RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Marine corps

CASE NUMBER: PD0900693 SEPARATION DATE: 20051115

BOARD DATE: 20110602

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve LCpl (6672-Aviation Supply Clerk) medically separated for the posttraumatic stress disorder (PTSD). The condition began after a deployment to Iraq in 2004 associated with Criterion A stressors. The Diagnostic and Statistical Manual of Mental Disorders (DSM IV) criteria for an Axis I diagnosis of PTSD were met. He did not respond to medications and psychotherapy adequately to perform within his military occupational specialty, was placed on limited duty (LIMDU) and convalescent leave after hospitalization, and underwent a Medical Evaluation Board (MEB). Prolonged PTSD and depressive disorder, not elsewhere classified were referred to the Physical Evaluation Board (PEB) as medically unacceptable conditions. The Informal PEB adjudicated PTSD as unfitting, rated 10%; depressive disorder, not otherwise specified (NOS) and bipolar disorder with mixed features, each rated 0%; and personality disorder, NOS as category IV (conditions which do not constitute a physical disability). Upon request by the CI, the PEB reconsidered the case and adjudicated as depressive disorder, NOS as unfitting, rated 0%; category III (conditions that are not separately unfitting and do not contribute to the unfitting condition) bipolar disorder with mixed features and PTSD, prolonged; and category IV (conditions which do not constitute a physical disability) personality disorder, NOS. The CI appealed to a Formal PEB (FPEB), and then filed a Petition for Relief and a Congressional appeal. The final FPEB adjudication was Category I, PTSD, rated 10%; and Category II depressive NOS related to PTSD. He was medically separated for the unfitting PTSD condition with a 10% disability rating with application of SECNAVINST 1850.4E.

CI CONTENTION: “My disability for PTSD was worse than the 10% that was assigned by PEB. I am currently 100% service connected by VA and am currently drawing Social Security Disability. I contend that my condition should have been greater and that I should have been entitled to a medical discharge with over 10% disability. I believe the records should show my condition was worse than the 10% that military granted at time of discharge. I believe I was given a lower percent of disability on my PTSD because military believed I had a diagnosis of PTSD and Bipolar Disorder. See attached medical statement from Dr. Antonio Lopez that states I do not meet criteria for Bipolar Disorder as tests did not show any signs of this condition.” No conditions other than PTSD are contended or noted in this application.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20051026** | | | **VA (9 Mo. after Separation) – All Effective 20051116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411-9435 | 10% | PTSD | 9411 | 70% | 20060809 |
| Depressive Disorder | CAT II | |  | | | |
| ↓No Additional MEB Entries↓ | | | Diarrhea | 7399-7319 | 10% | 20060811 |
| 0 x 0% / 0 x Not Service Connected | | | 20060811 |
| **Final Combined: 10%** | | | **TOTAL Combined: 70%** | | | |

ANALYSIS SUMMARY:

Mental Conditions. The FPEB rating, as noted above, was derived from SECNAVINST 1850.4E and preceded the promulgation of the National Defense Authorization Act 2008 mandate for DOD adherence to the VA Schedule for Rating Disabilities (VASRD) §4.129. 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 of Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD §4.130 criteria at six months post-separation for its permanent rating recommendation. The most proximate sources of available comprehensive evidence upon which to base the permanent rating recommendation in this case are the pre-separation VA clinic and hospital notes and the VA psychiatric compensation and pension (C&P) examination (30 January 2007), 14 months after separation. While the timing of the C&P exam is later than the six-month post-separation timeframe, it is still within a year of the end of TDRL and thus has significant probative value. The Board notes that the first VA rating decision relied on a C&P exam dated 9 August 2006, which is not in evidence. Attempted retrieval of this exam was unsuccessful. The probative value of the MEB exam (15 November 2004) is limited because it occurred one year prior to separation; however, the Board noted that the CI was completely absent from duty on convalescent leave due to his illness for an entire year prior to his separation from service. Since the C&P examination reflects the stress of transition to civilian life, which is a core intent of §4.129, it, along with the hospital and clinic notes, carries the preponderance of probative value in the Board’s assessment of a fair permanent rating recommendation.

At the MEB examination (one year prior to discharge) the CI reported recurrent nightmares, feelings of detachment, hyperarousal, hyper-startle, sleep impairment, and irritability. The CI was taking trazodone, seroquel, xanax, zoloft, tegretol and atarax. Prior to the MEB, he was hospitalized for several weeks for PTSD, and again for three days following a suicide attempt. Despite compliance with medications and mental health follow-up, his anxiety and depressive symptoms continued to cause significant impairment at work and at home. Mental status examination (MSE) showed an anxious and depressed mood with restricted affect. Thought was coherent with no psychotic features. There was no suicidal or homicidal ideation. His global assessment of functioning (GAF) was 55-65. The non-medical assessment (NMA) noted that the CI was completely absent from duties for the prior six months due to his medical condition.

The CI was followed by the VA while he remained on convalescent leave from the time of the MEB until he was discharged one year later. During this time his condition was described as chronic and severe, with serious sleep disruptions (talking and crying out in his sleep), and with severe anxiety (21 April 2005). His wife could not trust him to care for their child. After running out of medication, he was admitted again two months prior to separation (22 September 2005) with a fit of rage, increasing hypervigilance, auditory hallucinations, and an attempt at self-harm. GAF at the time of admission was 30, though improved to 55 at time of discharge. At that time the CI was receiving alprazolam, haloperidol, quetiapine, trazodone, clonazepam and sertraline.

A general VA C&P (11 August 2006) nine months post-separation was of limited probative value because of lack of details regarding the PTSD condition. It was reported that the CI was not taking medications for PTSD and depression and that he was still married and unemployed. The VA subsequently assigned a rating of 70%. At the time of the first PTSD C&P (30 January 2007), 14 months post-separation, the CI had recently restarted medications (seroquel, trazodone, xanax and zoloft). He felt continuous depression. He had difficulty maintaining employment due to sleep difficulty and panic attacks several times per week, and stayed at home because of anxiousness and insecurity around people. Outside of his wife and children, he only affiliated with his sister and her husband. He was briefly employed until three months prior to the exam. The panic attacks would occasionally lead to “blackouts.” Nightmares were experienced almost every night. Hypnagogic hallucinations were also reported. There was weekly violence directed towards his wife, sometimes requiring police intervention. He experienced frequent temper outbursts and road rage. His wife needed to remind him to bathe or shower. The MSE reported him to be agitated, unkempt, and severely depressed. He displayed a nervous tic. Chronic suicidal and homicidal ideation without intent or plan was reported. Short term memory was good, but impairment in long term memory was present. Concentration was normal, but thought processes appeared disorganized. The PTSD was assessed as severe, and a GAF of 35 (major impairment in several areas) was assigned. He did not appear to be employable or able to manage his own affairs. The VA subsequently rated the PTSD 100%, and determined that the CI was incompetent to handle disbursement of funds.

The Board directs its attention to its rating recommendation based upon the evidence just described. The MEB examination was well before separation, and was not representative of the worsening of the CI’s condition during the year prior to separation which is evident in the record. The requirement for multiple antipsychotic medications was considered by the Board to be an indicator of the serious nature of the mental condition. The Board also discussed the fact that the prescribed combination of medications likely indicated the onset of a condition more severe than PTSD alone. The CI was totally absent from duty during the year prior to discharge, and had been hospitalized prior to separation. The Board discussed whether these factors indicated that the CI warranted a §4.130 rating of 100% (total occupational and social impairment), 70% (occupational and social impairment, with deficiencies in most area) or the 50% criteria (occupational and social impairment, with reduced reliability and productivity) at separation. The Board again deliberated about whether after the six-month TDRL period the symptoms described at the psychiatric C&P exam were consistent with more than the required 50% rating under §4.129. The Board noted CI’s inability to perform activities of daily living, his low GAF scores, need for significant psychotropic medication, inappropriate behavior dangerous to his family, disordered thought, and general inability to function in social or occupational situations. The Board considered that the CI had been excused from all military duties for a year prior to separation. In determining the permanent rating the Board considered that the CI’s condition was consistently severe from the point of his convalescent leave through the VA examinations after separation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a TDRL rating of 70% and permanent disability rating of 70% for the mental condition, coded 9411-9435.

Remaining Conditions. One other condition identified in the Disability Evaluation System (DES) file, and noted in the VA rating decision, was diarrhea. Although active during the MEB period, it did not carry an attached LIMDU, and was not implicated in the commander’s statement. It was noted to be resolving during the hospitalization prior to separation. This condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to separation rating.

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 reliance on SECNAVINS 1850.4E for rating PTSD was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the PTSD condition, the Board, by a vote of 2:1, recommends an initial TDRL rating of 70% in retroactive compliance with VASRD §4.129 as DOD directed and §4.130 and a 70% permanent rating at six months IAW VASRD §4.130. The single voter for dissent (who recommended an initial TDRL rating of 50% and a 50% permanent rating at six months) did not elect to submit a minority opinion. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as a permanent 70% disability retirement as indicated below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Posttraumatic Stress Disorder | 9411-9435 | 70% | 70% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091026, 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

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. Separation from the Naval service due to physical disability with placement on the Temporary Disability Retired List with a disability rating of 70 percent for the period 11 May 2005 thru 10 November 2005.

b. Final separation from Naval service due to physical disability effective 11 November 2005 with a disability rating of 70 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.

Assistant General Counsel

(Manpower & Reserve Affairs)