RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1000053 SEPARATION DATE: 20010925

BOARD DATE: 20111012

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Major (B031P3, Security Forces) medically separated for anxiety disorder after he experienced the volcano eruption at Mount Pinatubo in 1991, followed by a typhoon and daily earthquakes over the next five months. He did not respond adequately to treatment and was unable to perform within his Air Force Specialty (AFS). He was issued a permanent S4 profile and underwent a Medical Evaluation Board (MEB).Anxiety disorder was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123.One other condition, as identified in the rating chart below, was forwarded on the MEB submission as medically acceptable conditions. The Informal PEB (IPEB) adjudicated the anxiety disorder as unfitting, rated 10%, with application of DoDI 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD), respectively.The CI was placed on Temporary Disability Retired List (TDRL), with ratings as reflected in the chart below. The CI appealed to AF Board of Corrections for Military Records (AFBCMR) and was then medically separated with a 10% disability rating.

CI CONTENTION: “VA rating was 70% and 100% IE [individual unemployability) due to service connected disability on 16 August 2000. This was prior to my final IPEB rating of 10% conducted by the USAF on 13 August 2001. I was severenced and discharged on 25 Sept 2001. I feel I should have been retired at 50% and afforded the benefits and pay of my rank.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Final Service IPEB – Dated 20010813** | **VA – All Effective Date 20000115** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 19991115** |  | **TDRL** | **Sep.** |
| Anxiety Disorder | 9400 | 30% | 10% | PTSD Delayed Onset, MDD Moderate, Recurrent, Panic Disorder with Agoraphobia (Claimed as PTSD, Depression, Anxiety) | 9411 | 70% | 20000307 |
| Depression while on TDRL | CAT II |
| ↓No Additional MEB/PEB Entries↓ | Pes Planus Bilateral (Claimed as Flat Feet) | 5276 | 10% | 20000414 |
| Not Service Connected x 1 |  |
| **Combined: 10%** | **Combined: 70%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his other conditions and for the gravity of his condition and predictable consequences which merit consideration for a higher separation rating. While the Disability Evaluation System (DES) considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member's career, and then only to the degree of severity present at the time of final disposition. However, the Department of Veterans Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate veterans for the purpose of adjusting the disability rating should the degree of impairment vary over time.

Mental Condition/Anxiety/Depression/Posttraumatic Stress Disorder. The CI developed anxiety disorder and symptoms of posttraumatic stress disorder (PTSD), including flashbacks, sleep disturbance with nightmares, and panic attacks, after he experienced the volcano eruption at Mount Pinatubo in 1991, followed by a typhoon, as well as daily earthquakes over the next five months. Over the next two years, the PTSD symptoms resolved; however, the anxiety symptoms with social phobia worsened, especially related to public speaking. These symptoms increased through 1999, being refractory to multiple medication regimens. He was selected to attend the Air Command Staff College; however, in August 1999 he experienced severe anxiety symptoms on the first day and was self-eliminated from the school. By October 1999 it was decided that his ongoing anxiety symptoms were intractable and that they prevented performance of his military duties. The narrative summary (NARSUM) on 14 October 1999, noted that the CI denied specific PTSD symptoms. The mental status examination (MSE) documented thought processes centered upon anxiety symptoms with terse speech. The Axis I diagnosis was anxiety disorder, not otherwise specified (NOS). It noted that he had PTSD symptoms from 1991 through 1993, mostly resolving, with anxiety and social phobia worsening since 1993. The Global assessment of functioning (GAF) was 60, indicating moderate symptoms. His impairment was marked for continued military service and considerable for civilian, social and industrial function. The IPEB on 15 November 1999 found the anxiety disorder NOS, as unfit, coded 9400 (generalized anxiety disorder), and recommended placement on the TDRL at 30%. On 14 January 2000 he was separated to the TDRL.

The VA compensation and pension (C&P) examination for PTSD on 7 March 2000, two months after placement on the TDRL, documented high levels of anxiety with panic attacks occurring two to three times per week. Other symptoms included sleep disturbance with nightmares, flashbacks, intrusive thoughts, decreased concentration, avoidance behaviors, crying spells and suicidal ideation without intent. The CI had very little social functioning and was afraid to leave the house. MSE showed restricted affect, anxious mood, and some immediate and recent memory impairment. PTSD criteria were met and the Axis I diagnoses were PTSD, major depressive disorder (MDD) moderate recurrent and panic disorder with agoraphobia. The GAF was 35.

The TRDL examination on 24 May 2001 four months before separation from the TDRL noted that PTSD had been diagnosed six months after the MEB and he was maintained on Lorazepam, Clonazepam, and Trazodone. He flew to New York on a monthly basis for his VA follow-up appointments, and reported that he has not been employed since his medical retirement from the military, but noted that he owned eight homes across the country and managed this real-estate, which sometimes involved travel. Future plans were to look for a job as a Security Analyst in the local D.C. area. He continued to have significant depression, with neurovegetative symptoms and anxiety, but he felt that finding employment would help him recover from depression and start a new life. He hoped that someday he would be reunited with his wife and stated, "I love the Air Force and I want back in." The Axis I diagnosis was anxiety disorder NOS, chronic severe in partial remission on medications. The GAF was 60. His condition continued to be medically unacceptable IAW AFI 48-123 and AFI 36-3212 and was referred to the PEB for final adjudication. The IPEB on 13 August 2001 one month before separation from the TDRL found the anxiety disorder in partial remission to be unfitting, code 9400 with a 10% rating. Depression, code 9434 (MDD) was considered to be a category II condition. The CI petitioned the AFBCMR, contesting the difference between the VA and service ratings. On 26 January 2009 they found insufficient evidence for an error or injustice in the service rating for this condition.

The Board considered at length the application of §4.129, the TDRL rating, the coding and the final rating for the anxiety disorder as unfitting at a 10% versus 30% level. The Board did agree that application of §4.129 was appropriate given his exposure to the eruption of Mount Pinatubo and the subsequent earthquakes and a typhoon. 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 TDRL. The Board must then determine the most appropriate fit with VASRD 4.130 criteria for its permanent rating recommendation. The Board agreed that the 50% rating was not exceeded for the TDRL period. The Board next considered the permanent rating recommendation with discussion related to a final 10% versus 30% rating.

The Board majority determined that the MEB and TDRL examinations strongly supported a 10% rating with minimal occupational and social impairment. One Board minority considered the symptoms typical of 30% (occupational and social impairment 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). The Board considered coding options for code 9400 (anxiety disorder) and 9411 (PTSD) as under the VASRD either coding option is rated the same way under a global mental health assessment there was no advantage of one code over the other. After careful consideration of all available evidence, the Board, by simple majority, recommends a TDRL rating of 50% and a final rating of 10%, code 9400 for the mental health condition.

Other PEB Conditions. Hemorrhoidswere forwarded by the MEB and adjudicated as not unfitting by the PEB. This condition was not profiled, implicated in the commander’s statement, or noted as failing retention standards. It was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the hemorrhoid condition.

Remaining Conditions. Pes planus bilateral was service connected, with a 10% VA rating. This condition is not noted in the DES file. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical, or found elsewhere 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. The Board therefore has no basis for recommending any additional unfitting conditions for 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. The PEB did not apply VASRD §4.129 to the CI’s mental health adjudication as mandated by National Defense Authorization Act 2008. In the matter of the mental health condition, code 9400, the Board, by simple majority, recommends an initial TDRL rating of 50% IAW VASRD §4.129, and a 10% permanent rating IAW VASRD §4.130. The single voter for dissent (who recommended code 9411 with a 30% permanent rating) did not elect to submit a minority opinion. In the matter of the hemorrhoids or any other medical condition eligible for Board consideration, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| Anxiety/Depression/PTSD | 9400 | 50% | 10% |
| **COMBINED** | **50%** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100202, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00053.

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the disposition at the time of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended modification of your records to reflect an assigned rating of 50% while on the Temporary Disability Retired List without change to your assigned disability rating and separation with severance pay, upon final disposition.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

 Sincerely,

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2010-00053

MEMORANDUM FOR THE CHIEF OF STAFF

 Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) and Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:

 The pertinent military records of the Department of the Air Force relating to xxxxxxxxxx, be corrected to show that on 15 January 2000 he was was placed on the Temporary Disability Retired List (TDRL), with a diagnosis of Anxiety Disorder, VASRD code 9400, rated at 50% rather than 30%.

 Director

 Air Force Review Boards Agency