RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD2010-00196 SEPARATION DATE: 20070228

BOARD DATE: 20101222

SUMMARY OF CASE: Data extracted from the available records reflects that this Covered Individual (CI) was a 22 years old, active duty United States Marine Corps (USMC) Lance Corporal (LCpl) who was medical separated from the Marine Corps after 4 years 2 months continuous service as a 2131/Artillery Mechanic. The medical basis for the separation was Post Traumatic Stress Disorder (PTSD). This first became symptomatic when he was deployed to Iraq from August 2004 to July 2005. While in Iraq the CI was repeatedly exposed to death of comrades, civilian personnel and destruction as well as received and returned direct fire in combat. The CI deployed to Okinawa in July 2005 where he was seen by psychiatry with diagnoses of Post-Traumatic Stress Disorder (PTSD) and Alcohol Abuse. Although he did receive treatment for alcohol abuse and was able to maintain sobriety, he did not respond adequately to conventional medical treatment for PTSD. His Commanding Officer recommended separation as unfit for military duty. The Narrative Summary (NARSUM) recommended that his case be referred to the Physical Evaluation Board (PEB) for disposition. The PEB adjudicated the PTSD as unfitting (code 9411) at 10%. Alcohol dependence was adjudicated as a category IV condition which did not constitute a physical disability

CI CONTENTION: The CI states: “I was assigned less than 50% disability rating by the military for my unfitting PTSD upon discharge from active duty. The PDBR should assign the highest final disability rating applicable consistent with 38 CFR4.I29 and DOD policy. Please see attached list of contentions regarding why the PDBR should make the changes request in Item 3.”

This case is court remanded under the Sabo et al v. United States class action suit.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – 20070225** | | | | **VA (3 Months after Separation)**  **All Effective 20070301** | | | | |
| **Condition** | | **Code** | **Rating** | **Condition** | | **Code** | **Rating** | **Exam** |
| PTSD | | 9411 | 10% | PTSD | | 9411 | 50% | 20070605 |
| Alcohol Dependence | Cat IV Not Unfitting | | | - | |  |  |  |
|  | | MEB H&P | | Chondromalacia Right Knee | 5260-5024 | | 10% | 20070604 |
|  | | MEB H&P | | Fracture Right Proximal 5th Metatarsal | | 5284 | 0% | 20070604 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined: 60%** | | | | |

ANALYSIS SUMMARY:

Post Traumatic Stress Disorder (PTSD). The CI was deployed to Iraq from August 2004 to July 2005 in Fallujah. While in Iraq the CI was repeatedly exposed to death of comrades, civilian personnel and destruction as well as received and returned direct fire in combat. 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. His PTSD first became symptomatic during his 2004 OIF deployment. The CI deployed to Okinawa from July 2005 to January 2006, where he was seen by psychiatry and diagnosed with PTSD and Alcohol Abuse. The CI entered Substance abuse treatment program for alcohol abuse on 20060627. He completed the program successfully, and was actively working a 12-step program. The records provided document that he had continued to maintain sobriety since that time. His Commander’s Statement noted that the CI had expressed thoughts of hurting others as well as having suicidal ideations, making him a liability to himself and to others. His problems would continue to require a considerable amount of medical treatment to deal with his current mental state and would detract from his obligations in the Marine Corps. For these reasons it was felt that the CI was incapable of continuing within his MOS and it was recommended that he be deemed unfit for military duty.

The MEB NARSUM of 20061129 documented a history of irritability, impaired sleep, flashbacks twice daily, nightmares every night (one recurring every 3 days directly related to his experiences, and others that vary in direct relation to combat), trouble with crowds, hyper vigilance with increased startle response, conflicts with peers, and a long-standing difficulty with anger control. He is able to identify triggers, specifically gunfire from 50 cal and Howitzer, the smell of barbeque, and media coverage of the war. He works to avoid triggers and war reminders. He also reported increased alcohol consumption in a pattern consistent with alcohol dependence. The CI was engaged to be married, but his symptoms (anger, mood, detachment, irritability) contributed to relationship difficulties and the relationship ended. Other symptoms included anhedonia, difficulty concentrating, social detachment, low frustration tolerance, and weight loss (from both decreased appetite and discontinued alcohol consumption). He was maintained on two medications, Paxil and Minipress. Family history included an alcoholic father who was violently abusive to his mother and all the children. There is an extensive family history of alcohol and drug use, including his father, paternal grandfather, paternal grandmother, and uncles. On Mental Status Examination (MSE) his mood was described as “angry” and the affect was mood congruent. He was alert and oriented to person, place, time and circumstance. He displayed no homicidal or suicidal ideation, delusional or hallucinatory symptoms, speech disturbance, or cognitive impairment. Intellectual functioning was average and memory was intact. Insight, judgment, and impulse control were felt to be adequate. The Axis I diagnoses included PTSD and Alcohol Dependence (in remission). The Global Assessment of Functioning (GAF) score was 51-60 indicating moderate symptoms. The NARSUM recommended that this case be referred to the Physical Evaluation Board for disposition.

The Board directs its attention to its rating recommendations based on the evidence just described. The Board must 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) PTSD Examination performed on 20070605, three months after separation. At that time the CI was not in any current mental health treatment. He indicated that he was last on Paxil, but ran out of his prescription and had not taken it in 45 days. He felt that this medication did not work anyway. The CI indicated that he received some treatment in the military on an outpatient basis prior to being boarded out, noting that the group and individual therapy seemed to help a little bit. He was an artillery mechanic in the Marines, but he functioned as a grunt when he deployed to Iraq. He had considerable combat experience as a machine gunner and was involved in clearing houses and picking up dead bodies. He was awarded the Combat Action Ribbon and indicated that he was still in the process of getting a Bronze Star and Combat V verified. He says that the worst thing that happened in Iraq was when he "killed a kid" in battle. He says the second worse thing was watching his buddy die, but these were both very disturbing situations. He also indicated other traumatic events, including his buddies dying in a helicopter crash. The CI was hesitant to talk about all his stressors, but he did indicate that there were other traumatic events, not related, during his service. The CI reported some depressive symptoms, including depressed mood, anhedonia and significant loss of weight over the last week or two with reduced appetite, insomnia, fatigue, and excessive feelings of guilt and worthlessness. He met criteria for a depressive disorder, largely related to his combat trauma experiences in Iraq, although there is likely some previous depression, which was exacerbated by his experiences in Iraq. He has a strong history of anger outbursts and was in a number of alcohol related fights. He indicated some visual and auditory hallucinations, normally involving flashback type experiences. For example, he says that he saw an Iraqi run in front of his truck once and sometimes hears gunshots when they are not there or will hear screaming when things become too quiet. He denied any non-trauma related hallucinations. He did not show signs of delusional thinking other than some mild paranoia secondary to his PTSD. The CI indicated that he has been suicidal before but he has a religious belief that would prevent him from acting on this, and he says he would never act on his thoughts. He did indicate some homicidal ideation but only when he was in "the heat of the moment." He indicated that he was able to brush these thoughts to the side and he typically isolated himself when he became angry. On MSE the CI presented as being angry and he was irritated about having to take the Minnesota Multiphasic Personality Inventory (MMPI). He was somber and rapport was very difficult. He spoke very softly and he had poor eye contact. He presented as an attractive, trim and fit, well-dressed and groomed male. He was verbal and was estimated to have above average intelligence. His thought process was logical, coherent, and relevant. Mental status was generally normal with no significant cognitive impairment. He denied any problems with concentration, short-term memory, or long term memory. He denied any history of neurological accidents or incidents. Affect was irritable and somewhat depressed, appearing tense during the interview. He was well oriented to time, place, person and situation. Reasoning was fair and judgment was poor, though this appeared to be improving somewhat, since he had remained sober. Fund of general information and verbal comprehension were average.

With his PTSD treated with medications he clearly meets the 10% criteria for occupational and social impairment. He manifests three of six descriptors for occupational and social impairment at the 30% level, these being depressed mood, suspiciousness, and chronic sleep impairment. At the 50% level the CI manifests two descriptors with mood disturbance and difficulty establishing and maintaining effective work and social relationships. The second descriptor is only partially met as his PTSD symptoms had affected social relationships but he was working and work was noted to be “therapeutic.” At the 70% level he did manifest two descriptors, expressing suicidal thoughts but stated that he would never act on those thoughts. He also indicated some homicidal ideation but only “in the heat of the moment” and was able to brush these thoughts aside and isolate himself when he became angry. These descriptors are noted only in the VA records. The NARSUM stated that suicidal and homicidal ideation was “convincingly denied.” The VA examination for PTSD on 20070605 (3 months after separation) noted some visual and auditory hallucinations including hearing gunshots and screaming and seeing an Iraqi run in front of his truck. These hallucinations, if persistent, are actually a descriptor at the 100% impairment level. The NARSUM does not relate any history of hallucinations. These symptoms may not have been considered to be hallucinations, but only part of his flashbacks where these experiences were relived. The Global Assessment of Functioning (GAF) for the NARSUM was 51-60 and for the VA PTSD examination was 57, both consistent with moderate symptoms. The PEB adjudicated the PTSD condition as unfitting (code 9411) with a 10% rating. The VA assigned a rating of 50% based on symptoms of sleep disturbance, anger issues, flashbacks, audio/visual hallucinations, increased hypervigilance and exaggerated startled response which cause difficulty in establishing and maintaining effective social relationships. Since the VA rating was 50% the hallucination symptoms were apparently not persistent or severe enough to result in total occupational and social impairment.

The Board carefully reconsidered the PEB adjudication of the 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 considered whether the minimum 50% threshold for the TDRL rating period was exceeded. It was agreed that §4.130 criteria for a higher rating could not be justified and that 50% was the appropriate TDRL rating, as mandated in its recommendation. The Board then determined the most appropriate fit with VASRD 4.130 criteria at six months for its permanent rating recommendation. As noted above, the best evidence on which to base the permanent rating recommendation in this case was the VA Compensation and Pension (C&P) PTSD Examination performed on 20070605, 3 months after separation. There was no VA or civilian provider evidence covering the six month interval. The probative value of the VA rating examination is strengthened on the principle that it reflects the stress of transition to civilian life which is intrinsic to the Board’s permanent rating recommendation. Since the VA exam was still fairly close to separation and removed from the six month rating interval, the MEB evaluation itself provides a useful baseline and is assigned relevant probative value in the Board’s efforts to arrive at a fair permanent rating recommendation. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a permanent PTSD disability rating of 30% in this case.

Other Conditions in the Disability Evaluation System (DES) File. Chondromalacia (R) Knee Injury and Fracture Right Proximal 5th Metatarsal are both noted in the DES File. The MEB Examination noted right knee tenderness in the joint line and MRI was ordered for evaluation of possible meniscal injury. There is no report of this study in the file. The VA rated this condition as Chondromalacia at 10%. The MEB Examination noted that the right foot 5th metatarsal fracture was well healed with no problems. The VA rated this condition at 0%. These conditions were not noted in the Commander’s Statement. No link to fitness is in evidence for the above listed conditions, therefore they were not considered by the PEB for disability rating. The Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

Alcohol Dependence was considered by the PEB and determined to be a Category IV condition which did not constitute a physical disability. The records noted that he entered treatment for alcohol dependence on 20060627 and had maintained sobriety with total abstinence since that date. The Board unanimously agrees that it cannot recommend a finding of Alcohol Dependence as unfit for additional rating at separation.

Other Conditions Not in the DES. Right Shoulder Subacromial Impingement is not mentioned in the DES File and was not service connected by the VA. There is no evidence that this condition was unfitting at separation. The CI retains the right to request his service Board for Correction of Naval Records (BCNR) to consider adding this condition as unfitting.

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. In the matter of the PTSD condition (coded 9411), the Board unanimously recommends an initial Temporary Disability Retired List (TDRL) rating of 50%, in retroactive compliance with VASRD §4.129, as directed by DoD. The Board unanimously recommends a permanent rating of 30% at six months following separation, IAW VASRD §4.130. In the matter of the Chondromalacia (R) Knee Injury and Fracture Right Proximal 5th Metatarsal conditions the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. In the matter of the Alcohol Dependence condition the Board does not find the condition unfitting. It was appropriately determined by the PEB to be a Category IV condition which did not constitute a physical disability, thus no recharacterization is recommended.

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 a period of six months (PTSD at 50% IAW §4.129 and DoD direction) following his prior medical separation, and then permanently retired by reason of physical disability with a final 30% rating as indicated below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Post-traumatic Stress Disorder (PTSD) | 9411 | 50% | 30% |
| **COMBINED** | **50%** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100225, w/attachments

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

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 retroactive disposition:

a. Separation from the naval service due to physical disability with placement on the Temporary Disability Retired List with a disability rating of 50 percent for the period February 12, 2007 thru August 11, 2007.

b. Final separation from naval service due to physical disability effective August 12, 2007 with a disability rating of 30 percent and placement on the Permanent Disability Retired List.

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)