RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1000880 SEPARATION DATE: 20050430

BOARD DATE: 20111101

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3, (0311, Infantry—Light Armored Vehicle Scout), medically separated for bipolar disorder type I and anxiety disorder not otherwise specified (NOS). The CI had a history of anxiety disorder, with panic attacks (with sweating, chest pain) since high school, and received treatment for the disorder shortly after entering the military. His symptoms worsened during his deployment to Iraq, where he survived two IED attacks on his vehicle with relatively minor injuries. He was medically evacuated with an escort in January 2005 after his anxiety, impulsive behavior, and hypervigilance resulted in his shooting at a perceived enemy (a noise) without appropriate identification or safety procedures. Soon after arrival in CONUS, he was hospitalized for approximately five days with a diagnosis of bipolar disorder type I without psychotic features. During his hospitalization, a Medical Evaluation Board (MEB) was initiated. “Bipolar affective disorder, manic, severe, without mention of psychotic behavior” and “anxiety state, unspecified” were forwarded to the Physical Evaluation Board (PEB). No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file are discussed below. The Informal PEB (IPEB) adjudicated the bipolar and anxiety disorders as unfitting, rated 10% each. The CI did not appeal for a formal PEB, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “I feel I was misdiagnosed, even my doctor at the time told me they only gave me 20 percent because they didn’t want to retire me.”He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions. All service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050304** | | | **VA (6 Mos. After Separation) – All Effective 20050501** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bipolar Disorder Type I, w/o Psychotic Features | 9432 | 10% | PTSD w/Bipolar Disorder in Remission | 9432-9411 | 50%\* | 20051116 |
| Anxiety Disorder, NOS | 9499-9400 | 10% |
| Personality Disorder, NOS | Cat IV | |
| Forehead Laceration, Healed | Cat III | | Scar Forehead, Residual of Shrapnel Wound | 7800 | 30% | 20051116 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 0 / Not Service Connected x 0 | | | 20051116 |
| **Combined: 20%** | | | **Combined: 70%\*** | | | |

\* PTSD/Bipolar, 9432-9411, increased to 100% effective 20080128

ANALYSIS SUMMARY:

Psychiatric Conditions (Bipolar Disorder and Anxiety Disorder). Although the CI experienced psychiatric symptoms prior to entry into the military, the MEB and PEB did not consider the psychiatric diagnoses as existed prior to service (EPTS), and the Board did not have any basis for applying or means of measuring any deduction which might be considered for any pre-existing mental disorder. In addition, there was likely Service aggravation of the CI’s preexisting mental condition, as discussed below. Multiple psychiatric diagnoses were identified in the record, including acute stress disorder, bipolar disorder, personality disorder NOS, anxiety disorder with PTSD symptoms. In rating the CI’s mental condition(s), the Board considered his total mental impairment, including other Axis I diagnoses, IAW §4.126 (evaluation of disability from mental disorders) as all are rated IAW the General Rating Formula for Mental Disorders IAW VASRD §4.130.

The narrative summary (NARSUM), three months prior to separation, diagnosed two conditions; bipolar disorder type I, severe without psychotic features, most recent episode manic; and, anxiety disorder, NOS (with PTSD-like symptoms). The CI described symptoms of depression lasting for several weeks, periods of hypomania or mania (with impulsive, risky behaviors; elevated, irritable and labile mood; urges to fight; and racing thoughts), anxiety, insomnia, and hypervigilance. He apparently experienced some improvement with two psychotropic medications and psychotherapy. On mental status exam (MSE), the examiner noted psychomotor hyperactivity, elevated mood, and a labile affect with periods of irritability. Speech was noted to be rapid, loud and verbose. Thought process was circumferential and moderately loose. The remainder of the MSE was unremarkable, with no current suicidal or homicidal ideation, no psychotic symptoms, or cognitive impairment. Global assessment of functioning (GAF) score was 65, “with medication and a stable environment” (GAF of 65 generally indicates some mild symptoms or some difficulty in social or occupational functioning, but generally functioning pretty well; has some meaningful interpersonal relationships). The examiner characterized the CI’s prognosis, both for continuing military service and for civilian employment as poor, “Given the severity of the patient's symptoms and likely recurring course of his illness….” The examiner felt the CI was “likely to require continuing psychiatric treatment for the rest of his life.” The examiner recommended the CI not be allowed access to weapons, and “should be placed in a minimal stress job and be monitored closely by a mental health provider pending his discharge from the military.” The non-medical assessment (NMA) noted the CI was working as a facilities clerk, unable to perform his military occupation specialty (MOS) as a light armored vehicle scout.

VA psychiatric outpatient notes proximate to separation indicate the CI’s condition deteriorated significantly at that time, and he was diagnosed with PTSD in addition to bipolar disorder four days prior to separation. GAF scores at that time, as well as at another exam 10 days prior to separation, were 45, denoting serious symptoms or serious impairment of social or occupational functioning. Subsequent psychiatric outpatient notes suggested a brief improvement in the CI’s condition at four months post-separation (brief outpatient note), and continued decline at eight months post-separation, with active substance abuse (cocaine, alcohol), inability to hold a job, irritability and outbursts with physical fights related to drinking, last one at three weeks prior, and passive suicidal ideation.

At the VA Compensation and Pension (C&P) examination, seven months post-separation, the examiner diagnosed PTSD and a history of bipolar disease. In addition to his pre-separation symptoms the examiner noted the CI was experiencing nightmares, flashbacks, social isolation, and suicidal ideation with a plan, panic attacks, memory problems, and difficulty concentrating. He continued his two-drug psychotropic regimen and psychotherapy. The CI stated, “my wife divorced because she said that, ‘I scared from you [sic].’” He also reported isolating himself at home, watching television, and reading; noting “I don’t like to go out.” The CI was unemployed at the time of the exam, and reported previously working in construction and changing “a lot.” He also noted a history of substance abuse (cocaine, alcohol, marijuana), but stated, “I quit.” On MSE, the examiner noted the CI had depressed mood and anxiety, but gave no additional details, instead describing the CI’s symptoms as noted above. The examiner reported the CI responded affirmatively to having delusions, and stated “Yes, I have auditory and visual hallucinations once or twice in my life.” GAF was assessed at 55, indicating moderate symptoms or moderate difficulty in social or occupational functioning. The examiner stated the CI’s mental disorder resulted in “clinically significant distress and impairment in social and occupational function.” The VA rated the exam at 50% IAW VASRD §4.130. A review of the CI’s VA claims file at 13 months post-separation confirmed the diagnosis of PTSD and bipolar disorder, manic, in remission. The reviewer suggested the possibility of pre-separation misdiagnosis, and noted there was no evidence of current bipolar episode. The reviewer also provided a GAF of 50, suggesting serious symptoms or serious impairment of social or occupational functioning.

Although remote from separation, a second C&P exam at 35 months post-separation indicated continued severe PTSD symptoms, with continued panic attacks, worsening social isolation (no close friends), anhedonia (no hobbies), depression, anxiety, suicidal ideation, and “severe” impairment of his short term memory. The examiner noted he appeared to have some difficulty maintaining basic life skills, often going days without bathing. The CI was unemployed and reported having held two jobs for a month or less during the past year; he reported on-the-job anxiety, errors, and difficulty getting along with coworkers and customers. The examiner assessed his GAF at 30, suggesting serious impairment in communication or judgment, or inability to function in almost all areas (CI specifically denied hallucinations and delusions). A psychiatric medical statement at 33 months noted visual hallucinations (“devils running around the room”) and assessed the CI’s GAF as “an extremely poor level.” The VA increased the CI’s PTSD evaluation to 100% based on these exams.

The Board directs its attention to its rating recommendations based on the evidence just described. The Board first considered whether the CI’s diagnosis was the result of a “highly stressful event,” IAW §4.129 (mental disorders due to traumatic stress). The Board noted that the CI sought psychiatric counseling three days after his first IED encounter in Iraq, and was diagnosed with PTSD by the VA shortly prior to separation. The Board carefully evaluated the entire record of evidence, and the Board majority felt that the combat stressors the CI experienced in Iraq, including two IED explosions (with award of the Purple Heart and Combat Action Ribbon), could reasonably be considered a “highly stressful event,” and that the CI’s mental condition was clearly exacerbated or aggravated, if not precipitated by that event (there was no diagnosis of biopolar disorder or confirmed anxiety disorder prior to his IED exposure). The Board adjudged that the provisions of VASRD §4.129 should be applied in this case. The provisions of §4.129 require a minimum 50% rating for six month period (on a constructive Temporary Disability Retired List (TDRL) period in this instance) and then reevaluation and permanent rating.

All members agreed that the §4.130 criteria for a 50% rating were not exceeded at the time of separation. Independent rating at that time would be between 30% and 50%; therefore, the minimum 50% constructive TDRL rating was applicable. The Board then directed its attention to determining 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 C&P exam performed seven months after separation, corroborated by outpatient notes at four to eight months post-separation. The Board majority adjudged that the 50% description (“Occupational and social impairment with reduced reliability and productivity”) was a better fit with the CI’s level of impairment described in those records. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends 50% as the most representative of impairment and the fair and equitable permanent rating for bipolar disorder and anxiety disorder, coded 9432-9400 in this case.

Other PEB Conditions. Forehead laceration, healed (VA 30%), and personality disorder NOS were adjudicated by the IPEB, but were not forwarded by the MEB. In accordance with DoDI 1332.28, personality disorders are classified as “conditions and circumstances not constituting a physical disability.” The facial scar condition was noted to be two centimeters in length and was a result of an IED blast. The condition was not profiled, implicated in the NMA, or noted as failing retention standards. The condition was reviewed by the action officer and considered by the Board. There was no indication from the record that the condition significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for either of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were “yes” responses (on the MEB history form) to shortness of breath, broken bones, skin diseases, and “seizures, convulsions, epilepsy, or fits.” No evidence of a seizure disorder was found elsewhere in the record. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant during the MEB period, none were the basis for limited duty and none were implicated in the NMA. These conditions were 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. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. 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. The Board surmised from the record and PEB ruling in this case that the VASRD guidance of §4.126 (Evaluation of disability from mental disorders) was not applied. In the matter of the Bipolar Disorder Type I and Anxiety Disorder conditions coded as 9432-9400, the Board, by a vote of 2:1 recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 and a 50% permanent rating at six months IAW VASRD §4.130. The single voter for dissent (who recommended that §4.129 not be applied and the 9432-9400 condition be rated 30%) submitted the addended minority opinion. In the matter of the forehead laceration condition, the Board unanimously recommends no change from the PEB adjudication as Category III, not unfitting. In the matter of the personality disorder condition, the Board unanimously recommends no change from the PEB adjudication as Category IV, not a physical disability. In the matter of 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 prior medical separation (minimum of 50% IAW §4.129) and then a permanent 50% disability retirement as below.

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Bipolar Disorder Type I and Anxiety Disorder | 9432-9400 | 50% | 50% |
| **COMBINED** | **50%** | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100727, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

Minority Opinion:

The main issue in the case was whether to apply §4.129 for Mental disorders due to traumatic stress, in accordance with the following definition extracted from the VASRD: “When a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the veteran’s release from active military service, the rating agency shall assign an evaluation of not less than 50 percent and schedule an examination within the six month period following the veteran’s discharge to determine whether a change in evaluation is warranted.“

In my opinion, the record in evidence does not support that the CI’s mental disorder resulted from a highly stressful event. It can certainly be conceded that two IED blasts could qualify as highly stressful event, but the records also indicate that the CI was suffering from, and was treated for anxiety and other mental health symptoms well before deployment and the IED blasts. The CI was seen by Mental Health (MH) on April 13, 2004, 3 months prior to deployment for multiple complaints (including anxiety), and mentions feelings of intense anxiety since High School. The evidence indicates to me that the Mental Health condition that eventually became severe enough to bring about the CI’s release from the Marine Corps was already established, and clearly did not develop as a *result* of the IED blasts.

Absent the requirement for a six month evaluation IAW §4.129, the appropriate rating should be based the PEB diagnoses: Bipolar Disorder Type I, w/o Psychotic Features, and Anxiety Disorder, NOS at the time of separation. Both these conditions should be rated according the General Rating Formula for Mental Disorders, and when rated according to §4.130, the overall disability impairment more closely relates to the VASRD description 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).”

RECOMMENDATION: I recommend that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability, effective as of the date of his prior medical separation.

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bipolar Disorder Type I and Anxiety Disorder | 8620 | 30% |
|  | **COMBINED** | **30%** |

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS COMMANDER,

NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 13 Dec 11 ICO xxxxxxx

(c) PDBR ltr dtd 13 Dec 11 ICO xxxxxxx

(d) PDBR ltr dtd 13 Dec 11 ICO xxxxxxx

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. XXX-XX-1654: Separation from the Naval Service due to physical disability rated at 10 percent (increased from 0 percent) effective 1 April 2009.

b. XXX XX 3543: Transfer to the Permanent Disability Retired List at 30 percent effective 15 July 2008.

c. XXX XX 2866: Placement on the Temporary Disability Retired List at 50 percent for the period 30 April 2005 through 30 October 2005 with transfer to the Permanent Disability Retired List at 50 percent effective 31 October 2005.

3. Please ensure all necessary actions are taken to implement these decisions and that subject members are notified once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)