RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1000583 SEPARATION DATE: 20070720

BOARD DATE: 20110303

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Capt (12S3F, Special Operations Navigator) medically separated from the Air Force in 2007 after 6 years of service. The medical basis for the separation was Posttraumatic Stress Disorder (PTSD). His symptoms began after a combat incident in Iraq in 2004, during which he called off an in-flight strike targeting insurgents. Criterion A stressors were well documented during subsequent combat deployments. In 2006, he was diagnosed with PTSD and began treatment and was removed from flying status. He did not respond adequately to perform within his Air Force Specialty, was placed on an S-4 profile and referred for a Medical Evaluation Board (MEB). The PTSD was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions were included on the MEB’s submission. Additional conditions supported in the Disability Evaluation System (DES) packet are discussed below, but were not forwarded for PEB adjudication. The informal PEB (IPEB) adjudicated the PTSD condition as unfitting, rated 10% IAW DoDI 1332.39. The CI appealed to the formal PEB (FPEB), and was then medically separated with a 0% disability rating.

CI CONTENTION: The CI states: “At the time of my MEB, I perceived significant pressure from my commander to come to a final conclusion regarding my condition, and was under the impression that if I was not medically discharged, they would pursue a commander-directed separation, even though I had an above par record of performance. Additionally, I was afraid of my ability to retain a TS clearance, should I be discharged with remnants of PTSD. Recent changes in policy and attitude within the DoD towards PTSD, and those diagnosed with PTSD, have prompted me to make this request for medical retirement; without the fear of retribution I was under at the time of my MEB, when seeking help for such conditions was almost certainly a career ending event. Since the time of my discharge, it is good to know that programs such as AFW2 and Recovery Care Coordinators have been created, and airmen with PTSD - and other combat injuries have options, other than ending their Air Force career.” He additionally lists all of his VA conditions and ratings as per the rating chart below. Contention for their addition to separation rating is implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20070523** | | | **VA (6 Mo. After Separation) – All Effective 20070721** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 0% | PTSD w/MDD | 9411 | 30% | 20080128 |
| Personality Disorder | Not Ratable | | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Scar Tissue on Right Pinna | 7800 | 30% | 20080124 |
| Cervical Strain | 5237 | 10% | 20080124 |
| Dermatitis of Thighs/Shoulders | 7806 | 10% | 20080124 |
| Other X 1 / Not Service Connected X 2 | | | 20080124 |
| **Final Combined: 0%** | | | **Total Combined: 60%** | | | |

ANALYSIS SUMMARY:

PTSD Rating Recommendation. The FPEB rating, as noted above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act (NDAA) 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 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 most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the VA psychiatric Compensation and Pension (C&P) examination six months after separation. Especially since the C&P examination also reflects the stress of transition to civilian life, which is a core intent of §4.129, it carries the preponderance of probative value in the Board’s assessment of a fair permanent rating recommendation. The MEB evaluation, nevertheless, serves as a useful reference point and retains relevant probative value. The CI’s symptoms at the time of the MEB are best described as mild to moderate. The CI reported recurrent nightmares, hyperarousal, sleep impairment, irritability and anger outbursts. Although he had experienced prior suicidal thoughts, he expressed no current suicidal ideation. He argued frequently with his wife and felt like an outcast in his combat unit. While on profile and not deployable, he worked full shifts, had no physical training limitations, and was noted by his Commander to be an outstanding worker. The narrative summary (NARSUM) examiner noted anxious affect and near-tearfulness. His Global Assessment of Functioning (GAF) was in the range indicating less than mild symptoms (GAF=80). The assessment was mild social and industrial impairment. Prognosis for full recovery was worsened by the presence of a personality disorder. A psychiatric addendum by the same MEB examiner performed two months prior to separation reported that the CI responded very well to a form of psychotherapy specifically designed for PTSD. The CI’s GAF was improved to 85, he was able to discontinue all medications and experienced a significant reduction in symptoms, but because he was still deemed highly likely to experience a return of symptoms, impairment for further military duty was still rated as marked and his Commander also expressed strong support for medical separation.

At the initial VA examination for PTSD, six months after separation, the PTSD was considered Mild to Moderate and the psychiatrist additionally diagnosed Major Depressive Disorder, Moderate to Severe, single episode. The examiner deferred on the possible diagnosis of personality disorder per history, and personality disorder was not diagnosed by the VA. The CI had continued with monthly psychotherapy, and medication was re-instituted. The CI was employed as an assistant engineer for Boeing, and noted good relationships with supervisors and coworkers. He was still married with no children. The CI reported symptoms of anxiety, sleeping difficulty, trouble concentrating and irritability without anger outbursts, depressive symptoms of decreased emotion, feeling unhappy, decreased libido, feelings of helplessness, worthlessness and guilt, and weight loss. He no longer maintained an interest in exercise or healthy eating, and did not go out with friends. He was able to manage his money in his own best interest. Mental Status Exam indicated: mood was dysphoric and affect restricted; suspiciousness and panic attacks were absent; memory was normal. The examiner quoted the 30% rating criteria in his opinion, noting that “psychiatric symptoms cause occupational and social impairment with occasional decrease in work efficiency and intermittent inability to perform occupational tasks although he is generally functioning satisfactorily with routine behavior, self-care, and normal conversation.” GAF was in the mild symptom range (GAF=68; vs. MEB and addendum GAFs of 80 and 85).

The Board directs its attention to its rating recommendations based on 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 therefore the minimum 50% TDRL rating (as explained above) is applicable. All members agreed that the 0% threshold was exceeded and that the 50% threshold was not approached for the permanent rating at six months. The deliberation was therefore focused on a 10% vs. 30% permanent rating recommendation. The Physical Evaluation Board (PEB) and VA chose the same coding options for the condition. The Board considered that the MEB exam could be rated 10% under §4.130, but it was not temporally competitive at six months post-separation with the VA examination for probative value and was prior to the stresses for separation. The VA examination indicated worsening of symptoms and was consistent with the general description for a §4.130 rating of 30%, ‘occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal).’ After this deliberation, considering the totality of the evidence and with deference to VASRD §4.3 (reasonable doubt), the Board recommends 30% as the fair and equitable permanent rating for PTSD in this case.

Other PEB Conditions. IAW DoDI 1332.38 Personality Disorder is a condition not constituting a physical disability. The Board, therefore, has no reasonable basis for recommending this condition as an additional unfitting condition for separation rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for scar tissue on right pinna (ear), cervical strain, and dermatitis of thighs and shoulders. None of these conditions were noted in the DES documents, none carried attached profiles and none were implicated in the Commander’s statement. 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. All evidence considered there is not reasonable doubt in the CI’s favor supporting addition of these three conditions as unfitting for separation rating. Moreover, 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. These three conditions, and any other contended conditions not associated with the recommendations already rendered by the Board, remain eligible for consideration by the Air Force Board for Corrections of Military Records.

Remaining Conditions. The only other condition identified in the DES documents was nocturnal enuresis, listed on the NARSUM as an Axis III diagnosis. This condition was not contended by the CI, and there was no evidence that it was unfitting. Enuresis is also defined by DoDI 1332.38 as a condition not constituting a physical disability. The Board, therefore, has no reasonable basis for recommending this condition as an additional unfitting condition for separation rating. One additional condition, right inguinal hernia scar, was established by the VA within twelve months of separation as service connected with a compensable rating of 0%. This condition was not documented in the DES file and there is no evidence that would implicate it as unfitting. 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. No other conditions were service connected with a compensable rating by the VA within twelve months of separation. 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 PTSD was operant in this case and the CI’s conditions were adjudicated independently of that policy and instruction 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 by a vote of 2:1 for a 30% permanent rating at six months IAW VASRD §4.130. The single voter for dissent (who recommended a 10% rating) did not elect to submit a minority opinion. In the matter of scar tissue on right pinna (ear), cervical strain, dermatitis of thighs and shoulders, nocturnal enuresis and inguinal hernia surgical scar conditions, and 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; TDRL at 50% for 6 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%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100303, 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-2010-00583.

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

PDBR PD-2010-00583

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 xxxxxxxxxx, are corrected to show that:

a.  He was not discharged on 20 July 2007 with entitlement to disability severance pay; rather, on that date, he was relieved from active duty and on 21 July 2007, his name was placed on the Temporary Disability Retired List (TDRL), with a diagnosis of Post Traumatic Stress Disorder, VASRD code 9411, rated at 50%.

b.  On 20 July 2007, he elected spouse and child coverage under the Survivor Benefit Plan (SBP) based on full retired pay.

c. On 20 January 2008, he was removed from the TDRL and permanently retired with a final combined disability rating of 30%.

Director

Air Force Review Boards Agency