RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: USAF

CASE NUMBER: PD1000102 BOARD DATE: 20100714

SEPARATION DATE: 20070917

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SUMMARY OF CASE: This covered individual (CI) was a Senior Airman, 2T151-Vehicle Operations who was medically separated from the Air Force in 2007 after 4 years of service. The medical basis for the separation was Post Traumatic Stress Disorder (PTSD) with Major Depressive Disorder. The CI was referred to the Physical Evaluation Board (PEB), determined unfit for continued military service, and separated at 10% disability using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Air Force and Department of Defense regulations.

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CI CONTENTION: The CI states: ‘I was discharged w/severance on 17 Sep 2007 for PTSD w/ a rating of 10%. My PTSD is derived from combat related incidents. Since I was discharged in 2007, the OSD has determined that all PTSD discharges are to have a minimum rating of 50%. I request to be placed on TDRL, effective 17 Sep 07, with a minimum rating of 50%.’

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Service PEB | | | | VA (3 Months After Separation) | | | | |
| Condition | Code | Rating | Date | Condition | Code | Rating | Exam | Effective |
| PTSD | 9411 | 10% | 20070625 | PTSD | 9411 | 30%  30% | 20071213  Failed to show for exam in Aug 2009 | 20070918 |
|  |  | Not in DES | | Migraine Headaches from Traumatic Head Injury | 8100 | 30%  30% | 20071214  Failed to show for exam in Aug 2009 | 20070918 |
|  |  | Not in DES | | Lumbar Strain (Back Pain) | 5237 | 10% | 20071213 | 20070918 |
|  |  | Not in DES | | Left Medial Meniscus Tear | 5299-5260 | 10% | 20071213 | 20070918 |
|  |  | Not in DES | | Tinnitus | 6260 | 10% | 20071214 | 20070918 |
|  |  | Not in DES | | TBI, Bilateral Hearing Loss, Costochondritis |  | NSC |  |  |
| TOTAL Combined: 10% | | | | TOTAL Combined (*Includes Non-PEB Conditions*):  60% from 20070918 | | | | |

ANALYSIS SUMMARY:

PTSD

The PEB 10% rating, as described above, was most likely derived from DoDI 1332.39 as this Instruction was in effect at the time of the PEB adjudication in June 2007 and this date preceded the promulgation of the NDAA 2008 mandate for DOD adherence to 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 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 Veterans Administration (VA) Compensation and Pension (C&P) PTSD examination three months after separation.

The CI was deployed to Iraq from 20040719 to 20050311 and served as a driver and a gunner. In September 2004 he was involved in an accident with an Iraqi vehicle that resulted in the death of a local national. An investigation cleared him of any wrongdoing, but the CI reported feelings of guilt associated with his role in the accident.

Immediately after the accident, the CI noted the onset of difficulty sleeping, emotional distance and avoiding contact with family, loss of appetite and weight loss, problems concentrating, reduced energy, negative self talk, irritability, and fear of driving. He avoided conversations or discussion of topics related to military or deployment, as well. He felt worsening of mood with depression and irritability. He did not seek care for these symptoms during his deployment.

The CI first sought care for this problem in May 2006 after he had returned from deployment and moved to Misawa AB. He reported the persistence of the symptoms described above. He complained of insomnia as well as nightmares and flashback experiences. He avoided driving at night and strongly discourages his wife from driving due to fear of her dying. He restricted activities and markedly reduced social interactions. He would often sit at home and do nothing at all. He also endorsed lower frustration tolerance which culminated in a domestic altercation in Nov 2006. He noted feeling emotionally distant from his family as well. His wife perceived him as more distant, irritable, detached, anxious, and stressed since returning from deployment.

He was in treatment at the Life Skills Support Center on Misawa AB from May 2006 through Apr 2007. During this time, he was diagnosed with PTSD and Major Depressive Disorder. His treatment involved weekly individual and group therapy sessions with an active duty Social Worker which continued for the duration of his treatment. He was observed in both individual and group settings to have improvement in his symptoms and functioning. His therapist noted that when individuals, such as the therapist or other group members, would comment that he appeared to be making progress, it was common for the CI to be dismissive of their feedback or the implication that he was getting better.

A variety of medication was tried and discontinued secondary to side effects and the CI’s perceived stigma of being on medications. Treatment eventually included Effexor XR which provided modest reduction in anxiety, avoidance, and hyperarousal and Seroquel which provided significant relief of insomnia and a reduction in nightmares. At the narrative summary (NARSUM) examination a GAF of 70 was reported.

The CI’s First Sergeant and supervisor both reported he was an outstanding troop who functioned at a very high level occupationally. He reported the CI manifested a heightened level of alertness and intensity at baseline, and this is most noticeable during operational exercises and training scenarios. However, he also described the CI as very professional and ‘the kind of guy you want with you if you are going to deploy’. There had been no safety related concerns with regard to his performance or limitations in his occupational functioning.

In late March and early April 2007 the CI and his wife met with the social worker and a psychiatrist. The CI and his wife initially appeared to believe he had moderately improved but later stated he had not improved at all and he was unable to continue service in the Air Force. The CI desired a Medical Evaluation Board (MEB) and wanted his failure to improve to be included in the MEB documentation.

The CI declined a TDY to the VA in Hawaii for treatment in their residential PTSD program. He also declined cross-training into another career field and stated that he was not interested in pursuing this option. The CI elected to discontinue mental health care during his participation in ALS for six weeks. His last clinical contact with Life Skills was on 12 Apr 07. At the time of the NARSUM, the CI reported he was not willing or able to deploy again as a driver. He stated that he felt frustration with his current active duty status and that he needed to be out of the military. He stated that his current symptoms would improve markedly once he was out of the military.

Psychological testing was done in April 2007 and the validity scores indicate a good effort and valid scores. The MMPI and MCMI results both were consistent with PTSD and depression. The results suggest an individual who feels anxious and tense who may feel intense emotional distress and report symptoms of insomnia, guilt, and depression. He may have unwanted or disturbing thoughts, fear of losing control, and feel misunderstood. The results also suggest marital discord that may have impacted his ability to cope.

The CI filed a claim at the VA on 20070911 and had a VA C&P examination on 20071213, three months after he separated from service. The VA assigned a rating of 30% based on review of his service treatment record (STR) and the C&P examination.

At the time of the December 2007 C&P examination, the CI was taking Seroquel, Wellbutrin and Prazosin. This examination documented the CI continued to have difficulty sleeping, nightmares three to four times a week, recurrent daily thoughts about the accident, feeling extremely anxious when driving, and being easily startled by loud noises. He also continued to avoid watching the news and being in crowds. He did not go out to eat often and usually got his food to go. He would often wait in the car while his wife shopped.

The CI had not been employed since he separated from service and he stated this was partly because he would become very on edge when driving. He reported he had been spending a lot of time at VA appointments and he also did a lot of reading and thinking. He did enjoy listening to music and had a small circle of friends he visited with. He remained married to his wife and felt she understood his problems but that she noticed he was more distant from his children and less emotional.

On mental status exam the CI appeared reliable. He made little eye contact and appeared anxious. His speech seemed pressured at times. His predominant mood was anxious and his affect was appropriate. The psychiatrist reported his Global Assessment of Functioning (GAF) at 47. He did not see evidence of a separate diagnosis of depression and felt the CI’s symptoms of depression were part of his PTSD. There was no evidence of a cognitive disorder or a post-military stressor.

Although the two reported GAFs are significantly different, 70 and 47, the CI does not appear to have such a large change in his actual functional impairment. His condition does appear to have worsened in the three months post-separation but his functional impairment meets the VASRD 30% rating criteria at both times. He appears to be generally functioning satisfactorily with routine behavior, self-care, and conversation normal but he does have significant frequent symptoms of PTSD which interfere with his ability to gain employment and interact with others socially. The CI’s aversion to driving appears to be directly related to the stressor that led to his PTSD and would be expected to significantly limit his ability to gain employment.

The CI filed a second VA claim 20090415 asking for an increased rating but failed to show for his scheduled VA C&P examination. Treatment reports from the Little Rock VA Medical Center (VAMC) did not include any records describing treatment for PTSD or migraine headaches from February 2008 to October 2009. The VA continued his previous rating.

Other Conditions not in the DES

Migraine Headaches from Traumatic Head Injury, Lumbar Strain (Back Pain), Left Medial Meniscus Tear, Tinnitus

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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 most likely operant in this case and the condition was adjudicated independently of that instruction by the Board. After careful consideration of all available information the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed; and a 30% permanent rating at six months IAW VASRD §4.130.

The CI appears to be generally functioning satisfactorily with routine behavior, self-care, and conversation normal but he does have significant frequent symptoms of PTSD which interfere with his ability to gain employment and interact with others socially. His aversion to driving appears to be directly related to the stressor that led to his PTSD and would be expected to significantly limit his ability to gain employment. The VA examination used to determine the final disability rating was completed only three months after the CI separated from service. However, more likely than not, the CI would not have improved to the point of warranting a lower disability rating in the subsequent three months.

The other diagnoses rated by the VA (Migraine Headaches from Traumatic Head Injury, Lumbar Strain (Back Pain), Left Medial Meniscus Tear, and Tinnitus) were not mentioned in the Disability Evaluation System (DES) package and are therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Military Records (BCMR) consider adding these conditions as unfitting.

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RECOMMENDATION: The Board recommends that the CI’s prior separation be recharacterized to reflect that rather than discharge with severance pay, the CI was placed on the TDRL at 50% for 6 months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then permanently retired by reason of physical disability with a final combined 30% rating as indicated below.

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

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100106, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

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-2010-00102.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended your separation be re-characterized to reflect disability retirement, rather than separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at 1-800-531-7502 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 30 days from the date of this letter, you will not be enrolled in the SBP program unless at the time of your separation, you were married or had an eligible dependent child, in such a case, failure to render an election will result in automatic enrollment.

Sincerely

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2010-00102

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 xxxxxxxxxxx, are corrected to show that:

a.  He was not discharged on 17 September 2007 with entitlement to disability severance pay; rather, on that date he was relieved from active duty and on 18 September 2007 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 16 September 2007, he elected Spouse and Child coverage under the Survivor Benefit Plan (SBP) based on full retired pay.

c. On 18 March 2008 he was removed from the TDRL and permanently retired with a final combined disability rating of 30%.

Director

Air Force Review Boards Agency