RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD1000627 SEPARATION DATE: 20070406

BOARD DATE: 20110721

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty EM1 (EM 3364 / Submarine Nuclear Propulsion Plant Supervisor) medically separated for major depression, recurrent episode. He did not respond adequately to treatment and was unable to perform within his rating. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Major depression was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. Dysthymic disorder was forwarded on the MEB submission as a related category 2 diagnosis. The PEB adjudicated major depression as unfitting, with a rating of 10% with application of SECNAVINST 1850.4E and DoDI 1332.39 as well as the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “The decision provided does not seem to cover the extent of the condition that existed at time of evaluation as documented in medical records.” He additionally lists right shoulder condition as per the rating chart below. A contention for inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20061227** | | | **VA (6Mo. After Separation) – All Effective Date 20070407** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Major Depression | 9434 | 10% | Recurrent Major Depression | 9434 | 50% | 20070924 |
| Dysthmic Disorder | CAT II | | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Right Shoulder Strain | 5099-5024 | 10% | 20071010 |
| Not Service Connected x 8 | | | 20071010 |
| **Combined: 10%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred conditions have had on his quality of life. However, the military services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. The VA, however, can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time. 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, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board’s threshold for countering Disability Evaluation System (DES) fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations but remains adherent to the DoDI 6040.44 “fair and equitable” standard.

Major Depression with Dysthymic Disorder. The CI had symptoms of depression since approximately March 2005 in the setting of marital discord (wife left and took his son in September 2004), family loss (death of niece who lived with him), occupational stress and family separation as a submariner. The CI was arrested for driving under the influence of alcohol in March 2005, completed treatment, and had no further alcohol related incidents or evidence of relapse. He was referred for mental health treatment at that time, but declined due to fear of negative impact on his career as submariner. His symptoms worsened and he was referred for mental health care in June 2006. Presenting initial symptoms included depressed mood, worry, irritability, angry feelings, feelings of grief and loss, guilt/shame, diminished self-esteem, poor concentration, decreased energy level, lack of motivation, variable changes of appetite, crying spells, loss of libido, and disturbed sleep patterns (two to three hours every couple of nights). He endorsed experiencing approximately three panic attacks since onset the year before. He was treated with psychotherapy, but not medication. At time of the narrative summary (NARSUM) on October 25, 2006, six months before separation, the CI continued to experience depressed mood, sleep difficulties, low self esteem, and feelings of unworthiness. He was grappling with conflicting goals of staying in the Navy as a submariner and his priority for being nearer to his children (separated from his wife since September 2004). However, he was not interested in transferring to a surface (non-submarine) career field. On mental status examination the CI was fully oriented and cooperative with normal psychomotor activity. Mood was described as "not good" with mood congruent affect that was restricted in range, but of appropriate intensity and appropriate to content. Thought processes, insight, judgment, abstract thinking and memory (remote, recent, short-term and immediate) were intact. There were no hallucinations, delusions, or suicidal/homicidal thoughts or behavior. Impulse control was adequate. At the time of the PEB, a trial of medication was initiated. The examiner diagnosed major depression, recurrent (with disability for occupational functioning as “moderate”) and dysthymic disorder (with disability for occupational functioning as “moderate”) and assigned a combined global assessment of functioning (GAF) of “51-60” for moderate symptoms, commenting:

“This patient's coping skills have sharply decreased with the stressors mentioned above. The patient is unable to successfully perform his military duties. His relationships are also adversely affected by his depressive symptoms. Further treatment in the military setting is not likely to restore the patient to a full duty status. He will likely require ongoing psychotherapy as well as pharmacotherapy following discharge.”

The commander’s non-medical assessment letter, December 6, 2006, reflected that the CI was a hard worker in his assigned duties (non-submarine duty), without specifying the level of duties. The commander indicated the CI had good potential for retention in the Navy in his present physical and mental condition. The commander, however, cited the use of anti-depressant medication as disqualifying for submarine duty and the CI’s desire to remain in the Navy only if he could stay in the submarine force. At the time of a VA compensation and pension (C&P) examination five months after separation (September 2007), the CI remained symptomatic with ongoing depressed mood, worry, low self esteem, low energy, loss of interest and libido, sleep disturbance, crying spells, poor concentration, fluctuating appetite, anxiety and occasional panic attacks. Although he reported medication was helpful, he was no longer taking medication because he felt that medication would cause him to lose his USN job. He was not working and reported that his career plans after completing VA assessments and other separation actions included returning to college and finding work to support his children. He and his wife were in a difficult divorce process, but he reported having a girlfriend and several friends in the area with whom he socialized. Alcohol was not a problem, and he was able to keep appointments. On examination the CI was fully oriented, well groomed, with normal speech and thought processes. There were no delusions, hallucinations, inappropriate behavior, suicidal (other than passive) or homicidal thoughts or behavior, memory loss or impairment, obsessive or ritualistic behavior or impaired impulse control. The examiner’s stated “moderate to severe depression and anxiety” in objective findings and diagnosis was major depression, recurrent, moderate and alcohol abuse in remission. The examiner assigned a GAF of 51-60 for moderate symptoms.

The Board concluded that the CI’s depression was not due to a “highly stressful event” as used in the VASRD and the Board determined that §4.129 was not applicable in this case. The Board considered the most appropriate fit with VASRD §4.130 criteria for its rating recommendation at the time of separation from military service. Symptoms attributed to the CI’s dysthymic disorder were considered in the overall §4.130 rating for major depression. IAW VASRD principles [§4.126, evaluation of disability from mental disorders], mental health diagnoses are rated together as one condition under the primary diagnosis due to overlapping symptoms and impairments. All Board members agreed that the evidence did not approach the 50% rating, therefore, the Board deliberations centered on 10% versus 30% permanent rating. With regard to a 30% evaluation (“occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks although generally functioning satisfactorily …”) can be surmised from the symptoms documented at the time of the NARSUM including depressed mood, anxiety, occasional panic attacks, and chronic sleep impairment. The PEB medical member commented on the “pervasive” nature of the condition in his recommendation for a finding of unfit versus unsuited for special duty. Although the CI appeared to be performing his assigned non-submarine duties satisfactorily, the position as an administrative assistant did not replicate the stresses of military duties and was therefore not predictive of the CI’s ability to perform in a non-submarine Navy career field. The Board also considered absence of information with regard to the position that would shed light on occupational functioning in a civilian occupation that would overcome the MEB psychiatrist’s impression of moderate social and occupational impairment and opinion with regard to prognosis. The majority of the Board did not conclude the preponderance evidence showed either mild or transient symptoms that would argue for a 10% rating. Both the MEB and C&P psychiatrists concluded the symptoms and impairment was moderate, and the CI had experienced symptoms of depression for over a year leading up to the time of separation. Although there were ongoing marital stressors, he was working in a protected environment while undergoing MEB and continued to manifest moderate symptoms. The Board noted that a C&P examination three years after separation indicated some improvement; however, this examination was far too removed from the time of separation to have probative value for rating the unfitting condition at the time of separation. After due deliberation considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that the severity of the CI’s mental health condition more nearly approximated the 30% evaluation at the time of separation.

Remaining Conditions. No other conditions were noted in the NARSUM or identified elsewhere by the CI. Right shoulder strain was noted in the VA rating decision proximal to separation but was not documented in the DES file. At the MEB history and physical examination on November 30, 2006, the CI did not report shoulder problems. Following the PEB, the CI reported shoulder pain in a separation physical examination on February 5, 2007. 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.

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, and DoDI 1332.39 for rating major depression was operant in this case and the condition was adjudicated independently of those instructions by the Board. In the matter of the major depression condition, the Board recommends, by a vote of 2:1, a separation rating of 30% coded 9434 IAW VASRD §4.130. The single voter for dissent (who recommended a 10% rating) submitted the addended minority opinion. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for 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 his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Major Depression | 9434 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100501 w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President, Physical Disability Board of Review

Minority Opinion

The evidence presented, in my opinion, supports the Navy PEB’s coding and rating of Major Depression at 10% as accurate and fair. The CI was under significant stressors starting when his wife left and asked for a divorce in early 2005, then in April, 2005, his niece (who lived with him and he helped raise) died of cancer. This series of losses compounded by high work demands and an inability to deal with family issues due to geographic separation, led to his feelings of grief and depression, and ultimately to his being found unfit to continue as a nuclear ET aboard submarines. The CI’s commander noted he was working very hard at his assigned duties outside the submarine environment and had good potential for continued service in the Navy in non-submarine duties. He also noted that the only way the CI would continue his military service, was if he could stay in the Submarine Force, but that due to his medication, he would be permanently disqualified from Submarine Duty. At the VA C&P exam done 5 months post separation, the CI said he didn't really want to get out of the Navy, but he was told he would have to start all over again, so he chose to be medically discharged. The fact that there was discussion about an option to remain in the Navy in the Surface Fleet indicates to me that the symptoms were mild. The C&P exam also mentioned that the CI was planning to attend College at Duke University, had a girlfriend, and socialized with several friends, again indicating milder symptoms.

After considering the preponderance of the evidence, there is not reasonable doubt favoring the CI in support of a recommendation for the higher rating. I recommend no recharacterization as shown in the chart below:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Major Depression | 9434 | 10% |
| **COMBINED** | **10%** |

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USN, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 23 Aug 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)