RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1000217 BOARD DATE: 20110107

SEPARATION DATE: 20060131

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a USMC LCpl/E-3 (MOS 5811, Military Police) medically separated in January 2006 after 4½ years of service. The medical basis for separation was Post-traumatic Stress Disorder (PTSD). CI was deployed to Iraq in 2003 and again in 2004. 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 his PTSD symptoms, CI was not deployable and could not meet the operational requirements of his Military Occupational Specialty (MOS). After a period of Limited Duty (LIMDU), the CI underwent a Medical Evaluation Board (MEB). Two Axis I psychiatric diagnoses (PTSD and Bipolar Disorder) were addressed in the narrative summary (NARSUM) and forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable. The IPEB adjudicated PTSD as the single unfitting condition, and rated it 10% IAW DoDI 1332.39. Bipolar Disorder was listed as Category 2 (not separately unfitting, but related to the unfitting condition). The CI accepted the findings of the PEB, and was then medically separated with a 10% disability rating.

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CI’s CONTENTION (20100306): “I was assigned less than 50% disability rating by the military for my unfitting PTSD upon discharge from active duty. In accordance with the class action notice, assign the highest final disability rating applicable consistent with 38 CFR4.I29 and DOD policy to the extent such increase will not adversely affect my total compensation, including but not limited to compensation pursuant to CRSC. Please see attached list of contentions regarding why the PDBR should make the changes I request in Item 3.” The CI has submitted a two-page memo which further describes and clarifies his contentions. (This case is court remanded under the *Sabo et al v. United States* class action suit.)

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20051213** | | | **VA (2 mo. Pre-separation) – All Effective 20060201** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Post-traumatic Stress Disorder | 9411 | 10% | Post-traumatic Stress Disorder  (including Bipolar Disorder) | 9411 | 50% | 20051206 |
| Bipolar Disorder | Category 2 | |
| No PEB entry |  | | Right Patellofemoral Syndrome | 5099-5024 | 10% | 20051206 |
| No PEB entry |  | | Left Patellofemoral Syndrome | 5099-5024 | 10% | 20051206 |
| No PEB entry |  | | Right Foot Strain | 5299-5284 | 10% | 20051206 |
| No PEB entry |  | | Tinnitus | 6260 | 10% | 20051206 |
|  |  | | NSC X 3 | | |  |
| **TOTAL Combined: 10%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 70%** | | | |

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ANALYSIS SUMMARY:

Psychiatric Condition – The CI’s history of psychiatric problems goes back to his youth. As a teenager, he tried to kill himself three times (once by cutting, once by hanging, and once by drinking kerosene). He was in a group of “misfits” and was threatened with arrest often (for drinking and “truck surfing”) but was never arrested. He used drugs, including heroin. In June 2001, the CI enlisted in the Marine Corps at age 18. One year and a half later (January 2003), he deployed to Kuwait and started running convoys into Iraq. He began having PTSD symptoms in June 2003. Initial symptoms included difficulty sleeping, depressed mood, decreased socialization and increased irritability. He was treated with medication and psychotherapy. He returned to the U.S. in October 2003, and then went back to Iraq four months later (February 2004). During his second Iraq deployment, CI was exposed to mortar attacks and firefights. He began having symptoms of anger, anhedonia, nightmares, insomnia, irritability, depression, decreased concentration and decreased socialization. In June 2004, the CI was involved in an incident where he pulled a weapon on an NCO who came up and grabbed him from behind. He underwent a command-directed mental health (MH) evaluation, and was diagnosed with PTSD. Once again he was treated with psychotherapy and medication, and his symptoms improved. In August 2004, he overdosed on one of his medications, but this was deemed to be accidental, not intentional. The CI returned to the U.S. in September 2004. At an MH evaluation on 17 November 2004, he stated that his symptoms had resolved with stable mood, good sleep, and a supportive relationship with his wife. He was off all medications. Dr. C. (a Psychologist) documented a normal mental status exam (MSE), and a normal Global Assessment of Functioning (GAF). Dr. C. felt that the CI no longer had PTSD and was fit for full duty. However, nine months later (August 2005) the CI’s symptoms had returned. He sought treatment for irritability, trouble sleeping, and flashbacks. Medication and psychotherapy were resumed, and the CI was placed on light duty by a LIMDU Board. On 3 October 2005, he was seen by Dr. M. (a psychiatrist) because of an acute flashback episode that occurred while climbing a tower during which the CI was overwhelmed with anxiety and sobbing. Dr. M. assigned a GAF score of 65. Dr. M. felt the CI had “symptoms consistent with PTSD,” but considered that he might also have Bipolar Spectrum Disorder due to mood swings and a positive family history for Bipolar Illness. The CI failed to improve with treatment and underwent an MEB (October 2005). In the MEB NARSUM, it was noted that CI had normal cognition and memory, intact judgment and insight, and a GAF of 60. The prognosis for continuing military service was poor, and he was likely to require continuing psychiatric care for an extended period of time. CI underwent a VA Compensation and Pension (C&P) exam on 6 December 2005 (8 weeks prior to separation). At that exam, CI reported sleep disturbance, startle response, hyper-vigilance, panic attacks, isolation, depression, intrusive memories, flashbacks, distractibility, poor concentration and anger problems. The CI was noted to be hostile and belligerent, with homicidal thoughts, avoidance, paranoia, marginal impulse control, poor insight and poor coping skills. The GAF score was 45 with moderately severe social impairment and moderate industrial impairment. The examiner opined, “It is not clear that he has Bipolar disorder. It seems that most of the symptoms can be subsumed under the Post-traumatic Stress Disorder diagnosis.”

The Physical Disability Board of Review (PDBR) carefully reviewed all evidentiary information available. IAW VASRD §4.129, when a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the CI’s release from active military service, the rating agency should assign an evaluation of not less than 50 percent. Based on the CI’s psychological condition at the time of separation, the Board unanimously recommends an initial 50% rating for PTSD in retroactive compliance with VASRD §4.129. The permanent rating should be based on the CI’s level of functioning six months (26 weeks) following separation. Treatment records show that CI was evaluated by a VA physician (Dr. C.) on 28 July 2006 (3 days prior to the six month point). At that visit CI described a warm relationship with his wife, and he denied substance use. He reported symptoms of anxiety, anger, interrupted sleep, easy startle, and nightmares. It was noted that CI was alert, oriented, adequately groomed, and moderately tense, with no suggestion of hypomania, psychomotor retardation, thought disorder, active delusions, or hallucinations. CI had not been taking his anti-depressant medication (Remeron/mirtazapine) as prescribed. Dr. C. decided to continue the Remeron, and CI agreed to full compliance. The CI was not employed at that time, but apparently had worked for awhile placing cable in the ground (length of employment not clear).

Based primarily on that 28 July 2006 evaluation, the Board determined that although CI was generally functioning satisfactorily (with routine behavior, self-care, and conversation normal) his PTSD symptoms caused a moderate degree of occupational and social impairment, with occasional decreases in efficiency and intermittent periods of inability to perform certain tasks. After considerable discussion and lengthy deliberation, the Board unanimously recommends a permanent PTSD separation rating of 30% (IAW VASRD §4.130). The Board then turned its attention to the matter of Bipolar disorder. The Navy PEB (8 December 2005) listed Bipolar disorder as Category 2 (not separately unfitting, but related to the unfitting condition). The Board unanimously agrees with the PEB, that the Bipolar disorder was not separately unfitting but was related to the PTSD condition. All evidence considered, there is not sufficient evidence to support the addition of Bipolar disorder as an additional unfitting condition.

History of Other Conditions not documented in the Disability Evaluation System (DES) file – Patellofemoral syndrome (bilateral), Right foot strain, and Tinnitus were also noted by the Board. There is no evidence that these conditions were a matter of record in the DES package. Therefore, these conditions are judged to be outside the scope of this Board.

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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. Furthermore, Navy PEB reliance on DoDI 1332.39 may have been operant in this case, and the CI’s condition was adjudicated independently of that instruction by the Board.

In the matter of the Psychiatric 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.

Bilateral patellofemoral syndrome, Right foot strain, and Tinnitus (all rated by the VA) were not a matter of record 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 for Correction of Naval Records (BCNR) to consider adding these conditions as unfitting.

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RECOMMENDATION: The Board recommends that the CI’s prior separation be re-characterized to reflect that, rather than discharge with severance pay, the CI was placed on the TDRL at 50% for a period of 6 months (PTSD at 50% IAW §4.129 and DoD direction) 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%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100306, w/atchs.

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 XXX, 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 January 31, 2006 thru Jul 30, 2006.

b. Final separation from naval service due to physical disability effective August 1, 2006 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)