RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD2010-00306 SEPARATION DATE: 20070910

BOARD DATE: 20100827

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SUMMARY OF CASE: This covered individual (CI) was an active duty PO2 (MOS 8404, Hospital Corpsman) medically separated from the Navy in 2007 after 9 years of service. The medical basis for the separation was Post Traumatic Stress Disorder (PTSD). The CI presented with PTSD symptoms in Sep 2005 following return from deployment to Iraq (Mar-Oct 2004). Criterion A combat stressors were documented and DSM IV criteria for an Axis I diagnosis of PTSD were met. He was started on a regimen of psychotropic medications, and psychotherapy that were effective in decreasing his symptoms; however, his symptoms were exacerbated when he learned of a friend being killed and that he was to be re-deployed to Iraq. The CI was compliant with his medication and other treatment modalities for PTSD, but following two periods of Limited Duty, his psychiatric limitations were not compatible with the operational requirements of his MOS. He was referred for a Medical Evaluation Board (MEB), and the MEB forwarded the PTSD condition to the Physical Evaluation Board (PEB) on the NAVMED 6100/1 as medically unacceptable without listing any other medical conditions. The informal PEB adjudicated the PTSD as unfitting, rated 10%. The CI rebutted the informal PEB’s findings and reconsideration upheld the condition and 10% rating of the informal PEB. The CI was thus medically separated with a 10% disability rating.

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CI CONTENTION: “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 CFR 4.129 and DoD policy, to the extent such increase will not adversely affect my total compensation, including but not limited to compensation pursuant to CRSC.” The 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 PEB – Dated 20070607** | | | **VA (4 Mo. Prior to Separation) – All Effective 20070911** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 50% | 20070724 |
| ↓No Additional Listed Conditions↓ | | | R Knee … | 5260-5014 | 10% | 20070716 |
| R Shoulder … | 5201-5020 | 10% | 20070716 |
| Lumbar Spine … | 5235-5237 | 10% | 20070716 |
| R Eye … | 6099-6001 | 10% | 20070716 |
| Bilateral Tinnitus | 6260 | 10% | 20070723 |
| GERD | 7399-7346 | 10% | 20070716 |
| 0% X 5 and NSC X 3 | | | 20070716 |
| **TOTAL Combined: 10%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 70%** | | | |

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ANALYSIS SUMMARY:

PTSD Rating Recommendation. The PEB rating preceded the promulgation of the NDAA 2008 mandate for 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 of 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 CI underwent a pre-discharge VA initial PTSD evaluation on 20070724. Neither the MEB nor VA evaluation would rate higher than 50%, so 9411 at 50% IAW §4.129 is the appropriate TDRL rating level. The pre-separation VA evaluation was rated by the VA as 50% by §4.130 criteria and did not invoke §4.129, therefore future VA evaluation exam was not projected until Feb 2009. The most proximate source of post-discharge comprehensive evidence on which to base the permanent rating recommendation in the file is a Mental Health History and Physical dated 20090507 for treatment; it was not a compensation and pension evaluation. It is noted for the record that the Board recognizes the significant interval (18 months) between the date of separation and the VA evaluation. The Board must therefore weigh the evidence contained in the MEB psychiatric Narrative Summary (NARSUM), and pre-separation VA evaluation balanced by the VA evidence fairly remote from separation, in order to extrapolate the ratable condition 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 post-separation evidence in this case somewhat diminished. The Board recognizes, however, that the 18 month VA examination reflects the stress of transition to civilian life which is intrinsic to the permanent PTSD rating recommendation. The 20070724 examination rater noted the CI suffered from insomnia and when he did fall asleep, had nightmares 3 or 4 times a week. He would have flashbacks especially when he saw TV coverage of the war. He was irritable and had bouts of anger. He was socially avoidant, had an increased startle. His global assessment of functioning (GAF) was in the range of moderate symptoms (GAF=60). His PTSD was considered severe and chronic. He was being treated with psychotropic medications, group, and individual therapy. As noted, the VA rated the CI’s PTSD at 50% using pre-separation exams. The Disability Evaluation System (DES) file also supported significant time away from duty for treatment of PTSD, and a decline of the CI’s level of functioning in a supervisory or management capacity due to symptoms of PTSD, with the medical opinion of ‘the degree of civilian performance impairment is moderate.” The 18 month post-separation VA PTSD evaluation indicated slight improvement with only slight waxing and waning of PTSD symptoms post discharge. The CI was having nightmares 1 or 2 times a week, was isolating himself when irritable, and still had an increased startle. He also still had panic attacks with physiologic changes when in a crowd, but was functioning as a medical technician in the VA emergency room. His GAF score was improved to 68 (from 60). The Board had to extrapolate the CI’s pre-discharge PTSD disability and 18 month post-discharge condition to predict the severity of the CI’s PTSD at the six month window for rating. Independently rating the pre-discharge PTSD evaluations by the Navy and the VA were between 30%-50% IAW §4.130 criteria. The PTSD evaluation 18 months after separation, although rated by the VA at 50%, was independently rated as closer to 30% than 50%. The Board determined that all evidence considered, the CI’s PTSD condition at the six month window was more likely than not, closer to 30% than 50%. After due deliberation, the Board agreed that a permanent PTSD rating of 30% is the most representative of impairment and a fair recommendation in this case.

Other Conditions (Q-fever, Right Knee, Right Shoulder, Lumbar Spine, Right Eye, Tinnitus, and abdominal [GERD]) . The CI was diagnosed with Q-fever and hospitalized for two weeks following return from deployment. Q-fever was addressed in the MEB NARSUM, and an Infectious Disease Clinic specialist stated ‘Currently the patient has no evidence of active or chronic infection. Phase I antibodies are down trending. The patient’s continued complaints of fatigue and malaise are unlikely related to his history of Q fever. No further diagnostic tests or treatment is indicated. No further follow-up is indicated.’ Q-fever was not an MEB or PEB-listed diagnosis. The VA determination that the Q-fever was “not service connected” as there was no evidence of active disease was upheld following multiple appeals and evaluations. Symptoms of fatigue noted during VA evaluations were attributed to the CI’s unfitting PTSD condition. The only additional conditions evidenced in the DES packet which are relevant for Board consideration as potentially unfitting were right knee, right shoulder, and lower back conditions, as well as an abdominal condition (equivalent in the VASRD to GERD) all noted in the MEB history and physical. They were stable at the time of separation and not under active medical care. The Non-Medical Assessment (NMA) statements did not note any impairment to performance unrelated to ‘psychological difficulties’ and no non-psychiatric conditions were indicated as not meeting retention standards. All evidence considered, there is no reasonable argument therefore that would support a recommendation for Q-fever, right knee, right shoulder, lower back, or abdominal conditions as unfitting conditions for additional rating at separation. The other diagnoses of right eye small superficial corneal opacity, and bilateral tinnitus rated by the VA were not mentioned in the DES package. “Hearing loss” mentioned by the CI on DD Form 2697 is not adjudged equivalent to tinnitus – ringing in the ears. 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 other VA-identified conditions or any contended conditions not covered above remain eligible for 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. In the matter of the post traumatic stress syndrome condition, 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 6 months IAW VASRD §4.130. In the matter of the Q-fever 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: In the matter of the post-traumatic stress disorder condition, 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 6 months IAW VASRD §4.130.

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| --- | --- | --- | --- |
| **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 20100315, 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 XXXX, FORMER USN, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 16 Sep 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. 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 10 November 2007 thru 10 May 2008.

b. Final separation from naval service due to physical disability effective 11 August 2008 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)