RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Air Force

CASE NUMBER: PD-2010-00415 SEPARATION DATE: 20041126

BOARD DATE: 20110401

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Senior Airman (5R051, Air Traffic Controller and later Chaplains’ Assistant) medically separated from the Air Force in 2004. The medical bases for separation were posttraumatic stress disorder (PTSD) associated with panic disorder and social phobia, both designated as EPTS (existed prior to service) and alcohol abuse. The CI was treated with medication and psychotherapy, but did not respond adequately to perform within his Air Force specialty. He was consequently issued an S-4 profile and referred to a Medical Evaluation Board (MEB). PTSD associated with panic disorder and social phobia was forwarded to the Physical Evaluation Board (PEB). The PEB adjudicated PTSD and associated conditions as the only unfitting condition, rated 30% with an EPTS deduction of 20% and application of DoDI 1332.39. The CI made no appeals, and was medically separated with a 10% disability rating.

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 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. The application lists no other conditions except for schizophrenia and bipolar disorder. This case is court remanded under the *Sabo et al v. United States* class action suit.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20041126** | **VA (2 Mo. after Separation) –****Effective 20041127** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD W/ Panic Disorder and Social Phobia | 9411 | 10% | PTSD | 9411 | 50%\* | 20050112 |
| Tobacco Abuse | Not Unfitting | No VA Entry |
| History of Alcohol Abuse | Not Unfitting | No VA Entry |
| ↓No Additional MEB Entries↓ | Vestibular Neuronitis | 6204 | 30% | 20041127 |
| **Combined: 10%** | **Combined: 70%** |

\*Increased 70% effective 20051009; increased to 100% effective 20060526

ANALYSIS SUMMARY:

Mental Conditions. The PEB rating, as noted above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act 2008 mandate for DOD adherence to VA 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 of TDRL. The Board must then determine the most appropriate fit with VASRD §4.130 criteria at six months for its permanent rating recommendation. The most proximate sources of comprehensive evidence upon which to base the permanent rating recommendation in this case is the VA compensation and pension (C&P) examination performed two months after separation, along with the VA psychiatric outpatient notes encompassing the six-month interval. The MEB narrative summary (NARSUM), 4 months prior to separation, and the VA psychiatric evaluations, 11-15 months after separation also provide a trajectory to extrapolate the condition of the CI at the six-month post-Temporary Duty Retired List (TDRL) time frame. The 15-month examination is particularly useful in that it documents the CI’s illness during the period in which the CI was to receive his permanent rating for the mental condition.

The MEB NARSUM (four months pre-separation – GAF 50) reported the CI’s life-long history of anxiety and social phobia, exacerbated by alcohol and sexual abuse for which he underwent both in- and outpatient psychological and alcohol treatment. He was diagnosed with PTSD, panic disorder and agoraphobia and prescribed Celexa, Trazadone, and Benadryl. He could not participate in daily life activities and was unable to regularly attend therapy due to his disabling panic attacks and agoraphobia. He “tried to shut out the world,” (i.e. did not answer the telephone, listen to messages, or read mail). His panic attacks lasted from minutes to several hours and were manifested by racing thoughts, feeling that his mind was out of control, gastrointestinal distress (diarrhea, nausea), chest pain, racing heart, feeling cold, dyspnea, twitching, headaches, and an inability to do anything. He stated that he had intrusive recollections, nightmares, and intense psychological distress in response to things which reminded him of it. He would sometimes not get out of bed and then would spent most of his time playing solitaire on the computer and watching TV. The CI had an episode of suicidal ideation when reminded of the abuse. The CI was divorced with no children. The examiner concluded that, even with treatment, the anxiety symptoms would impair his reliability and deployability. The PEB concluded that the CI had definite social and industrial adaptability impairment.

The VA psychiatric examination (two months post-separation – GAF 45) indicated the CI was living with his parents and younger brother, not working, still having nightmares, intrusive thoughts of abuse, hypervigilant, loss of trust, no friends, sleep disturbance, hyperstartle, anger, fluctuating energy levels, anhedonia, and poor concentration. He was not in a relationship. His mood was depressed and affect was flat. He was having auditory hallucinations. His mental status exam was normal except for some difficulty performing serial sevens. His diagnosis was PTSD, rule out major depressive disorder. The VA considered the CI to have preexisting anxiety but, without treatment or a formal diagnosis, the VA stated the presumption of soundness rule must apply.

The VA psychiatric exam and clinic notes, 11-15 months post-separation are probative in terms of when the CI’s psychosis actually began. The note indicates the CI was seeing a psychiatrist for three years and was fearful of being hospitalized and committed. This indicates the psychosis was present before the end of the TDRL period. The two-month VA examination also indicated the presence of auditory hallucinations prior to the end of the TDRL period. The VA psychiatric notes indicate the CI was living in an apartment on his own but was having difficulty functioning in an independent manner. He had paranoid delusions and auditory and visual hallucinations. The CI was prescribed Abilify, Haldol, Seroquel, Geodon, Klonopin and other medications. The CI was depressed with vegetative signs of depression, and was having suicidal ideation, mood swings, and racing thoughts. His thinking was disorganized and had difficulty with tangential thinking, and had rambling and confused thinking. He taking college classes but was having difficulty due to poor concentration. His diagnosis was schizoaffective disorder, bipolar type, and PTSD with a GAF score of 38 during the 15-month psychiatric exam. The examiner stated that the CI would not be able to work due to inability to reliably show up, difficulty relating to coworkers and supervisors, difficulty with production norms because even though he might have one good day, the next day he would not be functional. He had attempted suicide and was referred to a schizophrenia support group.

The Board directs its attention to its rating recommendations based upon the evidence just described. All members agreed that the §4.130 criteria for a rating higher than 50% were not met at the time of separation, and that the minimum 50% TDRL rating (as explained above) is applicable. As regards to the permanent rating recommendation, all members agreed that the §4.130 threshold for a 50% rating could be considered if only the examinations up to the two-month VA examination was considered. However, clear evidence within the VA clinic notes and the 15-month examination that covered the CI’s condition within the six-month TDRL timeframe had to be considered. Based upon this probative evidence, it was judged that a 100% rating could be argued and that the criteria for a 50% rating were exceeded by evidence applicable to the six-month rating benchmark. The deliberation settled on arguments for a 100% (total occupational and social impairment) versus 70% (occupational and social impairment with deficiencies in most areas such as work, school family relations, judgment, thinking or mood) permanent rating recommendation. The CI had significant psychosis long before the end of the TDRL period, but was afraid to talk about it. The agoraphobia, auditory hallucinations, paranoia, delusions, suicide attempts, severe social anxiety, and the need for heavy sedation to at best achieve partial control of his symptoms all favor a 100% rating. The Board also noted that the CI was taking college courses, and therefore was not totally impaired during the TDRL period thus a 70% rating would be equitable within this timeframe. The Board also noted that VA rated the 15-month examination at 70% and very soon afterwards changed that rating to 100%. Although the CI eventually warranted a rating of 100%, it was not clear to the Board that he had reached that level of impairment within the TDRL timeframe. 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 70% in this case.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were alcohol abuse and tobacco abuse. Neither of these conditions is subject to service rating, and any impairment from alcohol abuse stemming from the unfitting psychiatric condition is already subsumed in the above recommendations. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for either of the stated conditions.

Remaining Conditions. Vestibular neuronitis was noted in the VA rating decision proximal to separation. The condition was not clinically active during the MEB period, did not carry an attached profile, was not implicated in the commander’s statement, and was not documented in the Disability Evaluation System (DES) file. 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.

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 PTSD, the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed, and a 70% permanent rating at six months IAW VASRD §4.130. In the matter of the tobacco abuse and alcohol abuse, the Board recommends no recharacterization of the PEB adjudications as Category III and not ratable.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows: TDRL at 50% for six months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then a permanent 70% disability retirement as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| Posttraumatic Stress Disorder | 9411 | 50% | 70% |
| **COMBINED** | **50%** | **70%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20041126, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB, MD 20762-7002

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00415.

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended your separation be re-characterized to reflect disability retirement, rather than separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

 As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at 1-800-531-7502 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 30 days from the date of this letter, you will not be enrolled in the SBP program unless at the time of your separation, you were married or had an eligible dependent child, in such a case, failure to render an election will result in automatic enrollment.

 Sincerely

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2010-00415

MEMORANDUM FOR THE CHIEF OF STAFF

 Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) and Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:

 The pertinent military records of the Department of the Air Force relating to xxxxxxxxxxx, are corrected to show that:

 a.  He was not discharged on 26 November 2004 with entitlement to disability severance pay; rather, on that date he was relieved from active duty and on 27 November 2004 his name was placed on the Temporary Disability Retired List (TDRL), with a diagnosis of Postttraumatic Stress Disorder, VASRD code 9411, rated at 50%.

 b.  On 26 November 2004, he elected not to participate in the Survivor Benefit Plan (SBP).

 c. On 26 May 2005, he was removed from the TDRL and permanently retired with a final combined disability rating of 70%.

 Director

 Air Force Review Boards Agency