RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Air Force

CASE NUMBER: PD1000678 SEPARATION DATE: 20031014

BOARD DATE: 20110218

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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 A1C/E-3 (Air Transportation Journeyman, 2T251) medically separated from the Air Force in 2003 after two years. The medical basis for the separation was Posttraumatic Stress Disorder (PTSD) associated with Panic Disorder. The CI was diagnosed with PTSD due to an assault with a gun in January 2003 by his uncle. The gun was placed at the CI’s temple and fired but the gun jammed. The CI had developed symptoms of depression while he was at Altus AFB in 2002 which worsened upon his assignment to Germany, the assault with a gun, and his parental-figure aunt dying of cancer. The CI was psychiatrically hospitalized for three weeks and his symptoms included anxiety, difficulty concentrating, and recurrent thoughts about the event, nightmares, poor interest, social withdrawal, hypervigilance, and increased frustration and anger. The CI was unable to perform within his Air Force Specialty (AFS), was issued an S-4 profile, and referred to a Physical Evaluation Board (PEB). The informal PEB (IPEB) adjudicated “PTSD associated with panic disorder” condition as unfitting and rated 30% with a 20% deduction for aggravating/contributing factor, for a compensable disability rating of 10%; with application of DoDI 1332.39 (E2.A1.5). The CI made no appeals 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 CFR4.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. Change the rating(s) for these conditions to the highest rating possible” (none specified). 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:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – 20030822** | | | **VA (12 Mo. after Separation) – All Effective 20031015** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD… | 9411 | 10% | PTSD… | 9411 | 30% | 20041007 |
| Generalized Anxiety Disorder | CAT II - EPTS | |
| Tobacco Abuse | CAT III | | No VA Entry | | | |
| ↓No Additional MEB Entry↓ | | | 0% X 0/Not Service Connected X 1 | | | |
| **Final Combined: 10%** | | | **Total Combined: 30%** | | | |

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ANALYSIS SUMMARY:

PTSD Associated with Panic Disorder (including Generalized Anxiety Disorder). The PEB rating and deduction, as described above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act 2008 mandated adherence to VA Schedule for Rating Disability (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, 38 CFR 4.130, criteria at six months for its permanent rating recommendation. The most proximate sources of comprehensive evidence on which to base the permanent rating recommendation in this case are the narrative summary (NARSUM) exam four months pre-separation (including hospitalization six months pre separation) and the VA Psychiatric (7 October 2004) rating evaluation 12 months post-separation. The probative value of the VA rating examination 12 months post-separation is strengthened on the principle that it reflects the stress of transition to civilian life which is intrinsic to the Board’s permanent rating recommendation. The CI’s Medical Evaluation Board (MEB) exam accomplished four months prior to separation indicated PTSD symptoms and multiple mental health diagnoses. The CI had a strong family history of mood disorders and alcohol abuse. The CI had been hospitalized for anxiety attacks with auditory and visual hallucinations and for blackouts related to stress which were described as dissociative events (seizure disorder was ruled out and EEG was normal). The CI had episodic depressed mood, daily panic attacks, impaired judgment, disturbances of motivation and mood, anxiety and chronic sleep impairment. The examiner dated the CI’s PTSD from the winter of 2003 (impairment: definite), panic disorder without agoraphobia from 2002 (impairment: moderate), and generalized anxiety disorder with “history supports onset during childhood” (impairment: moderate). The examiner also noted that “there is some evidence of pre-existing character structure that made him somewhat intolerant of the actions of others, particularly if they disagree with him. Assessment of global functioning (GAF) was in the moderate symptom range (GAF=60). The PEB rated this exam at 30%, with a 20% deduction.

The CI’s “interrelated mental health conditions prevent him from reasonably performing the duties commensurate with his office, grade, rank, or rating. The IPEB opines member's social and industrial adaptability impairment rating is best described a definite, as evidenced by having no ongoing requirement for hospitalization. The IPEB also notes member's EPTS Anxiety Disorder and his non-compliance with medications, non-compensable conditions under disability law/policy, and opines they significantly affect the severity of his Posttraumatic Stress/Panic Disorders. The Board opines were it not for the non-compensable conditions, the member's social and industrial adaptability impairment rating would best be described as mild IAW DoD/VASRD guidelines. The IPEB finds the member unfit and recommends discharge with severance pay with a disability rating of 10%”

This was IAW DoDI 1332.39 (rescinded) rating and deduction guidance which this Board does not apply. The Board does follow the provisions of DoDI 1332.38 with regard to military specific deductions where they are “…consistent with medical facts that are so reasonable and logical as to create a virtual certainty that they are correct.” The CI was clearly non-compliant with medication and appointments; however, this is consistent with the underlying mental health conditions and no deduction is made for non-compliance. Regarding the pre-existing mental health condition, the CI was evaluated as a trainee, and, although found to be at “higher than average statistical risk for early adverse attrition,” the Air Force still kept him on active duty as fit. The CI was not on medication at the time of that psychological testing and, therefore, his level of disability at entry is rated at 0% or undeterminable for any deduction as there is no “virtual certainty” of any higher rating deduction.

The Compensation and Pension (C&P) psychiatrist evaluation (7 October 2004), 12 months post-separation diagnosed PTSD (mild, intermittent), Panic Disorder without Agoraphobia (mild), and Generalized Anxiety Disorder (mild to moderate over time). The CI was employed, living with his father and grandmother and under no mental health treatment. Symptoms included abnormal affect and mood with impaired impulse control, unprovoked irritability and periods of violence, panic attacks less than one per week, dizziness, and tunnel vision, and rapid heartbeat, shortness of breath, shaking and sweating. Mood was noted to cycle with periods of increased anxiety and decreased functioning below his pre-service baseline (not tied to any significant stressor). The GAF was 68 (MEB GAF=60), indicative of mild symptoms or some difficulty in social, occupational or school functioning. The VA rated this exam at 30%. Subsequent VA exams and ratings consistently demonstrated symptoms in the 30% range with no change in the VA 30% rating despite a return to medication therapy.

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.

As regard to the permanent rating recommendation, all members agreed that the §4.130 threshold for a 50% rating was not approached and that the criteria for a 0% rating were well exceeded. The deliberation settled on arguments for a 30% vs. a 10% permanent rating recommendation. The VA rater’s rationale for a 30% rating was well justified despite the higher GAF, as the CI had waxing and waning symptoms that occasionally interfered with work efficiency. In addition to the general descriptions of occupational and social impairment, the §4.130 general formula fleshes out each rating description with a list of features or symptoms as examples for this level of impairment. This helps to determine a potential level of psychiatric impairment regardless of how well or poorly the veteran is actually faring with work and social activities at the time. Of six such descriptors under the 30% rating the CI had four of six descriptors. The Board deliberated if there were any certain method to deduct for either pre-existing underlying condition or any not unfitting mental health diagnosis, although the preponderance of the hard evidence favors a 30% rating strictly IAW VASRD §4.130. The Board determined that any deduction above 0% would not be justified. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a permanent PTSD disability rating of 30% in this case.

Other Conditions (Tobacco Abuse). This condition is Category III, not considered a physical disability IAW DoDI 1332.38. This condition was reviewed by the Action Officer and considered by the Board. It was determined that this condition could not be argued as unfitting and subject to a separate 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 DoDI 1332.39 for rating PTSD was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the PTSD associated with Panic Disorder, the Board unanimously recommended an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DoD directed and a 30% rating at six months IAW VASRD §4.130. In the matter of the generalized Anxiety Disorder condition, the Board unanimously agrees that it cannot recommend a finding of separately unfitting for additional rating at separation as it is a mental health disorder and considered with the CI’s primary unfitting condition. In the matter of the tobacco abuse condition, the Board unanimously recommends no recharacterization of the PEB adjudications as not separately unfitting and not compensable or ratable. 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.

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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 Associated With Panic Disorder | 9411 | 50% | 30% |
| **COMBINED** | **50%** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100603, 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-2010-00678.

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-2010-00678

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 xxxxxxxxxxx, are corrected to show that:

a. He was not discharged on 14 October 2003 with entitlement to disability severance pay; rather, on that date he was relieved from active duty and on 15 October 2003 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 14 October 2003, he declined coverage under the Survivor Benefit Plan (SBP).

c. On 15 April 2004 he was removed from the TDRL and permanently retired with a final combined disability rating of 30% rather than 10%.

Director

Air Force Review Boards Agency