RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD201000806 SEPARATION DATE: 20060131

BOARD DATE: 20110211

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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 Petty Officer (HM-2, Hospital Corpsman) medically separated from the Navy in 2006. The medical basis for the separation was Posttraumatic Stress Disorder (PTSD). The CI had several traumatic events while in service. In Kosovo he was shot in the chest, fell over and was knocked unconscious, but sustained no bullet injuries due to his sapper plates. After that incident he began therapy and psychiatric medication with a decrease in his symptomatology and return to normal functioning. The CI had a recurrence of symptoms in Iraq when his HumVee was hit by an improvised explosive device (IED). The CI was treated with therapy and medication. He did not respond adequately to perform within his military occupational specialty (MOS) due to persistent symptoms of PTSD. The CI was referred to the Medical Evaluation Board (MEB) where the PTSD, along with a history of a left knee condition and overweight were noted in the NARSUM, and were forwarded to the Physical Evaluation Board (PEB). The informal Physical Evaluation Board (PEB) adjudicated the PTSD as unfitting with a rating of 10%, with application of SECNAVINST 1850.4E and/or DoDI 1332.39 (E2.A1.5) which were in effect at the time. The PEB adjudicated the left knee internal derangement, status post multiple surgeries as Category III (not separately unfitting and does not contribute to the unfitting condition), and overweight as Category IV (does not constitute a physical disability). The CI did not appeal and was medically separated with a disability rating of 10%.

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. The PDBR should assign the highest final disability rating applicable consistent with 38 CFR 4.129 and DOD policy.” He additionally requested that the ratings for PTSD, left knee injury including degenerative joint disease in left knee be given the highest possible rating: “All was labeled at 10%, I was found unfit for duty and involuntarily discharged by the PEB for PTSD and left knee injury. If I was so unfit why did I not receive retirement or a higher rating?” The CI also lists Traumatic Brain Injury (TBI), hearing loss right ear, and Gulf War Syndrome contentions. Contention for their addition to separation rating is implied. This case is court remanded under the *Sabo et al v. United States* class action suit.

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Rating Comparison chart on Page 2

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060119** | | | **VA (9 Mo. after Separation) – All Effective 20060201** | | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | | **Code** | **Rating** | | **Exam** |
| PTSD | 9411 | 10% | PTSD, … Anxiety, Depression | | 9411 | 50% | | 20061025 |
| L Knee … | CAT III: Not Unfitting | | Left Knee | | 5010 | 10% | | 20061027 |
| Overweight | CAT IV: Not A Disability | | No VA Entry | | | | | |
| ↓No Additional MEB Entries↓ | | | Hearing Loss R Ear, Tinnitus, Vertigo … | 6299-6205 | | 30% | 20061025/7 | |
| Irritable Bowel Syndrome | | 7319 | 10% | 20061027 | |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 70%** | | | | | |

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 current earning ability and quality of life. However, the military disability evaluation system (DES) can only rate and compensate for conditions that directly led to the CI being unfit for continued service at the time of separation. The DES has neither the role nor the authority to compensate service members for all service incurred conditions that were not unfitting at the time of separation. This role and authority is granted by Congress to the Veterans Administration to rate all medical conditions that are service connected.

Posttraumatic Stress Disorder. The PEB 10% rating, as described above, preceded the promulgation of the NDAA 2008 mandate for DoD adherence to the Veterans Administration Schedule of Rating Decisions (VASRD) §4.129 IAW DoDI 6040.44 and DoD guidance (which applies current VASRD §4.129 to all Board cases). Under these regulations the Board is obligated to recommend a minimum rating of 50% for PTSD for a retroactive six month period of Temporary Disability Retired List (TDRL) to begin at the date of separation. The Board must also determine the most appropriate fit with VASRD, 38 CFR §4.130, criteria at six months for its permanent rating recommendation for PTSD. The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the VA Mental Health examination (20060731) six months post separation. Additional exams (20051219) approximately two months pre-separation, the VA Mental Health examination (20060320-20060317) approximately six weeks post-separation, and the VA Compensation & Pension (C&P) Psychiatric rating evaluation nine months after separation are also probative in that they will indicate the course of the PTSD symptoms over time.At the time of the VA Mental Health examination six months post separation, the CI reported almost daily intrusive thoughts, nightmares three times per week, a single episode of dissociation, hyperarousal, depression, anhedonia, feelings of detachment, one episode of unprovoked irritability and anger where he punched a wall, sleep disturbances, and hypervigilance. The VA did not assign a rating based on the six month Mental Health examination, but rather on the nine month C&P examination. However, the findings in the six month exam performed by a clinical psychologist did not significantly differ from the nine month exam performed by a psychiatrist. At the time of the VA Psychiatric rating examination nine months after separation the CI’s symptoms continued to experience symptoms of hypervigilance, impairment in short term memory, exaggerated startle response, increased arousal, isolation, anxiety, depressed mood, impaired sleep and nightmares. A significant degree of social withdrawal was evidenced at that time, although he had begun a new relationship and was engaged to be married. He had been employed for a short time as a warehouseman, but had to quit due to knee problems, not due to PTSD symptoms. The CI was becoming depressed due to his recent loss of his job due to his knee arthritis. The CI’s endorsed difficulty with memory, but objective memory deficits were not demonstrated on examination. Mental status exam showed anxious and dysphoric mood, inability to perform serial 7’s (Attention Intact: No; “Comments: ADHD interferes with serial 7’s”). Panic attacks precipitated by crowds was listed by the examiner without a specific frequency and impulse control was “poor due to PTSD type picture and ADHD.” The Global Assessment of Functioning (GAF) was in the range of moderate symptoms (GAF=60; MEB GAF=59), and the psychiatrist indicated that PTSD signs and symptoms resulted in deficiencies in the following areas (70% rating language): Yes for Work, Mood, and School and No for Judgment, Thinking, and Family Relations. The VA assigned a §4.130 rating of 50% based on this examination, independent of §4.129. The Board agreed that the CI clearly exceeded the 10% criteria and did not reach the 70% criteria on any exam. At the time of separation, the CI’s condition would have rated no higher than 50% and IAW §4.129 a 50% rating is recommended for the six month constructive TDRL period. The CI showed little or no improvement of his mental condition from the time of his separation through the six month and nine month periods. With regard to the permanent rating recommendation, all members agreed that the §4.130 threshold for a 70% rating was not approached and that the criteria for a 10% rating were well exceeded. The deliberation settled on arguments for a 50% vs. a 30% permanent rating recommendation. The VA rater’s rationale for a 50% rating was well elucidated in the rating decision. However, the 30% description (“occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks”) is a better fit with the occupational functioning in evidence. The Board also considered the 50% rating but did not find that the CI demonstrated that degree of occupational and social impairment with reduced reliability and productivity. The CI only demonstrated a disturbance of motivation and mood and lacked the other findings that warrant a 50% rating. The Board considered that pre-existing ADHD had a non-deductable interaction with the CI’s PTSD and deliberated whether the CI’s panic attacks, anxiety and post-separation change of jobs supported a 50% rating recommendation. After due deliberation considering all of the evidence for the permanent rating for PTSD, the Board recommends a separation rating of 30% for the PTSD.

Left Knee Condition. The CI injured his left knee on his first tour of active duty and was found unfit in 1990 for chronic infrapatellar ligament tendonitis, status post partial medical meniscectomy and excision of diseased portion of infrapatellar ligament. In spite of his previous unfitting condition, in 1997 the CI was found fit for duty in the Reserves. Subsequently, he was called to active duty in December of 2001 and January of 2005. The CI underwent left knee chondroplasty in Bourbon County Community Hospital in 2000, left knee arthroscopy in Heidelberg, Germany in 2002, and left knee high tibial osteotomy in St. Joseph Hospital in 2003. The CI also developed an ACL tear in his left knee while in Iraq a year before discharge. On 1 December 2005, the Commander stated that the CI was able to perform Physical Readiness Tests (PRT). After the CI was found unfitting for his previous knee condition in 1990, the only record of a LIMDU for the left knee condition was during the brief two month period of 23 July 2002 to 23 September 2002 when he was instructed not to run, march, or carrying a rucksack because of left knee arthritis. Although the CI had ongoing issues with his left knee including pain mentioned in the NARSUM, the condition did not appear to limit his ability to perform his military duties as shown in the service treatment record, the limitations of duty, and the Commander’s statement. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of left knee condition as an unfitting condition for separation rating.

Other PEB Conditions (Overweight). The PEB adjudicated the overweight condition as Category IV (does not constitute a physical disability). The VA did not rate this condition. IAW DoDI 1332.38, obesity is a condition which does not constitute a physical disability and is not eligible for disability rating. The Board agreed with the PEB adjudication as a condition which does not constitute a physical disability and is not eligible for separation rating. This condition cannot be added as an unfitting condition for separation rating.

Remaining Conditions. The VA rated hearing loss (right ear), vertigo, and tinnitus as service related conditions at 30% under the analogous code of 6299-6205 (Meniere’s Syndrome [endolymphatic hydrops]), and rated irritable bowel syndrome (IBS) at 10% under the code of 7319. Hearing loss and “rectal disease, hemorrhoids or blood from the rectum” (congruent to IBS) was mentioned in the DES package. However, there is no evidence in the service treatment records, the Commander’s statement, or the limitations of duty that any of these conditions resulted in unfitness for continued military service. There is no argument favoring any link of these conditions to fitness for its consideration by the Board as subject to additional Service rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of hearing loss, vertigo, tinnitus or IBS as unfitting conditions for separation rating. No other conditions were rated by the VA at 10% or higher within 12 months of separation. The CI also contended that he has Gulf War Syndrome; however, there is no evidence for this condition in the DES package, and it was not rated by the VA. 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.

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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 the rating PTSD was likely operant in this case and the condition was adjudicated independently of that 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 a 30% permanent rating at six months IAW VASRD §4.130. In the matter of the left knee condition the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. In the matter of the overweight condition, the Board unanimously recommends no recharacterization of the PEB adjudication as a condition which does not constitute a physical disability and is not eligible for separation rating. In the matter of the hearing loss (right ear), vertigo, tinnitus, IBS 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: TDRL at 50% for six months following CI’s medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then a permanent 30% disability retirement.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Posttraumatic Stress Disorder | 9411 | 50% | 30% |
| **COMBINED** | **50%** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100707, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

From: Director, Secretary of the Navy Council of Review Boards

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44

1. I have reviewed the subject case pursuant to reference (a). The subject member’s official records are to be corrected to reflect the following retroactive disposition:

a. Separation from the naval service due to physical disability with placement on the Temporary Disability Retired List with a disability rating of 50 percent for the period 31 January 2006 thru 30 July 2006.

b. Final separation from naval service due to physical disability effective 31 July 2006 with a disability rating of 30 percent and placement on the Permanent Disability Retired List.

2. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid funds if appropriate, and notification to the subject member once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)