RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Air Force

CASE NUMBER: PD1000882 SEPARATION DATE: 20060217

BOARD DATE: 20101110

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SUMMARY OF CASE: This covered individual (CI) was an active duty SSgt/E5 (Security Forces/3P051) medically separated from the Air Force in 2006 after 7 years of service. The medical basis for the separation was Post Traumatic Stress Disorder (PTSD). The CI started to exhibit insomnia, nightmares, intense mood swings, concentration difficulties, irritability and hyper vigilance after he returned from deployment to Kirkuk, Iraq in Apr 2004. The CI was treated for PTSD with group and individual therapy as well as psychiatric medications with some improvement of symptoms. The CI did not respond adequately to perform within his military occupational specialty, carry a weapon, or deploy and was issued a S-4 profile and referred to a Medical Evaluation Board (MEB). PTSD was addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) on the AF Form 618 as medically unacceptable. No other condition appeared on the AF Form 618. The informal PEB adjudicated the PTSD condition as unfitting and rated at 10%; with application of DoDI 1332.39 (E2.A1.5) which was in effect at the time. The CI made no appeals, and was thus medically separated with a 10% disability rating.

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CI CONTENTION: “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.” This case is court remanded under the *Sabo et al v. United*

*States* class action suit.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – 20051228** | | | **VA (11 Days after Separation) – All Effective 20060218** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 50% | 20060228 |
| ↓No Additional MEB Entries↓ | | | Allergic Rhinitis | 6599-6522 | 0% | 20060228 |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 50%** | | | |

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ANALYSIS SUMMARY: The Board confirmed with the VA that there are no treatment notes or rating determinations since their original determination of 20060510.

PTSD Rating Recommendation: The PEB rating, as noted above, was derived at least in part from DoDI 1332.39 and preceded the promulgation of the NDAA 2008 mandate for DOD adherence to Veterans Administration Schedule for Rating Disabilities (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 Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD §4.130 criteria at six months for its permanent rating recommendation. There is no VA or civilian provider evidence covering the six month interval. The probative value of the VA rating examination 11 days after 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. Since the VA exam was still fairly close to separation and removed from the six month rating interval, the MEB evaluation itself provides a useful baseline and is assigned relevant probative value in the Board’s efforts to arrive at a fair permanent rating recommendation. The severity of the CI’s PTSD condition as evidenced by the MEB evaluation (three months prior to separation) and pre-separation treatment notes could best be described as mild. The Commander stated that the CI’s condition “has deteriorated considerable over the last 3-4 months” and that “he can no longer cope with the stresses of the Security Force Squadron (SFS) career field. There was documentation that the CI was restricted from weapons and was working outside even the administrative capacity of his MOS. Some social avoidance was documented, but relationships and overall social functioning remained intact. He was prescribed an anti-anxiety medication and a sleep medication. His mental status exam (MSE) showed a normal affect, mood and thought process. There were subjective complaints of difficulty concentrating and the examiner noted irritability as a concern. The NARSUM stated “he seems unable to mange his symptoms during times of increased stress. During these times of increased stress, his PTSD symptoms become overwhelming and result in a marked impairment in his social and occupational functioning.” The CI’s global assessment of functioning (GAF) had improved to a range of mild to transient symptoms (GAF=65 to 75). The DoDI 1332.9 rating of 10% for mild social/industrial impairment is justified by this evidence, although a fair rating under VASRD §4.130 would have approximated 30%. Therefore the minimum 50% TDRL rating IAW §4.129 is appropriate. At the time of the VA psychiatric rating examination 11 days after separation the CI’s symptoms were moderately worse with symptoms attributed to PTSD described as having severe nightmares once a week, difficulty concentrating, feeling of detachment, persistence avoidance, hyper arousal, and daily intrusive recollections. The CI reported that he had hyper vigilance and exaggerated startle response around loud noises to the point of almost soiling his pants. Immediate memory was mildly impaired, affect was normal with an anxious mood. Thought processes were normal and attention was intact. The examiner stated “Smells have triggered very short and transient dissociative episodes when he briefly returns to Iraq and sees flashes at night of small arms fire or mortars, their smell.” The CI was unemployed and looking for work. He had one episode of losing his temper with a verbal altercation short of violence. The GAF score was 70, in the same range as the one assigned in his pre-separation treatment notes. There is a significant caveat however, with the examiner stating that the GAF “drops into mid to high 30s with transient dissociative flashback phenomena” indicating impairment in reality testing or communication or major impairment in several areas. The VA assigned a §4.130 rating of 50% based on this examination (independent of §4.129). All Board members agreed that the record was insufficient to support a 70% rating under §4.130 and that the 0% threshold was well exceeded. The Board deliberated therefore primarily between 50%, 30%, and 10% as the permanent rating recommendation IAW §4.130. In addition to the general description 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 nine such descriptors under the 50% rating, two were likely manifest at six months (three if flattened affect is conceded). Of the six descriptors listed for the 30% rating, three were likely manifest at six months. The Board considered if the immediate stressors of separation from service had led to a transient exacerbation of symptoms; and, if the CI’s symptoms diminished or worsened following the VA exam. Unfortunately, there was no later evidence in the record. The Board deliberated if the principle of reasonable doubt and the opinion of the VA rater of the “dissociative flashback phenomena” supported a 30% or 50% rating recommendation, although the preponderance of the hard evidence favored a 30% rating strictly IAW VASRD §4.130. After due deliberation, the Board agreed that a permanent PTSD rating of 30% was most consistent with the preponderance of the evidence and a fair recommendation in this case.

Other Conditions (Allergic Rhinitis): Allergic Rhinitis was chronic and under active treatment at separation. There is no support in the physical profile or Commander’s statement justifying a recommendation that this condition was unfitting. The Board, therefore, has no reasonable basis for recommending any additional unfitting condition for separation rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of Allergic Rhinitis as an unfitting condition 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 rating Post-Traumatic Stress Disorder was 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 6 months IAW VASRD §4.130. In the matter of the Allergic Rhinitis condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional 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 6 months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then a permanent combined 30% disability retirement as below.

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

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The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 2010713, 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-2010-00882.

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-2010-00882

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 xxxxxxxxxx, are corrected to show that:

a.  He was not discharged on 17 February 2006 with entitlement to disability severance pay; rather, on that date he was relieved from active duty and on 18 February 2006 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 17 February 2006, spouse and child coverage under the Survivor Benefit Plan (SBP) based on full retired pay was established.

c. On 18 August 2006, he was removed from the TDRL and permanently retired with a final combined disability rating of 30%.

Director

Air Force Review Boards Agency