RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1000529 SEPARATION DATE: 20030716

BOARD DATE: 20110513

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SSGT/E-5 (4A051/ Health Service Mgt), medically separated for psychotic disorder, not otherwise specified (NOS). The CI first sought care in January 2003 and was hospitalized in February 2003 with symptoms of suicidal ideation, self mutilation, depression, affective instability, auditory hallucinations, insomnia, nightmares, and flashbacks of alleged early childhood sexual abuse. Her treatment included individual and group psychotherapy as well as multiple medications. She did not respond adequately to treatment and was unable to perform within her Air Force specialty (AFS) or to deploy. She was issued a revised S4 temporary profile and underwent a Medical Evaluation Board (MEB). Axis I psychotic disorder NOS, rule out posttraumatic stress disorder (PTSD); Axis II borderline personality disorder; and Axis III chronic back pain were forwarded to the Physical Evaluation Board (PEB) IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file are discussed below. The Informal PEB (IPEB) adjudicated the psychotic disorder, NOS as unfitting, rated 30%, less aggravating/contributing factors (minus 20%) for a combined compensable disability rating of 10%, with likely application of the Department of Defense Instruction (DoDI) 1332.39 (E2.A1.5). The CI did not appeal and was medically separated with a 10% disability rating.

CI CONTENTION: “Condition is permanent and total. VA has rated me unemployable because I am constantly receiving treatment. I have had several hospitalizations for mental illness. I should be retired because I was injured in the line of duty and have not recovered. I am not able to work due to the illness. I believe the PTSD was introduced/aggravated by military assault.” She further states, “My unfitting condition is Psychosis NOS, which stemmed from the PTSD. I paid back $23,792.00 severance pay because of this. If you find that the two conditions are not related, then I should be given back the severance pay.” She additionally lists her VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is, therefore, implied. All service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20030416** | **VA (16 Mos. After Separation) – All Effective Date 20030717** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Psychotic Disorder, NOS Definite | 9210 | 30% \*\* | PTSD | 9411 | 50%\* | 20041115 |
| Borderline Personality Disorder | Cat III |
| ↓No Additional MEB/PEB Entries↓ | Mechanical Back Pain | 5237 | 10%\* | 20041115 |
| Tendonitis R/Wrist | 5024-5215 | 10%\* | 20041115 |
| 0% x 2/Not Service Connected x 11 | 20041115 |
| **Combined: 10% (\*\* after deduction of 20% EPTS)** | **Combined: 60%\*** |

\*9411 increased to 70%, 5237 increased to 20%, and 5024-5215 changed to 5215-8511 and increased to 20% (combined 80%), all effective 20050504

ANALYSIS SUMMARY:

Mental Condition: Although the PEB adjudicated only one Axis I condition, others were noted in the treatment record; the MEB included rule out PTSD, and hospital discharge summaries included major depressive disorder, PTSD, history of alcohol abuse, and obsessive-compulsive disorder. In rating the CI’s mental condition, the Board considered her total mental impairment, including other Axis I diagnoses, as those are also rated using the General Rating Formula for Mental Disorders IAW VASRD §4.130. The Board then addressed the question of whether VASRD §4.129 was applicable in this case. The NARSUM noted that the CI had been sexually abused by her father as a child until she was 10. During service, the CI was married and sexual activity as part of the marriage caused her to have flashbacks of the childhood sexual abuse. Because of this, the CI dreaded sex with her husband, and this was contributing to failure of her marriage as it had with her previous marriage. The onset of sexual activity resulted in nightmares related to her childhood abuse, flashbacks, mood disturbance, and self mutilation and suicidal ideation. The MEB considered this to be a trigger for possible diagnosis of PTSD. In addition, at 16 months post-separation, the CI reported to a VA examiner that she was raped while in the military, but that no charges were ever filed. In accordance with 38 CFR 3.304(f), the VA requires credible supporting evidence that the claimed in-service stressor actually occurred. Although the VA was unable to obtain such evidence, the VA granted service connection for PTSD likely due to her PTSD diagnosis in service. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations compared to VASRD standards, as well as the fairness of PEB fitness adjudications. The Board considered all options for coding and rating, including the potential application of §4.129. The Board determined that the PEB diagnosis of psychotic disorder, NOS, was most appropriate for the medical condition, and the Board turned its attention to the rating recommendation for the total mental impairment, including any potential contribution from PTSD, whatever its origin.

The narrative summary (NARSUM), four months prior to separation, characterized the CI’s social and industrial impairment as “considerable.” The CI reported symptoms of suicidal ideation and gestures, depression, self-mutilating behaviors, affective instability, auditory hallucinations, insomnia, nightmares, and flashbacks of alleged early childhood sexual abuse by her biological father. The examiner noted that prior to the hospitalization, the CI had written a letter to her family about ending her life, but that she did not really mean it, she did it just to ‘see how it feels (i.e., ideation without intent). The commander’s statement noted the CI was missing six hours per month, and also 19 days away from work for the hospitalization. The Board considered the fact that the CI had to be hospitalized for 19 days as significant evidence of severe impairment in ability to function, thus the fact that she missed only six hours per month at other times was of little significance. Social impairment was evidenced by difficulties in her current and previous marriages, and the examiner noted a pattern of unstable intense interpersonal relationships. Treatment during hospitalization included seven psychiatric medications, reduced to five at the time of the NARSUM. Global Assessment of Functioning (GAF) score was 80. GAF during hospitalization was 45, reflecting serious symptoms or serious impairment in social or occupational functioning. The CI admitted to hearing voices in her head for 3 years. She stated that she did not mention them earlier, because people would think she was crazy. Commencement of treatment with the antipsychotic medication, Respiradol, caused the auditory hallucinations to cease. The examiner later opined that the hallucinations were atypical in that they were not perceived as external and that she could control them. Their resolution with antipsychotics implied to the Board that they were likely to be actual hallucinations. There were also suicidal gestures during the time in service (discussed below). The MEB Axis I diagnosis was psychotic disorder, NOS, rule out PTSD. The personality disorder and the reported remote history of alcohol abuse were not ratable, IAW DODI 1332.38, since both conditions fall under conditions and circumstances not constituting a physical disability. There was no deduction from the CI’s unfitting psychotic disorder diagnosis for any potential contribution from the history of alcohol abuse; the PEB apparently deducted 20% for the personality disorder or other aggravating/contributing factors. In accordance with the VASRD this deduction cannot be made if there has been any service aggravation of the condition. The Board also considered that the CI served less than one month short of eight years and any deduction for pre-existing conditions is not equitable.

At the 16-month post-separation VA C&P examination, the CI’s psychiatric symptoms had apparently worsened compared to those described at the MEB. The CI had been hospitalized at least three times since leaving the military, and noted, "I hear demons telling me to kill myself and that I am going to die today.” The CI stated that she tried to hang herself in the hospital while in the military. The hospital report noted that she made a suicide gesture of creating a noose, but prior to acting on the impulse, she sought intervention from the nursing staff. This was one of three attempts. The CI was unemployed and reported losing three jobs due to her mental illness, after very short employments (of six days, one week, and six weeks). She reported that she was going through her second divorce; her marriages lasted 1.5 years and 2.3 years. On MSE, the CI had a blank stare and a flat affect, and the examiner noted that she cried and tensed up while talking about sexual traumas. The examiner stated that the CI received assistance from her mother to maintain minimal personal hygiene and other basic activities of daily living. The CI was living with her mother and step father. There were no suicidal thoughts, plans, or intent. GAF was assessed at 45, connoting serious symptoms or serious impairment in social or occupational functioning. In addition to PTSD, the examiner identified another Axis I diagnosis, major depression with psychotic features, which he related to her PTSD, and also identified an Axis II personality disorder. The VA rated the exam at 50% IAW VASRD 4.130.

Although remote from separation a second VA C&P exam at 23 months post-separation provides insight into the long term course of the CI’s condition. In the seven months since the previous C&P exam, the CI had been hospitalized once for command hallucinations and suicidal ideation. The CI remained unemployed and reported panic attacks (with difficulty breathing) while driving, and no social relationships, activities, or leisure pursuits due to her thinking that she will be sexually assaulted again. Her treatment regimen had been intensified to include monthly injectable antipsychotics in addition to her oral antipsychotics, antidepressants, and anti-anxiety medications. The examiner noted paranoid ideation, depressed mood, constricted affect, and mildly impaired recent memory on MSE, but the remainder of the exam as well as the GAF (48) were essentially unchanged from the previous C&P exam. In the examiner’s opinion, the CI’s PTSD symptoms resulted in total occupational/social impairment. Based upon this exam and outpatient treatment notes, the VA increased the CI’s PTSD-related disability rating to 70%, effective 22 months post-separation. Subsequent VA records indicate the CI was hospitalized at least four more times in 2006-2008 with hallucinations and suicidal ideation, with GAFs ranging from 20 to 58.

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 100% rating was not approached and that the criteria for a 30% rating were well exceeded. The deliberation settled on arguments for a 70% (occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood) vs. 50% (occupational and social impairment with reduced reliability and productivity) rating recommendation.

After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends 50% as the most representative of impairment and the fair and equitable rating for psychotic disorder, NOS in this case.

Other PEB Conditions: The MEB also included chronic low back pain as an axis III diagnosis in the assessment for the PEB. The condition was not profiled, implicated in the commander’s statement, or noted as failing retention standards. No range of motion impairment was in evidence; the only range of motion evaluation found in the record was a physical therapy note from January 1997, stating range of motion was full, with pain only at end ranges of motion. The condition was reviewed by the action officer and considered by the Board. There was no indication from the record that the condition significantly interfered with satisfactory performance of AFS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the implied PEB fitness adjudication for the chronic back pain condition.

Other Contended Conditions: The CI’s application asserts that compensable ratings should be considered for her other VA conditions, namely, right wrist tendonitis, hemorrhoids, and pes planus. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined, therefore, that none of the stated conditions were subject to Service disability rating.

Remaining Conditions: Other conditions identified in the DES file were peptic ulcer disease, headaches, and carpal tunnel syndrome. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period, none carried attached profiles, and none were implicated in the commander’s 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. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. 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. As discussed above, PEB reliance on DoDI 1332.39 for rating psychotic disorder, NOS, was likely operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the psychotic disorder, NOS condition, the Board by a vote of 2:1 recommends a rating of 50% coded 9210 IAW VASRD §4.130. The single voter for dissent (who recommended a 70% rating) did not elect to submit a minority opinion. In the matter of the chronic back pain, the Board unanimously recommends no change from the implied PEB adjudication as not unfitting. In the matter of the borderline personality disorder, the condition remains ineligible for separation rating or consideration by this Board. In the matter of the right wrist tendonitis, hemorrhoids, pes planus, peptic ulcer disease, headaches, and carpal tunnel syndrome conditions 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 determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Psychotic disorder, NOS | 9210 | 50% |
| **COMBINED** | **50%** |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100513 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-2010-00529.

 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-2010-00529

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 xxxxxxxxxxxx, be corrected to show that:

 a.  The diagnosis in her finding of unfitness for Psychotic Disorder, Not Otherwise Specified, VASRD code 9210, was rated at 50% rather than 20%.

 b.  On 16 July 2003, she elected coverage under the Survivor Benefit Plan (SBP) based on full retired pay.

 c.  She was not discharged on 16 July 2003 with entitlement to disability severance pay; rather, on that date she was relieved from active duty and on 17 July 2003 her name was placed on the Permanent Disability Retired List.

 Director

 Air Force Review Boards Agency