RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1000037 SEPARATION DATE: 20030723

BOARD DATE: 20110209 TDRL: 19990722

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SSG (54B30, Chemical Operations Specialist) medically separated from the Army in 2003. The medical basis for the separation was Major Depressive Disorder (MDD) and chronic low back pain. He did not respond adequately to perform within his military occupational specialty or participate in a physical fitness test. He was issued a permanent P-3, U-3, L-3, S-4 profile and underwent a Medical Evaluation Board (MEB). MDD and chronic low back pain as well as cervical pain were addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) on the MEB NAVMED 6100/1 as medically unacceptable. He was placed on the Temporary Disability Retired List (TDRL) in 1999 with a 50% rating (30% for MDD and 20% for cervical and low back pain). No other conditions appeared on the MEB’s submission. Other conditions included in the NARSUM and Disability Evaluation System (DES) packet will be discussed below. The CI was re-evaluated in 2000 and the PEB found that his cervical pain was resolved and no longer unfitting. He was re-evaluated again in 2002 and kept on TDRL status, with a final re-evaluation in 2003. The PEB adjudicated the MDD as unfitting at 10% and the lower back pain as unfitting at 10%, with application of DoDI 1332.39 for both conditions. The CI made no appeals and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “VA exams much more extensive and was found 50% rating vs. Army 20%. I went to Great Lakes Naval Hospital for exams and all exams very quick and out the door. I do not feel I was given the right ratings.” He elaborates no additionally contended conditions. As a matter of policy, all service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB (2 weeks prior to Separation) – 20030710** | | | | **VA (9 Mo. Prior to Separation) – 20010419** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL - 19990217** | **TDRL** | **Sep.** | **30% VA MDD at TDRL** |
| MDD | 9434 | 30% | 10% | MDD | 9434 | 50% | 20021015 |
| Chronic Low Back Pain\* | 5299-5295 | 20% | 10% | Lumbar Strain | 5295 | 20% | 19990510 |
| Cervical Neck Pain\*\* | W/ LBP: 5299-5003 | | Not Unfitting | Cervical Muscle Strain | 5290 | 10% | 19990510 |
| ↓No Additional MEB/PEB Entries↓ | | | | Hypertension | 7101 | 0% | 19990510 |
| 2 X NSC | | | |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*Incl Non-PEB Conditions*): 60%** | | | |

**Initial TDRL: \*Chronic low back pain and \*\*Cervical neck pain were combined under 5299-5003 @20%. During re-evaluation dated 20000918 Cervical neck pain was considered resolved and adjudicated as “Not Unfitting.” Final LBP coding was 5299-5295**

ANALYSIS SUMMARY: There was no evidence of a highly stressful event leading to his MDD and, therefore, the tenants of §4.129 do not apply in this case. Additionally, the CI had already been on a period of TDRL prior to final separation rating. This case is also adjudicated under the “old” spine rules (2003 Veterans Administration Schedule of Rating Disabilities [VASRD]). The current General Rating Formula for the Spine was not effective until 20030826, and the VASRD spine rule changes of 20020823 (5293 Intervertebral Disc Syndrome) were considered but did not apply in this case.

Major Depressive Disorder: The CI noted the gradual onset of a progressively worsening dysphoric mood associated with pervasive anhedonia, early morning awakening, ten pound weight loss, difficulty with both concentration and memory, anergia, and periods of behavioral change which were marked by agitation in which he had difficulty expressing himself. His commanding officer recognized the problem and agreed with the psychiatric referral. The mental status examination (MSE) in November 1997 noted constricted affect and agitated and depressed mood, and was otherwise normal. The CI started treatment with moderate results. He could “do most of his duties” with increased symptoms when he was off medication. His course waxed and waned and the MDD continued to impair his duty performance. He was initially place on TDRL (19990702) with a 30% rating for MDD. The December 1998 MEB indicated “MDD, Single Episode, Severe”, the evaluator noted “Impairment: moderate for civilian employment” and indicated that the commander agreed that the CI was only performing 50% of his work (administrative in garrison). The commander’s statement also indicated consistent work difficulties with concentration and anxiety. Absent the provisions of DoDI 1332.39 and IAW §4.130 criteria, this exam would rate at 50% for “occupational and social impairment with reduced reliability and productivity.” The VA exam from two months prior to TDRL entry indicated a global assessment of functioning (GAF) in the moderate symptoms range (GAF=51) with an exam that was rated at 30% by the VA. Independent rating might support a 50% rating; however, symptom severity may have been influenced by the significant transient stressors of pending military separation (MEB which led to his TDRL). At the third (final) TDRL re-evaluation, performed two months prior to separation (20030508) from TDRL, the CI was being treated with medications and described a good relationship with his family. The work history noted that the CI had requested a transfer from a higher paying job (site technician for the state) in June 2000 due to the stresses of dealing with the public (“easily overwhelmed him”) as well as the job’s physical demands. The CI was working as a building and grounds keeper for the state since 2003. The CI was noted to have a dysthymic mood and restricted affect, without other significant finding on the MSE (mirrored other evaluations--mood and affect were the predominate findings). A Beck Depression Inventory was 15, consistent with mild-to-moderate depression and determined by the evaluator to be moderate. The examiner stated the diagnosis as “MDD, Recurrent, Moderate, and Chronic” and stated that social and industrial impairments were “definite.” The examiner noted that “…depressive symptoms continue to interfere with his ability to work to his capacity. Despite concerns, he appears to have adapted very well by limiting his commitments and responsibilities and recognizing and accepting his limitations.” Global functioning was assessed in the mild symptoms range (GAF=65), which was significantly improved from the GAF of 50 noted on the VA Compensation and Pension (C&P) exam accomplished nine months prior to separation (20021015), and consistent with scores (70) annotated in outpatient visits in 2000 and 2001. It is also noted that at an exam six months earlier, the CI was likely not taking his medications (a Serzone blood level was “undetectable”). The VA examiner did more fully describe the CI’s work situation with frequent inability to report to work on time due to depressive symptoms. With regard to the permanent rating recommendation, all members agreed that the §4.130 threshold for a 70% rating was not approached and that the criteria for a 0% rating were well exceeded. The Board deliberated between 50%, 30% or 10% ratings. The VA rating decision (50%) was based on exam nine months prior to separation (20021015). The MEB exam a little more than two months before separation (20030508) was closer to separation and is given a higher probative value for chronological proximity. The military exam showed improvement which was consistent with the treatment notes and medication stabilization. Of special attention is the mismatch between the military examiner’s diagnosis of “MDD, Recurrent, Moderate, Chronic” which agrees with the VA diagnosis of “MDD recurrent and of moderate severity”, and the PEB diagnosis of “MDD, Single Episode.” The Board considered the MDD recurrent and the treatment records and history which indicated waxing and waning symptoms and the switch to a less demanding (lower paying) employment. This information supported a 30% rating recommendation [“…with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal)…”], although a 50% or 10% rating may have been supportable. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a TDRL entry rating for MDD as 9343 at 30% and a permanent TDRL separation MDD disability rating of 30% in this case.

Low Back Condition. As noted, this case precedes the newer VASRD spine rules that heavily rely on goniometric range of motions (ROMs). There were no full ROM evaluations from either the military or the VA. The VA C&P examination (19990510) and clinic visits were two months prior to the CI’s entry into the TDRL. They are not useful for final separation rating, but are useful for rating upon entry into the TDRL period. The PEB rating bundled the low back pain and cervical conditions rated together as 5299-5003 at 20% for “cervical and low back pain”. In addition to pain-limited flexion to 60⁰ the VA exam documented lumbar muscle spasm, loss of normal lordosis, and no extension. There was no radiculopathy noted. The CI’s low back pain condition, therefore, met the 20% criteria for 5295 lumbosacral strain for entry into the TDRL period (absent the USAPDA pain policy). The final TDRL exam indicated intermittent right S1 radiculopathy which was not to the level of being unfitting. The examiner noted the CI reportedly wore a back brace for work (also noted in prior VA exams), episodically visited a chiropractor with temporary relief, and was not a surgical candidate. Exam of the back was incomplete with no mention of tenderness, spasm, gait, lordosis, but states, “In the examination of his back shows no change from previous.” “The patient has a positive straight leg test on the right with a distribution of the right S1 at approximately 6⁰ of elevation (6⁰ is almost certainly a typo for 60⁰ given the remainder of the note).” Sensory and motor exams were normal. The TDRL re-exams refer to clinic notes which are not in the record, but each state, “unchanged from previous exam” and the 20000814 exam annotated lumbar flexion of 45⁰. The Board reconciles (to the extent possible) its opinion regarding degree of severity for 5292 (spine, limitation of motion of, lumbar) with the objective thresholds specified in the current §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation. The Board considered the VA 20% rating for 5295 at 20% (spasm and abnormal contour) distant from separation, and the only military flexion measurement of 45⁰ limited by pain, and the current VASRD §4.71a equivalence to a 20% rating for “flexion of the thoraco-lumbar spine greater than 30⁰ degrees but not greater than 60⁰.” After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a separation rating of 20% for the low back pain condition coded 5292.

Other PEB Conditions. For entry into the TDRL period, the cervical condition was bundled with the low back pain condition as noted above. Absent the USAPDA pain policy, either the military or VA pre-TDRL exams would be rated at 10% for slight limited motion under 5290 or IAW §4.59 for painful motion. At the final TDRL re-evaluation, the neck was noted to be asymptomatic with normal range of motion and without tenderness. All evidence considered the neck condition should be separately rated as 5290 at 10% for entry into the TDRL period and there is not reasonable doubt in the CI’s favor supporting re-characterization of the PEB final fitness adjudication for the cervical condition.

Remaining Conditions. Other conditions identified in the DES file were hypertension, stomach problems (likely gastroesophageal reflux disease), headaches, sinusitis and sinus congestion. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically significant during the MEB period; none carried attached profiles; and, none were implicated in the commander’s statement. These conditions were 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. No other conditions were contended in the application or identified 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.

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 DoDI 1332.39 for final rating for the MDD and LBP and the USAPDA pain policy for initial TDRL ratings for the lumbar and cervical spine conditions were likely operant in this case and the conditions were adjudicated independently of that regulation and policy by the Board. In the matter of the MDD, the Board unanimously recommends an initial TDRL entry rating of 30% and a final separation rating of 30% coded 9434 IAW VASRD §4.130. In the matter of the Chronic Low Back Pain condition, the Board unanimously recommends a TDRL entry rating of 20% and a permanent separation rating of 20% coded 5292 IAW VASRD §4.71a. In the matter of the cervical spine condition, the Board unanimously recommends an initial TDRL entry rating of 10% coded 5290 IAW VASRD §4.71a., and no recharacterization of the PEB final adjudication as not unfitting and not ratable. In the matter of the sinus condition or any other medical conditions 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 determination be modified as follows and that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Major Depressive Disorder | 9434 | 30% | 30% |
| Chronic Low Back Pain | 5292 | 20% | 20% |
| Chronic Cervical Pain | 5290 | 10% | Not Unfitting |
| **COMBINED** | **50%** | **40%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100108 w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.



