RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1000593 SEPARATION DATE: 20090210

BOARD DATE: 20110721

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty AG1/E-6 (7412, Aerographer’s Mate) medically separated for Bipolar Disorder (BPD). The CI was treated but did not respond adequately to perform his required military duties, so he underwent a Medical Evaluation Board (MEB). BPD was addressed in the MEB narrative summary and forwarded to the Physical Evaluation Board (PEB) on the NAVMED 6100/1. No other conditions appeared on the MEB’s submission. The Informal PEB (IPEB) found BPD unfitting and assigned a rating of 10%. Anxiety disorder not otherwise specified (NOS) noted in the MEB NARSUM was adjudicated as category II (related to the unfitting BPD condition). One other condition, alcohol dependence, was found to be category IV (not a physical disability). The CI did not accept the IPEB findings and requested reconsideration. In October 2008, a PEB Reconsideration was performed. The findings of the Reconsideration Board were identical to the original IPEB findings. The CI was thus medically separated with 10% disability IAW applicable Navy and DoD regulations.

CI’s CONTENTION: “The findings of the Physical Evaluation Board were that the unfitting condition was “bipolar disorder VA diagnostic code 9432” and it was rated at 10%. Anxiety disorder NOS (00000) was listed as a related category 2 diagnosis. Immediately upon separation from the Navy, I filed a claim with the Department of Veterans Affairs. The VA received my claim March 13, 2009. I received the Dept. of Veterans Affairs rating decision dated Sept. 1, 2009. In that letter they found the following: Service connection for bipolar disorder with posttraumatic stress disorder (claimed as anxiety disorder) is granted with an evaluation of 50 percent effective February 11, 2009. There is a significant difference in the rating given by the PEB and the rating given by the DVA. I am asking this Board to find that the original PEB rating was inaccurate and unrepresentative of my condition at that time. I am also asking that this Board recommend to the appropriate office that I be given a minimum rating of 30% for my unfitting condition, and that I be placed on the Permanent Disability Retirement List. This would better align the findings of the PEB with the findings of the DVA, as well as better represent the severity of my unfitting condition at the time of my separation.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Navy IPEB Recon – dated 20081002** | | | **VA ( 7 mos. Post-Separation) – All Effective 20090211** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bipolar 1 Disorder | 9432 | 10% | Bipolar Disorder with PTSD (Claimed as Anxiety Disorder) | 9432 | 50% | 20090428 |
| Anxiety Disorder, NOS | Category II | |
| Alcohol Dependence | Category IV | | No VA entry for Alcohol Dependence | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Cervical Strain w/ Torticollis | 5237 | 10% | 20090507 |
| Lumbar Strain | 5237 | 10% | 20090507 |
| 0% x 2 / NSC x 1 | | | |
| **TOTAL Combined: 10%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 60%** | | | |

ANALYSIS SUMMARY:

Mental Disorder. The CI has a long history of mental health problems. He also has a strong family history of mental illness. At age 17, prior to entering the Navy, the CI experienced anxiety versus panic attacks. Nine years later in 2007, he was diagnosed with BPD. He was referred to Naval Hospital Pensacola and was examined by Dr. M. in July 2008. At that exam, the CI was married and had a small child. His wife was described as supportive. He gave a history of depressive episodes and manic episodes, which began when he was a teenager. He had terminated two previous marriages, for no good reason. He also had impulsively terminated employment more than once. On one occasion, he had impulsively cashed in some bonds, and traveled across the country to visit a friend. On Dr. M.’s mental status exam, the CI was alert, made good eye contact, and showed no psychomotor agitation. His speech and thoughts were fully within normal limits. Mood was slightly anxious, but he demonstrated a full and congruent affect. Insight and judgment were intact. Global assessment of functioning (GAF) score was 65. As noted above, the Navy PEB found the BPD unfitting, and assigned a disability rating of 10%. Anxiety disorder NOS was adjudicated as category II, and alcohol dependence was found to be category IV.

On 28 April 2009, two months after separation, the CI underwent a VA compensation and pension (C&P) evaluation. At that exam, he reported that his symptoms were more under control than they were previously, but his problem had not remitted. He was taking Seroquel, Trileptol, Wellbutrin, and Hydroxyzine. The Depakote had been discontinued due to weight gain. The CI had not worked since leaving the Navy. On mental status exam, he was mildly depressed and anxious but was talkative, and appeared motivated. There were no delusions or hallucinations. He reported a general loss of interest in things that used to be fun. He had suicidal thoughts which were short-lived, few and far between, and had improved with medication. He denied homicidal ideation. His alcoholism was in full, sustained remission. His GAF score was 44. In addition to the BPD; the examiner also diagnosed posttraumatic stress disorder, opioid abuse (in full, sustained remission), and alcohol abuse (in full, sustained remission).

The Board carefully reviewed all evidentiary information available. The Board considered whether the Veterans’ Administration Schedule for Rating Disabilities (VASRD) §4.129 would apply in this case. After considerable discussion, the Board determined that based upon the preponderance of the evidence, VASRD §4.129 would not apply in this case. The CI’s history of mental illness goes back many years. The Board felt that the unfitting symptoms of BPD were not caused by a highly stressful event. Even though the CI had been exposed to the stress of combat, the Board determined that it was more likely than not, that the combat stressors did not cause the unfitting BPD symptoms. The Board then directed its attention to its rating recommendation, based on the evidence described above. The Board noted that the CI had a wife, and had good family relationships. Therefore, he was able to establish and maintain effective relationships. Although the CI was generally functioning satisfactorily (with routine behavior, self-care, and conversation normal), his symptoms caused a moderate degree of occupational and social impairment, with occasional decreases in efficiency and intermittent periods of inability to perform certain tasks. After considerable discussion and due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends by majority decision (2:1 vote) that the mental condition (BPD, with anxiety disorder NOS) be given a separation rating of 30% IAW VASRD §4.130. It is appropriately coded 9432, and meets criteria for the 30% rating.

The anxiety disorder (NOS) was indeed related to the unfitting BPD condition. The Navy PEB had correctly adjudicated anxiety disorder NOS as category II. Furthermore, the alcoholism was indeed a condition not constituting a physical disability. The Navy PEB had correctly adjudicated alcohol dependence as category IV. The Board determined that neither the anxiety disorder NOS, nor the alcoholism constituted a separately unfitting condition.

Remaining Conditions. Sexually transmitted disease, torticollis, neck pain, radiculopathy, myalgia, Duane’s syndrome of left eye, tobacco abuse (nicotine dependence), allergies, bronchitis, asthma, sinusitis, bursitis, back pain, plantar fasciitis, knee pain, fractured bones, diarrhea, hernias, genital warts, insomnia, and several other conditions were noted in the Disability Evaluation System file. None of these conditions were clinically significant during the MEB/PEB period. None of these conditions were the basis for limited duty and none were implicated in the commander’s non-medical assessment. These conditions were all 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.

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 the mental condition (BPD, with anxiety disorder NOS) the Board recommends by majority decision (2:1 vote) a rating of 30% (coded 9432) IAW VASRD §4.130. The single voter for dissent (who recommended a 10% rating) has written a minority opinion which is addended to this Record of Proceedings document. In the matter of the sexually transmitted disease, torticollis, neck pain, radiculopathy, myalgia, Duane’s syndrome, nicotine dependence, allergies, bronchitis, asthma, sinusitis, bursitis, back pain, plantar fasciitis, knee pain, fractured bones, diarrhea, hernias, genital warts, insomnia, or any other conditions eligible for 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 re-characterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bipolar I Disorder, with Anxiety Disorder NOS | 9432 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100524, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

Minority Opinion:

In the IPEB notes, the action officer comments that the “case is mild,” and, in my opinion, there is no pre-separation evidence to indicate that the PEB was inaccurate or unfair in this assessment. In fact, the note continues, the CI is “close to Fit, but can’t stand watch” which would again corroborate a mild condition at the time of separation. The commander in his non medical assessment says that the CI’s assignment is appropriate for the member's grade and rank; however, he is not in a full duty status. He goes on to say that the CI has had a stellar eight year Navy career, and is one of the top performers at this command. He has been a motivated Sailor and fully dedicated to mission accomplishment throughout his military service, and, despite a lack of focus and concentration that negatively impacts mission accomplishment, he has maintained an exceptional attitude and supports his shipmates and this command as best he is able. The CI received very strong comments in his evaluations in evidence from September 2000 through November 2008, (three months pre-separation), under the same rater from 2007 through separation. In his final evaluation signed 2 December 2008 (two months prior to separation), the CI was noted as being dedicated to mission accomplishment and a sailor with unlimited potential. He was a superb trainer, a meticulous manager and was instrumental in leading multiple aspects of a change of command ceremony

The MEB narrative summary noted that the CI was sleeping, eating and concentrating fairly well. His energy was good and he was able to enjoy normally pleasurable activities. The physician assigned a GAF of 65 which would imply mild symptoms.

A mental health treatment note dated 17 June 2008 (eight months pre-separation) showed the CI as alert and easily engaged, speech and thoughts were fully within normal limits. His mood was slightly anxious and he demonstrated a full and congruent affect. His insight and judgment appeared to be grossly intact with a GAF of 70, again implying mild symptoms.

In my opinion, the symptomotology described at the time of separation more closely resembles the VASRD description for 10%, “occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress,” and the PEB rating was fair and accurate.

RECOMMENDATION: I recommend that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bipolar I Disorder | 9432 | 10% |
| **COMBINED** | **10%** |

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXXX, FORMER USN, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 21 Sep 11

I have reviewed the subject case pursuant to reference (a) and non-concur with the recommendation of the Physical Disability Board of Review as set forth in reference (b). Therefore, Mr. XXXX’s records will not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)