RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1000431 SEPARATION DATE: 20030317

BOARD DATE: 20110225

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Petty Officer Second Class/E-5 (QM2, Quartermaster) medically separated from the Navy in 2003 after over four years of active service. The medical basis for the separation was Posttraumatic Stress Disorder (PTSD). In September 2000, the CI was assigned to the USS Cole when it underwent a terrorist attack. The CI assisted with aid for the wounded and removal of the deceased. Initial symptoms in December 2000 were felt to be a normal reaction, but those symptoms worsened in January 2001 and included insomnia, nightmares, depression, anhedonia, flashbacks, recurrent intrusive thoughts, anxiety, occasional panic attacks, avoidance symptoms, and increased startle response. He had multiple emergency room (ER) visits for anxiety and in July 2002 he was hospitalized for three days for a “fugue-like state,” with confusion and memory loss. Treatment included counseling and psychotropic medications. He underwent a Medical Evaluation Board (MEB) in October 2001 and was found fit for duty. Despite treatment, however, the CI’s symptoms persisted such that he could not perform within his military occupational specialty (MOS). He was issued a permanent limited duty (LIMDU) and underwent a second MEB. PTSD was the only condition addressed in the Medical Board Report and forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. The informal PEB adjudicated the PTSD condition as unfitting, rated 10%; with likely application of the SECNAVINST 1850.4E and DoDI 1332.39 (E2.A1.5). The CI did not appeal for a formal PEB and was medically separated with a 10% disability rating.

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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. 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 (continuation) Please see attached list of contentions regarding why the PDBR should make the changes I request in Item 3.” He elaborates no other conditions, but as a matter of policy all service conditions are reviewed by the Board for their potential contribution to its rating recommendations. 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 20030121** | | | **VA (1 Mo. Pre-Separation) – All Effective 20030318** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 30% | 20030207 |
| ↓No Additional MEB/PEB Entries↓ | | | L Knee PFS … | 5257-5003 | 10% | 20030120 |
| R Knee Tendinitis … | 5024-5257 | 10% | 20030120 |
| 0% X 1 / Not Service Connected X 0 | | | 20030120 |
| **Final Combined: 10%** | | | **TOTAL Combined (Includes Non-PEB Conditions): 50%** | | | |

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ANALYSIS SUMMARY:

PTSD Rating Recommendation. The PEB rating, as noted above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act 2008 mandated adherence to the 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 MEB psychiatric evaluation and pre-separation VA exam, under §4.130 criteria, would rate no higher than 50% and the minimum TDRL rating of 50% applies. The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is a combination of his VA outpatient psychiatric notes from seven thru nine months post-separation. There was no post-separation VA PTSD rating exam in evidence.

The CI’s pre-separation mental functioning is documented in both the narrative summary (NARSUM) and pre-separation VA psychiatric exam. These two reports describe a moderate level of mental impairment. Symptoms included insomnia, nightmares, depression, anhedonia, flashbacks, recurrent intrusive thoughts, irritability, anxiety, avoidance symptoms, increased startle response, and “occasional” panic attacks with “racing heart, shortness of breath with nausea and a sense of impending doom that will last minutes to hours.” There were two brief mentions of passive or “vague” suicidal ideation without plan or intent, both at nine months pre-separation, but the CI “indicated he would never harm himself. Throughout the remainder of the record the CI specifically denied suicidal ideation. Treatment included three psychotropic medications, outpatient psychotherapy, and one episode of hospitalization for three days for confusion and a “fugue-like state.” Social functioning appeared to be relatively intact. The CI married in October 2001 and had two children, the most recent born in January 2003. Nevertheless, the VA exam noted “avoidance of people, feeling he has a wall up around him,” and the CI reported a “strain in the marriage.” The CI stated that he planned to attend college after separation. Mental status exams (MSE) revealed depressed and anxious mood, sometimes inappropriate affect (VA), poverty of speech (VA), and “fair” judgment and insight (VA). Global Assessment of Functioning (GAF) scores were 55 (VA exam) to 60 (NARSUM), both corresponding to moderate symptoms or moderate difficulty in social, occupational, or school functioning. In addition to PTSD, the VA examiner identified two additional Axis I diagnoses: Panic Disorder with Agoraphobia and Major Depressive Disorder, moderate. Any contribution to the CI’s overall level of mental impairment from those diagnoses is included in the rating for his primary unfitting condition of PTSD by this Board. The CI’s pre-separation level of functioning best matches the 30% description under VASRD §4.130, “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks.”

VA psychiatric outpatient notes from seven through nine months post-separation described an apparent worsening, and significant impairment from his PTSD symptoms. The examiner described the CI’s PTSD as having a “prominent insomnia and depressive component.” The CI’s complaints included severe insomnia (sleeping only an hour at night), nightmares, intrusive memories, flashbacks, and “no energy, no appetite, feels numb.” The examiner described “pervasive anhedonia” with a 25-pound weight loss (time frame not stated), and noted the CI’s clothes appeared too large. The CI was apparently unemployed, staying at home to “care for his two young children while his wife completes college.” MSE revealed restricted affect and “insight, problem solving, and judgment all limited by passivity.” Brief answers and poor eye contact when discussing the USS Cole were also noted. His GAF was in the range of serious symptoms (GAF=45) and significantly lower than the MEB (GAF=60) or earlier VA (GAF=55) pre-separation GAF assessments. These outpatient notes suggest the CI’s functioning at the eight-month point was likely in the 30%-50% range under §4.130. A VA rating determination in May 2005 used VA treatment notes (October 2003-March 2005) two years remote from separation, indicating multiple medications, severe sleep difficulty, anhedonia, restricted affect, limited judgment, and a GAF of 45 to continue the 30% VA rating.

The deliberation was focused on a 30% vs. 50% permanent rating recommendation. All members agreed that the 10% threshold was well exceeded and that the 70% threshold was not approached. The Board considered that the MEB and pre-separation VA exams could be rated 30% under §4.130. They were not temporally competitive with the VA outpatient notes for probative value and were prior to the stresses of transition to civilian life. The CI’s symptoms and occupational and social impairment were clearly worse at eight months post-separation than they were prior to separation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 30% as the permanent PTSD disability rating in this case.

Remaining Conditions. Other conditions identified in the DES file were chronic serous otitis (ear), chronic right knee instability, scars of left knee and right hand, and numbness of chin and gums from wisdom tooth extraction in March 2001 (rated 0% by VA). Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant during the MEB period, none were cause for limited duty, and none were implicated in the Non-Medical Assessment statement. These conditions were reviewed by the Action Officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally patellofemoral syndrome, left knee and infrapatellar tendinitis, right knee were noted in the VA rating decision proximate to separation, but were not documented in the 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. 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. As discussed above, PEB reliance on SECNAVINST 1850.4E or DoDI 1332.39 for rating PTSD was likely operant in this case and the condition was adjudicated independently of that policy and regulation by the Board. In the matter of the PTSD 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 six months IAW VASRD §4.130. In the matter of the ear, right knee, scars of left knee and right hand, and numbness of chin and gums, 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: 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 30% disability retirement as below.

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

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100401, 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 XXXXXX, FORMER USN, 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 17 March 2003 thru 16 September 2003.

b. Final separation from naval service due to physical disability effective 17 September 2003 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)