RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1000083 SEPARATION DATE: 20050613

BOARD DATE: 20110422

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SrA (3P051, Response Force Leader ) medically separated from the Air Force in 2005 after over two years of service for posttraumatic stress disorder (PTSD). He was deployed to Iraq from June to November 2003 where he experienced combat stressors and feared for his life. Criterion A combat stressors were documented and the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) criteria for an Axis I diagnosis of PTSD were met. Due to treatment for PTSD, he was placed into L-code status in the Personnel Reliability Program and tasked to non-security duties. He did not respond adequately to treatment to perform within his specialty and was placed on a S4T physical profile. He was referred for a Medical Evaluation Board (MEB). PTSD was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. The PEB adjudicated the PTSD as unfitting, rated 10% with application of DoDI 1332.39, and added two conditions as identified in the rating chart below as category III that are considered not separately unfitting and not compensable or ratable. The CI made no appeals and was thus medically separated with a 10% disability rating.

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CI CONTENTION: The CI states: “PTSD more severe than first rated.” No conditions other than

PTSD are contended or noted in the application.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050428** | | | **VA (14 Mo. After Separation) – All Effective 20050614** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 30% | 20060825 |
| Occasional Tobacco Use | Cat III | | No Corresponding VA Entry | | | 20060825 |
| History of Alcohol Abuse |
| ↓No Additional MEB/PEB Entries↓ | | | Left Knee Instability | 5257 | 10% | 20060825 |
| Left Knee Chondromalacia | 5014-5260 | 10% | 20060825 |
| **Combined: 10%** | | | **Combined: 40%** | | | |

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ANALYSIS SUMMARY:

PTSD Condition. The PEB rating, as described above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for Department of Defense (DoD) adherence to Veterans Administration 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 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 compensation and pension (C&P) examination performed 14 months after separation. The Board must therefore weigh the evidence contained in the MEB records and psychiatric narrative summary, balanced by the VA evidence fairly remote from separation, in order to extrapolate an estimation of the ratable impairment at six months after separation. DoDI 6040.44 specifies a 12-month interval for special consideration to VA findings, rendering the probative value of the VA evidence in this case somewhat diminished; however, the exam was within 12 months of the permanent rating timeframe. The Board recognizes, however, that the delayed VA examination reflects the stress of transition to civilian life which is intrinsic to the permanent rating recommendation. The Board therefore agreed to assign relatively equal probative value to the evidence from the MEB and 14-month VA evaluations, as regards to its permanent PTSD rating recommendation.

The severity of the CI’s PTSD condition at the time of the MEB evaluation could best be described as mild. He reported flashbacks, nightmares, avoidance, sleep disturbance, decreased concentration, and hyper-vigilance. He also reported that he no longer felt comfortable with a weapon, and was anxious about performing his military duties. He was taking one psychotherapeutic medication and attending weekly counseling sessions. There were no hospitalizations, legal problems, or adverse administrative actions. His commander stated that, although the CI had not been fully utilized due to his condition and treatment, he “performs his assigned duties in a noteworthy manner.” The mental status examination was noteworthy for an affect that was slightly anxious, restricted, non-labile and appropriate. The CI described his mood as “paranoid” by which he meant hyper-vigilant. The exam was otherwise normal, with thought process that appeared logical and goal-directed with appropriate thought content. He denied any current or past hallucinations, delusions, obsessions, compulsions, any current suicidal or homicidal ideation, plan or intent. His insight and judgment were fair and his memory and cognitive status revealed no deficits. The examiner opined that the CI’s PTSD was mild to moderate and in partial remission, and assigned a global assessment of functioning (GAF) of 70, connoting mild symptoms or impairment.

At the time of the VA C&P examination 14 months after separation, the evaluation could best be described as moderate. The CI reported that the symptoms noted in the MEB exam had continued since leaving Iraq, with additions of reported anxiety and panic attacks from “two to three times a week in the past but now he has them a few times per month.” He was taking no medications, but felt that therapy was helpful. He had been employed at a car dealership for the past year, attending college, and doing an internship with Fox Sports. He reported missing about 20 days out of “last year” due to mental health issues related to PTSD. Socially, he was sharing an apartment, dating, and socialized on weekends. He remained close with his family. He had no legal problems or arrests. The examiner noted CI’s speech was non-pressured and his thought process was linear and goal directed, and his affect was serious. There were no psychotic features. In contrast to these findings, the CI reported his mood as being anxious: "I get defensive with others." The examiner stated his prognosis for improvement is fair to good with therapy and medication although he continued to have PTSD symptoms after being out of the military for 14 months. The examiner opined that the CI “is employable and I do not see any limitations on his employability. He is doing well at work, with his internship and at school, where he is getting a 3.8 GPA,” but then, citing the history of panic attacks, assigned a GAF of 55, connoting moderate symptoms or difficulties in occupational or social functioning. Subsequent PTSD worsening with VA rating of 50% in 2010 (five years post-separation) was considered post-separation worsening beyond the constructive TDRL period.

The Board directs its attention to its rating recommendations based on 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 (as explained above) is applicable. The initial VA rating of 30% was based on §4.130 criteria without application of the provisions of §4.129. As regards to the permanent rating recommendation, all members agreed that the criteria for a 0% rating were well-exceeded and that the §4.130 threshold for a 50% rating was not approached. The deliberation settled therefore on arguments for a 10% versus a 30% permanent rating recommendation. The MEB exam could most appropriately be rated 10% (occupational and social impairment due to mild or transient symptoms which decrease work efficiency…only during periods of significant stress or symptoms controlled by continuous medication) since there was no evidence of any impairment of work efficiency at base-line. The 30% description (occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks) could be defended on the basis of his avoidance symptoms, although no actual social impairment was documented. The VA exam could also appropriately be rated 10%, given the CI’s significant occupational and educational endeavors, accomplishments since separation, and his intact social functioning. In defense of a 30% rating, the VA psychiatrist noted anxiety and panic attacks a few times per month. Such features carry inherent occupational implications and some occupational impact was elaborated, with missed work which could support a 30% rating, although the preponderance of the exam results supported a 10% rating. After due deliberation considering the totality of the evidence, the Board recommends a permanent PTSD disability rating of 10% in this case.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were occasional tobacco use and history of alcohol abuse. Neither of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. Both were reviewed by the action officer and considered by the Board. There was no deduction made to the CI’s mental health condition rating (above) due to history of alcohol abuse. There was no indication from the record that either of these conditions 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 either of the stated conditions.

Remaining Conditions. A left knee condition was identified in the Disability Evaluation System (DES) file. This condition was not significantly clinically active during the MEB period, did not carry an attached profile, and, was not implicated in the commander’s statement. The condition was reviewed by the action officer and considered by the Board. It was determined that the knee condition could be argued as unfitting and subject to separation rating. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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 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 unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed; and, by a 2:1 vote, a 10% permanent rating at six months IAW VASRD §4.130. The single voter for dissent (who recommended a 30% permanent rating) submitted the addended minority opinion. In the matter of the tobacco use and history of alcohol abuse conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting (not compensable). In the matter of the left knee 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.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows: TDRL at 50% for six months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then permanently separated with severance pay by reason of physical disability with a final 10% rating as indicated below.

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Posttraumatic Stress Disorder | 9411 | 50% | 10% |
| **COMBINED** | **50%** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091217, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MINORITY OPINION:

The action officer (AO) recommended permanent PTSD rating of 30% in this case based on reasonable doubt regarding occupational impairment as elaborated in the post-separation ratable information available in this case. The VA C&P exam was the only exam that reflected the stress of transition to civilian life which is a core intent of §4.129, and it should therefore have carried a higher probative value in determining the permanent rating recommendation. It clearly provided evidence that the CI’s PTSD condition had worsened, and the CI’s GAF fell from 70 (mild symptoms) to 55 (moderate symptoms). The MEB examiner who assessed the CI’s GAF at 70 also indicated “impairment: definite for civilian/social/industrial adaptability” which is the prior DODI 1332.39 language for a 30% rating level. During the period after separation, records indicate that the CI experienced flashbacks episodes a few times a month and panic attacks two to three times per week which decreased to one to two times per month before the VA C&P. These panic attacks and their frequency, projected to the six-month rating timeframe would more likely than not impair occupational functioning, at least occasionally IAW the 30% criteria. Additionally, during this period the CI missed 20 days of work, secondary to his mental health condition. Especially in light of the VA examiner’s documentation of “PTSD, chronic, moderate” without indications of remissions, and the VA 30% rating, the AO can not endorse the majority opinion.

These facts, with consideration of VASRD §4.3 (reasonable doubt) should have carried heavier weight and been considered indicators of occupational and social impairment that place the CI’s condition at least as close to the 30% rating level as to the 10% rating level.

MINORITY RECOMMENDATION: The AO recommends that the CI’s prior determination be modified as follows: TDRL at 50% for six months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then a permanent combined 30% disability retirement as below.

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Posttraumatic Stress Disorder | 9411 | 50% | 30% |
| **COMBINED** | **50%** | **30%** |

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB, MD 20762-7002

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00083.

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 placement 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-2010-00083

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:

a.  He was not discharged on 13 June 2005 with entitlement to disability severance pay; rather, on that date he was relieved from active duty and on 14 June 2005, his name was placed on the Temporary Disability Retired List (TDRL), with a diagnosis of Post Traumatic Stress Disorder, VASRD code 9411, rated at 50%.

b.  On 13 December 2005, he was removed from the TDRL and separated with severance pay with a final combined disability rating of 10%.

Director

Air Force Review Boards Agency