RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000407 SEPARATION DATE: 20070215

BOARD DATE: 20110127

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a USMC Sgt/E-5 (0352, Anti-tank Missileman) medically separated in February 2007 after more than 3 years of active military service. The medical basis for separation was Post-traumatic Stress Disorder (PTSD). At his Medical Evaluation Board (MEB), the PTSD was determined to be medically unacceptable IAW NAVPERS 18068F. Two other conditions listed in the narrative summary (NARSUM), Hypertension and Back Pain, were determined to be medically acceptable. The CI was referred to the Informal Physical Evaluation Board (IPEB) and was found unfit for continued military service due to PTSD. The Hypertension and Back Pain were not found to be unfitting conditions. The CI accepted the IPEB findings, and was separated at 10% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Navy and DoD regulations.

CI’s CONTENTION (20100402): The CI states, “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.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 requested in Item 3.” 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)

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Navy PEB – Dated 20070103** | | | **VA (3 mo. after Separation) – All Effective: 20070216** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 30% | 20070510 |
| Back Pain | Not Unfitting | | Low Back Strain | 5237 | 10% | 20070510 |
| Hypertension | Not Unfitting | |  |  |  |  |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 40%** | | | |

ANALYSIS SUMMARY:

Post-traumatic Stress Disorder. This Marine served two combat deployments in Iraq. The first was from February to October 2004, and the second was from March to August 2005. The CI was exposed to direct combat during both of his tours in Iraq. He was engaged in searches, patrols, and improvised explosive device (lED) sweeps. He also was involved in multiple fire fights, lED explosions, and mortar attacks. Several members of his unit were killed or wounded. His symptoms began after he returned from his first combat tour. The CI did not discuss them with anyone or seek help, but admits to drinking heavily and was involved in several alcohol-related fights. After his second combat tour, he received a humanitarian transfer to care for his father. He was referred to mental health (MH) in November 2006 due to increasing anxiety and trouble controlling his temper. He experienced nightmares and intrusive thoughts of combat. He also had olfactory “flashbacks” when he recalled smells that he had encountered while in Iraq. He became very upset if he thought about the traumatic events that occurred, and he avoided discussing his combat experiences. He became irritable and had urges to punch people who angered him, but he had not engaged in any physical fights since returning from his second deployment. He complained of insomnia, daytime fatigue, and hyper-vigilance. He felt numb and detached at times. The CI was started on medication, but he stopped taking the medication on his own after a few weeks. In November 2006, he was placed on limited duty (LIMDU) status and an MEB was initiated.

The January 2007 Navy PEB decision in this case preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DoD adherence to VASRD §4.129. 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 upon the CI’s psychological status 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. A full, comprehensive psychological evaluation was not performed right at the six month point (15 August 2007), so the Board must use the best evidence available. Treatment records show that the CI was evaluated by the VA on 10 May 2007 (14 weeks prior to the six month point).

At that exam, the CI reported that he was unmarried, was living alone, and did not have a significant other. The CI had been working full-time at a landscaping job for the previous three weeks. He enjoyed being outdoors and got along well with co-workers. He also reported working four nights a week as a bartender, and providing security for the bar at times. He did not enjoy this job due to the crowds, and his tendency to become irritated with the disrespectfulness of some of the customers. He reported no difficulties with his behavior on the job. The CI was spending a good deal of time helping care for his father. He enjoyed spending time with old high school friends, running, working out, and reading. The CI was planning to attend classes at the local community college and was interested in pursuing a degree in nursing. Since his separation, he had been given multiple medications for his symptoms but he never took any of them. He was not on any medication, and was not in treatment of any kind. The CI reported that he still had nightmares, trouble sleeping, and distress from any war reminders. His chief complaint was a feeling of uneasiness and anxiety, related to his hyper-vigilance. He would often have this problem in crowded situations and while driving, so he tried to avoid crowds as much as possible. He described heightened irritability, which also became worse in crowded areas. Due to his irritability, he had thoughts about hurting others at times, and had acted out by "hitting a few walls." However, he reported no other physical violence. He felt stressed due to his financial situation. He also expressed concern for his father and other family issues. During the mental status examination (MSE) the CI denied suicidal ideation. He reported episodic thoughts of harming others who upset him, but had no intent or plan to do so. His mood was dysphoric. Affect was congruent with mood and restricted in range. No evidence of a thought disorder. Thought process was logical and goal-directed. He denied auditory or visual hallucinations. Cognition was not formally tested, but appeared intact. His insight and judgment were good. The examiner noted that CI appeared to spend a good deal of his time working and keeping busy in order to help manage his symptoms, and he reported no difficulties with his ability to manage his employment. The examiner felt that his level of hyper-vigilance and anxiety in crowded situations may impair future functioning, including his plans for earning his degree. Additionally, the examiner felt that the CI’s history of heavy alcohol use was somewhat concerning, though he reported attempts to decrease his use in order to avoid any future problems. The final diagnosis was Chronic PTSD, and History of alcohol abuse. Global Assessment of Functioning (GAF) score was 57, indicating moderate symptoms. The Board determined that, although the 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 work efficiency and intermittent periods of inability to perform certain tasks. After lengthy discussion and careful deliberation, the Board unanimously recommends a permanent PTSD separation rating of 30% (IAW VASRD §4.130).

History of Other Conditions (documented in Disability Evaluation System package). Back pain, hypertension, heartburn, left elbow injury, hearing loss, and plantar warts were all discussed and considered by the Board. There is no clearly documented evidence that any of these conditions caused a significant adverse effect on the performance of required military duties. These other conditions are all judged by the Board to be not unfitting at the time of separation from service, and are not relevant for disability rating. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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 SECNAVINST 1850.4E and DoDI 1332.39 may have been operant in this case, and the CI’s condition was adjudicated independently of those instructions. 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 back pain, hypertension, heartburn, left elbow injury, hearing loss, plantar warts, 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.

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 six 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.

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100402 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 XXXXX, 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 15, 2007 thru August 14, 2007.

b. Final separation from naval service due to physical disability effective August 15, 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)