RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD201000187 SEPARATION DATE: 20080602

BOARD DATE: 20101014

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SUMMARY OF CASE: This covered individual (CI) was an Active Duty HM2 (HM-8485, Psychiatry Technician) medically separated from the Navy in 2008 after 11 years of service. The medical basis for the separation was Generalized Anxiety Disorder; with Major Depressive Disorder as a related “Category 2” diagnosis. The CI began having documented mental health symptoms in 2003 and was started on medications for anxiety, depression and insomnia with a diagnosis of Generalized Anxiety Disorder. According to the record, the CI did not have a traumatic or highly stressful event as a precipitator to her mental health conditions. She had the diagnosis of Major Depression added in Jul 2007. She was tried on multiple medications without complete resolution of symptoms of depression and anxiety with panic episodes. As part of the Abbreviated Medical Evaluation Report NAVMED6100/5 the diagnoses for her Limited Duty (LIMDU 20080114) were for Generalized Anxiety Disorder and Major Depression, recurrent, moderate. The CI was also noted to have non-traumatic back (lumbar and thoracic costochondritis), neck, and shoulder pain in 2005 with treatments by Chiropractic, Physical Therapy, and left shoulder surgery (arthroscopic subacromial decompression in 2006) without resolution of her symptoms. She was on episodic non-steroidal and occasional narcotic pain medication. She had her first period of LIMDU (20061031) proximate to her shoulder surgery with no mental health related limitations. At the time of Disability Evaluation System processing (DES) she also had restrictions of duty due to her musculoskeletal conditions, but only the mental health diagnoses were annotated on the 20080114 LIMDU on NAVMED 6100/5. The CI did not respond adequately to perform within her military occupational specialty or participate in a physical readiness test and underwent a Medical Evaluation Board (MEB). The Anxiety Disorder, Major Depressive Disorder, Lumbosacral spine (Lumbar), Upper limb (left shoulder), Cervicalgia (neck), and Thoracic spine (costochondritis) conditions were listed on the NAVMED 6100/1 as interfering with duty and forwarded to the Physical Evaluation Board (PEB). Generalized Anxiety Disorder was determined to be unfitting by the PEB and coded 9413 at 10%; Major Depressive Disorder was listed as a Category 2 diagnosis. The four musculoskeletal conditions (left shoulder and three spine areas) were adjudicated as “Category III: Conditions that are not separately unfitting and do not contribute to the unfitting condition(s).” The CI did not appeal and was therefore separated at 10% disability.

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CI CONTENTION: The CI stated “Allergic Rhinitis (30% VA Rating), Anxiety Disorder (30% VA Rating), Left Shoulder Condition (20% VA Rating), Right Shoulder Condition (10% VA Rating), Cervical Strain (10% VA Rating), Degenerative Disc Disease/Lumbar Spine (10% VA Rating), Residual Surgical Scars (10% VA Rating), Tension Headaches (0% VA Rating) and Costochondritis (0% VA Rating). I request to be medically retired from the US Navy.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20080311** | | | **VA (2 Mo. after Separation) – All Effective: 20080603** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Generalized Anxiety Disorder | 9413 | 10% | Major Depressive Disorder | 9434 | 30% | 20080812 |
| Major Depression | Category II | |
| Cervical Neck Pain | Not Unfitting | | Cervical Strain | 5299-5237 | 10% | 20080805 |
| Thoracic Back Pain | Not Unfitting | | Lumbar Spine…DDD | 5003-5242 | 10% | 20080805 |
| Lumbar, … Degenerative Chgs | Not Unfitting | |
| Left Shoulder Impingement | Not Unfitting | | Left Shoulder… repair | 5024-5201 | 20% | 20080805 |
| Left shoulder… scars | 7804 | 10% | 20080805 |
| ↓No Additional MEB Entries↓ | | | Allergic Rhinitis | 6522 | 30% | 20080805 |
| Others X4 / NSC X4 | | | |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 80%** | | | |

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ANALYSIS SUMMARY:

Generalized Anxiety Disorder. The CI was found unfit for “Generalized Anxiety Disorder, Service Aggravated” and her second AXIS I diagnosis of “Major Depression, Recurrent, Moderate” was a “Related Category 2 Diagnosis.” The CI’s mental health condition was not the result of a highly stressful event or trauma, and therefore the tenets of Veterans Administration Schedule for Rating Disabilities (VASRD) §4.129 (six month TDRL period) do not apply to this case. There was no evidence in the record of a pre-service ratable disability and the CI had greater than eight years of active duty. There were no exams in evidence that clearly apportioned the CI’s various mental health-related symptoms or disabilities to one specific AXIS I diagnosis versus the other. The Board adjudged that all of the CI’s mental health symptoms and disabilities should appropriately be rated under the CI’s unfitting mental health diagnosis, and that no deduction could be made for any possible pre-existing impairment. The MEB evaluation was three months prior to separation and indicated Global Assessment of Functioning (GAF) in the range of moderate symptoms or moderate difficulty in social, occupational, or school functioning in social, occupational, or school functioning (GAF=55). The evaluator’s diagnosis was AXIS I Generalized Anxiety Disorder; and Major Depression, Recurrent, Moderate. The present condition was summarized as the CI had:

“… two major Axis I Psychiatric Diagnosis. She has been tried on several medication regiments and this has not returned her to a duty status. She presently is challenged to manage her marital relationship as a result of her symptoms. She continues to have symptoms of anxiety, depression, insomnia, and panic that render her unable to effectively manage her marital and occupational roles. She has been compliant with her treatment and despite pharmaceutical measures and therapy she continues to have challenge. …”

The Non-Medical Assessment (NMA) indicated the CI lost “up to 7-8 hours” a week from work and “… has lost motivation; … has an enormous amount of personal issues directly affecting her professional responsibilities; cannot focus the attention needed to adequately lead Sailors and supervise a medical clinic.” The CI’s symptoms included panic attacks of “break though anxiety” with near-daily work-day use of medication which “would seem to relieve the anxiety attack symptoms.” Since the CI’s MOS was Psychiatry Technician, the possible confounding issue of her insight into psychiatric symptoms and potential over-endorsement of symptoms was looked for in detail: All examiners noted the CI to be cooperative and a good historian with no evidence of histrionic traits, or symptom exaggeration. Independently rating the MEB exam IAW the criteria of §4.130 led to a 30% rating for “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 CI was evaluated by the VA two months after separation and the CI was receiving ongoing VA mental health treatment. The VA evaluation noted “affect and mood are depressed”; “She has difficulty establishing and maintaining effective work and social relationships”; reports of “She has a decreased appetite. She feels irritable and angry easily. She also experiences decreased energy and decreased motivation”; she “feels tense most of the time. She does not socialize. Since she has left the military she is more anxious about trying to find a job. She realizes that she needs to but she is so depressed and anxious that it is difficult for her to do so.” The CI’s GAF remained in the moderate symptom range (GAF=50). The VA changed her primary diagnosis from Generalized Anxiety Disorder to Major Depressive Disorder: “The Axis I diagnosis is major depressive disorder which is a progression of the prior diagnosis. She does not meet the criteria for generalized anxiety disorder with obsessiveness and dysthymic disorder.” The VA rated this exam IAW §4.130 at 30%. The CI’s condition and GAF had slightly worsened post-separation and this was considered a common finding due to the stresses of separation. The Board considered the service treatment record and post separation treatment records proximate to separation to determine the CI’s mental health disability at the time of separation. The CI was adjudged to exceed the 10% criteria of only “mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress.” The record likewise did not support a rating of 50%. All evidence considered, the Board recommends a separation rating for Generalized Anxiety Disorder with Major Depression, coded 9413 at 30% in this case.

Other MEB Conditions (Cervical, Thoracic [Costrochondritis], Lumbar, and Left Shoulder [and scars]): The DES specifically considered the CI’s contended conditions relating to her neck (Cervical Neck Pain/Cervical Strain), back (Thoracic Back Pain (includes costrochondritis)/Lumbar, Degenerative Spondyloarthropathy), and Left shoulder (Left Shoulder Impingement; post-surgery includes consideration of surgical scars) conditions. The musculoskeletal conditions were not specifically identified in the NMA. The CI passed the “PRT/PFT in Apr 2007. The spine and left shoulder conditions were judged by the MEB to interfere with duty, had ongoing therapy and a recommended duty restriction of no “PRT, running, heavy lifting, prolonged walking, standing, crawling or entering any area where her unsteady gait may pose a danger to herself or others.” The JDETS Finding and Recommended Disposition Work Card stated: “The evidence… inadequate to support unfit from musculoskeletal standpoint. If protested, may merit PIMS for better skeletal data incl impact on function, T-L ROM, etc.” Detailed review of the record failed to find any source exam or other document substantiating an abnormal gait aside from the MEB. The levels of limitation of range of motion (ROM) of the spine segments were documented as minor on 20080102: Cervical flexion 45° (normal 45°); Thoracolumbar flexion 65° (normal 90°). There was slight pain combined ROMs. The VA exam two months after separation (20080805) indicated normal posture and gait; Cervical ROM was normal with pain; Thoracolumbar ROM was normal with pain; and there was costrochondral tenderness. There was no peripheral nerve involvement. Imaging of the spine demonstrated minimal pathology of lumbar degenerative joint disease and minimal cervical pathology. There were no episodes of incapacitating neck or lower back pain. Review of the STR indicated few evaluations for musculoskeletal treatment aside from ongoing physical therapy. The major impact of the CI’s spine conditions were due to painful motion that appeared controlled on non-narcotic medications. The perception of pain may certainly be tied into and overlap the CI’s unfitting mental health diagnoses, but there was no indication outside the MEB restrictions that pain-limited motion interfered with performance of duty. All evidence considered, there is not a reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the Cervical, Thoracic, or Lumbar conditions. (See below for the left shoulder conditions )

Left Shoulder [and scars] Conditions. The CI had corrective surgery to her left shoulder (20060829) for a non-traumatic left shoulder impingement, synovitis and labral tear. Following surgical recovery, the record indicated either full range of motion (ROM) or slightly pain-limited ROM (170° of normal 180°)) with tenderness noted. A pre-separation VA evaluation (20070712) showed full ROM without pain. The record noted that she was returned to work activities. There was no indication that the left shoulder surgery scars restricted the wear of military equipment or additionally limited the shoulder ROM. The VA evaluation 2 months after separation noted a history of “weakness, stiffness, swelling, giving way, lack of endurance, dislocation, and intermittent localized aching, squeezing pain in the left shoulder… elicited by physical activity and relieved by pain relief medication.” An exam demonstrated pain-limited ROM of 100° abduction (normal 180°) with painful motion rated at 20%, and a painful scar of the shoulder rated at 10%. The additional limitations of the left shoulder were adjudged to be worsening post separation, as there was no indication of this level of disability pre-separation. All evidence considered, there is not a reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the left shoulder condition, or evidence sufficient for the addition of painful left shoulder scar as an additional unfitting condition for separation rating.

Other Conditions (Contended Tension Headaches, Allergic Rhinitis, and Right Shoulder): The headache condition (Migraine and Tension Headaches) was noted in the history and physical as treated with medication. The records show the CI’s headaches were long standing and adequately controlled. The headache condition was not identified as impairing to duty in the NMA. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of headache condition as an unfitting condition for separation rating. The Allergic Rhinitis and Right Shoulder conditions were not noted in the DES file. The history of “bronchitis in 2002 with sinusitis and cough” did not equate to a diagnosis of Allergic Rhinitis for PDBR adjudication. 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 Allergic Rhinitis and Right Shoulder conditions and any contended conditions not covered above remain eligible for Board for Correction of Naval Records (BCNR) consideration. 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the Generalized Anxiety Disorder condition, the Board unanimously recommends a rating of 30% coded 9413 IAW VASRD §4.130. In the matter of the Cervical Neck Pain, Thoracic Back Pain, Lumbar Spine, and Left Shoulder conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. In the matter of the left shoulder scar, and Migraine and Tension Headaches conditions 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 and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Generalized Anxiety Disorder with Major Depression | 9413 | 30% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100113, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USN, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 20 Oct 10

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 disposition:

a. Effective the date of her discharge, placement on the Permanent Disability Retired List with a disability rating of 30 percent.

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.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)