CI endorsed alcohol abuse and stopping his recently prescribed psychiatric medications due to side effects. The CI complained of visual hallucinations, increased frequency of nightmares (2 out of 3 nights per week), increased hyper vigilance, subjective short-term memory loss, anhedonia, appetite loss, nervousness, isolation, anxiety and poor concentration. There were no objective findings of impaired memory. There were no suicidal or homicidal ideations. At this exam, the GAF was 55 which is in the range of moderate symptoms. A treatment note from 13 months after separation (20081028) indicated "domestic violence this year" (2008) which matches with the history from the 1.5 year VA exam indicating a violent domestic dispute with overnight jail (case dismissed). There was no specific date for the domestic violence noted in the record, but the examiner’s wording places the event within 1 yr of separation (DOS 20070915) and increases the likelihood and probative value that the incident should be considered proximate to the six month rating time frame and possibly denoting impaired impulse control with violence [The CI also had a pre-separation incidence of violence that led to non-judicial punishment]. The VA exam at approximately 1.5 years post-separation, documented significant worsening of the CI’s condition despite treatment of antipsychotic and anti-anxiety medications and psychotherapy. The CI had apparently finished his schooling (truck driver license obtained), but remained unemployed due to “being unable to perform a number of jobs d/t PTSD & Crohn’s; being turned down for work d/t his dx.” This worsening was outside of the six month post separation timeframe for rating purposes, however, other historical information pertained to the rating period. The history of two dissociative episodes was provided, but not categorized as to when they occurred. The CI had visual hallucinations and GAF was assessed at 35. The examiner’s assessment was of PTSD and MDD, severe with no history of remission. The examiner commented that “PTSD & Major Depression share many features, particularly those in numbing and arousal clusters, but not in reexperiencing.” The VA rated this exam at 50%. Later hospitalization for PTSD (20090918) and increase in VA rating to 70% provided no additional historical information pertinent to the six month rating time period and was adjudged as worsening outside of the rating timeframe. All Board members agreed that the evidence was insufficient to support a 70% rating under §4.130 at the six month post separation timeframe, and that the 10% threshold was well exceeded. The Board deliberated therefore primarily between 50% and 30% as the permanent rating recommendation IAW §4.130. The Board could not deduct for, or exclude, symptoms that may have been attributable to PTSD versus the unfitting MDD diagnoses, and considered the CI’s unfitting diagnosis at permanent separation to be MDD with PTSD (changed from the PEB PTSD Cat 2 adjudication, to additionally unfitting within the same rating criteria). The Board considered that the CI’s “occupational and social impairment” and “reliability and productivity” were difficult to assess at the six month rating timeframe since the CI was doing well in full time school, and that retrospective application of subsequent worsening of symptoms or disability would be speculative. Although the preponderance of evidence appears to favor a 30% rating IAW VASRD §4.130, an argument remains for a 50% rating. After due deliberation, considering all of the evidence, the Board recommends a rating of 30% as the fair permanent separation rating for MDD and PTSD coded 9434-9411 in this case.

Other Conditions (Left Knee Condition & Right Knee Condition, Traumatic Brain Injury (TBI), and Crohn’s): The left and right knee conditions were noted in the Disability Evaluation System (DES) package. Neither LIMDU, Non Medical Assessment (NMA) nor narrative summary from the MEB identified any conditions other than the CI’s mental health diagnoses. The only physical limitations were those attributed to the adjudicated conditions. No link for fitness can be drawn for the knees. No other conditions were contended in the application or rated at 10% or higher by the VA within 12 months of separation. The Board therefore has no basis for consideration of any other conditions eligible for additional rating at separation. Although a TBI condition was discussed in the VA Polytrauma consultation evaluation (20081208), this was not mentioned in the DES package, nor was it rated by the VA. Any neurocognitive deficits at, or within six months of, separation were considered in rating the CI’s unfitting mental health condition above. Crohn’s disease was not mentioned in the DES package. 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. The TBI, Crohn’s and any contended conditions not covered above remain eligible for Board for Correction of Naval Records (BCNR) consideration.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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. In the matter of the mental health conditions, the Board unanimously recommends an initial TDRL rating of 50% for Major Depressive Disorder (9434) in retroactive compliance with VASRD §4.129; and by a vote of 2:1, a 30% permanent rating at 6 months for Major Depressive Disorder with Post-Traumatic Stress Disorder (9434-9411) IAW VASRD §4.130. The single voter for dissent (who recommended a 50% permanent rating) did not elect to submit a minority opinion. In the matter of the Left Knee and Right Knee conditions, or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for any additional rating at separation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 (MDD at minimum of 50% IAW §4.129) and then a permanent 30% disability retirement as below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT RATING** |
| Major Depressive Disorder [*PTSD Cat 2*] | 9434 | 50% | -  |
| Major Depressive Disorder with Post-Traumatic Stress Disorder | 9434-9411 | - | 30% |
| **COMBINED** | **50%** | **30%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20091022, 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 XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 3 Jan 11

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 September 14, 2007 thru March 13, 2008.

 b. Final separation from naval service due to physical disability effective March 14, 2008 with a disability rating of 30 percent and placement on the Permanent Disability Retired List.

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)