RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1001027 tdrl eNtry: 20061031

BOARD DATE: 20120126 TDRL EXIT: 20080415

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty E-5/SSgt (3P0, Security Forces) medically separated for posttraumatic stress disorder (PTSD). The CI was medically evacuated from theater for a contact dermatitis to nickel and cobalt and precluded weapons handling. She developed depression and anxiety secondary to the air evacuation due to guilt from leaving her unit early; PTSD symptoms were present, but the full criteria for diagnosis were not met. She was treated with medications and outpatient therapy, but failed to improve adequately to meet the operational requirements of her Air Force Specialty (AFS). She was then placed on a S4 profile and referred for a Medical Evaluation Board (MEB). Anxiety disorder was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable conditions IAW AFI 48-123. Contact dermatitis was listed as an Axis III condition and occupation stress as an Axis IV condition. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated anxiety disorder as unfitting; rated 30%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). Contact dermatitis and tobacco habituation were determined to be Category III conditions, not separately unfitting and not compensable. The CI was placed on Temporary Disability Retired List (TDRL) on 31 October 2006. She was re-evaluated on 6 March 2008. Her condition determined to be much improved, but to remain unfitting for military duties. The diagnosis was changed to PTSD, though, as diagnostic criteria were met. She was rated 10% with application of the VASRD. The CI made no appeals and was medically separated with a 10% disability rating.

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 CFR 4.129 and DoD policy, to the extent such increase will not adversely affect my total compensation, including but not limited to compensation pursuant to CRSC.”

TDRL Rating Chart

|  |  |
| --- | --- |
| **Final Service PEB – Dated 20080306** | **VA\* – All Effective 20061031** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20061031** |  | **TDRL** | **Sep.** |
| \*Anxiety Disorder/PTSD | 9413/9411 | 30% | 10% | Anxiety Disorder with Mild Depressive Symptoms | 9413 | 30% | 20061116 |
| Contact dermatitis | Category III | Contact dermatitis | 7806 | 0% | 20061116 |
| Tobacco abuse | Tobacco abuse | Not rated |
| ↓No Additional MEB/PEB Entries↓ | Not Service Connected x 1 | 20061116 |
| **Combined: 10%** | **Combined: 30%** |

\*TDRL Exit PEB separated her for PTSD instead of Anxiety Disorder

ANALYSIS SUMMARY: The PEB rating at final separation, as described above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DoD adherence to the 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 the period on the TDRL. Since the Service was in compliance with the §4.129 TDRL requirement, the Board need not apply a constructive TDRL rating interval in this case; although, the 50% minimum TDRL rating remains applicable as above, as held by the Federal court in the Sabo V. United States class action settlement. The Board must then determine the most appropriate fit with VASRD §4.130 criteria at the end of the TDRL interval 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 TDRL narrative summary (NARSUM), performed three months prior to the permanent separation on 15 April 2008.

Anxiety Disorder/PTSD. In early 2005, the CI was deployed to Balad, Iraq and experienced combat stress from her experiences while in theater. Her enlisted performance report reflects exemplary performance of duty while deployed; however, she developed a severe contact dermatitis requiring medical evacuation. She noted feeling helpless and sadness which were exacerbated during the flight when she was next to a severely injured service member. She experienced emotional lability, hyperactivity, irritability and hypervigilance after her redeployment leading her to seek medical care in July 2005 at the encouragement of her friends and peers. There was no prior history of mental health issues. Her primary care manager started her on Lexapro with improvement in her irritability and stabilization of her emotions. The MEB psychiatric evaluation was on 11 July 2006, a little over three months prior to TDRL entry. She continued to endorse symptoms of avoidance, easy startle, and intolerance of loud noise, but denied flashbacks, nightmares, anhedonia and suicidal ideation. Mental stress had also led to exacerbations and flares of the dermatitis. On mental status examination, she was noted to be anxious, but the exam was otherwise unremarkable. She scored within the normal range on an “outcome questionnaire 45 screening tool” (37 which is within the normal range). She was diagnosed with anxiety disorder, not otherwise specified (NOS), but noted to have many criteria of PTSD except for re-experiencing events. A Global assessment of Function (GAF) of 65 was assigned, corresponding to some mild symptoms or some difficulty in social, occupational, or school functioning, but generally functioning pretty well, has some meaningful interpersonal relationships. The VA Compensation and Pension (C&P) examination was on 16 November 2006, two weeks after TDRL entry. The history was similar although she also endorsed insomnia, which improved on medications. She also reported that she had tried to discontinue her medications with a recurrence of symptoms. She stated that she was in a stable relationship which was much improved from pre-treatment. She was planning to move in a few months and was taking on-line college courses. The mental status examination was similar to the MEB examination; mild anxiety was again noted along with mild depressive symptoms. She was assigned a GAF of 69-70, improved from pre-separation, but the description is the same for impairment. The Board considered the rating recommendation for TDRL entry. It noted that her duty performance had been lauded by her commander and that her performance reports remained outstanding. All members agreed that the §4.130 criteria for a rating higher than 50% were not met at the time of separation from active duty, and therefore the minimum 50% TDRL rating (as explained above) is applicable. The Board then considered the permanent rating for the anxiety disorder, subsequently diagnosed as PTSD by the TDRL examiner. The Board notes that the VA did not reevaluate the CI after the initial C&P examination. A psychiatric TDRL re-evaluation was accomplished on 17 January 2008, three months prior to removal from TDRL. It was noted that the CI was receiving outpatient psychiatric care and seen every three months. She remained on medications, but these had been changed. She reported that she was “110%” better, although she continued to endorse symptoms of avoidance, exaggerated startle response, hypervigilance, and sleep disturbance. She also reported flashbacks and nightmares which had not been present at the earlier MEB evaluation; accordingly, she now met the criteria for the diagnosis of PTSD. She continued to note depression with sadness and guilt, exacerbated at the time of the exam by the death of a friend two weeks earlier in a traffic accident. She continued to have general anxiety and agoraphobia which led her to avoid malls. She controlled her symptoms with a combination of medications, “God-sent”, and use of thought-stopping techniques which worked well for her. She was socializing, engaged to her boyfriend of five years, had recently finished her college degree in emergency disaster management and was working full-time as a program specialist at FEMA. She was looking forward to starting a family and buying her first home in the near future. She had not had a rash since separation and her biggest fear was returning to the military. The mental status examination was completely normal, specifically noting a euthymic mood and congruent affect. Her GAF was 75 which corresponds to transient symptoms, when present, and expectable reactions to psychosocial stressors; no more than slight impairment in social, occupational, or school functioning. Although the death of a close friend was noted as an Axis IV condition, the impact on her GAF was not addressed. The PEB changed the diagnosis to PTSD since the full criteria were now met; coded 9411, and rated it at 10% for permanent disability. This rating corresponds to occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress; or, symptoms controlled by continuous medication. The Board noted that the CI had graduated from college in the 15 months since TDRL entry, was working full-time using her college degree, was in a stable relationship for five years and engaged to be married, and was making plans for starting a family and the purchase of her first home. Although she continued to have symptoms and remained on medications, the Board concluded the occupational and social functioning more nearly approximated the 10% rating than the 30% rating. After due deliberation, in consideration of the totality of the evidence, and IAW §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change from the PEB permanent fitness adjudication for the PTSD condition.

Other PEB Conditions: Contact dermatitis and tobacco abuse. Tobacco abuse is not a disability and is not ratable or compensable under the rules of the DES (IAW DoDI 1332.38, Encl 5, conditions and circumstances not constituting a physical disability). Although the contact dermatitis resulted in limitations with regard to handing weapons and deployment, the Board notes that the CI had minimal signs of dermatitis at the time of the MEB and C&P exams proximate to TDRL entry and that at the TDRL exit exam, she stated that she had not had any problems with dermatitis since prior to separation. The VA C&P exam two weeks after separation noted a mild rash, though. The VA determined to be non-compensable. Even though the CI remained on a P4 profile for this condition since she could not handle weapons, her symptoms had rapidly improved after removal from an environment in which she was exposed to weapons. Nonetheless, service treatment records reflected the skin condition was the primary problem and it was the problem that triggered referral for MEB and consideration for cross training. The commander’s letter clearly notes the skin condition as duty limiting and the dermatology NARSUM noted that her skin condition rendered her non-deployable. The Board concluded the preponderance of evidence support the skin condition as a separately unfitting condition. The dermatology NARSUM reported treatment with topical medications, and the examination reported involvement of both palms and palmar aspects of the forearms. Neither this exam nor the VA C&P document the total area of the rash, but both indicate a mild, improving condition. IAW §4.3 (reasonable doubt), the Board concluded that it is as likely as not that the rash was at least 5 percent, but less than 20 percent, of exposed skin consistent with a 10% rating under VASD code 7806 dermatitis or eczema (§4.118). The Board did note that the VA rated the condition at 0% based on the post separation C&P examination. At the time of the TDRL reevaluation, there had been no significant skin rash since placement on the TDRL. This is clearly consistent with a 0% rating. After due deliberation, in consideration of the totality of the evidence, the Board recommends that contact dermatitis be added as a separately unfitting condition rated 10% at TDRL entry and a permanent 0% rating at the time of removal from the TDRL.

Remaining Conditions. The DES also notes hyperlipidemia, root canal surgery and gum disease*.* Hyperlipidemia is a laboratory finding and not subject to compensation. While the CI had dental treatment while on active duty, there is no evidence in the record of duty impairment other than short term following treatment and the use of analgesic medications. The VA also evaluated the CI for a history of right ankle sprain. It was found to be resolved on examination and non-compensable. No other conditions were service connected with a compensable rating by the VA within 12 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. In the matter of the anxiety disorder/PTSD condition, the Board recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed; and recommends no change from the PEB adjudication. In the matter of the contact dermatitis, the Board recommends that it be added as an additional unfitting condition; coded 7806, and rated at 10% for TDRL entry and 0% for the permanent rating. For the tobacco abuse condition, the Board unanimously recommends no change from the PEB Category III adjudication. In the matter of the hyperlipidemia, dental conditions or any other condition 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 separation be modified to reflect that the CI was placed on the TDRL at 60% (PTSD at 50% IAW §4.129 and DoD direction) and then permanently separated with severance pay by reason of physical disability with a final 10% rating as indicated below.

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| Anxiety Disorder NOS (Entry)/PTSD (Exit) | 9341/9411 | 50% | 10% |
| Contact Dermatitis | 7806 | 10% | 0% |
| **COMBINED** | **60%** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100826, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

 Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §1554a), PDBR Case Number PD-2010-01027.

 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 modification of your assigned disability rating without re-characterization of your 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 direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

 Sincerely,

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2010-01027

MEMORANDUM FOR THE CHIEF OF STAFF

 Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Title 10, United States Code, Section 1554a (122 Stat. 466) and Title 10, United States Code, Section 1552 (70A Stat. 116) it is directed that:

 The pertinent military records of the Department of the Air Force relating to xxxxxxxxxx, be corrected to show that:

 a.  On 16 April 2008 she was placed on the Temporary Disability Retired List (TDRL), with a diagnosis of Anxiety Disorder (NOS), VASRD code 9413, rated at 50% rather than 30%; and Contact Dermatitis, VASRD Code 7806, rated at 10%; with a combined rating of 60%.

 b.  Upon final TDRL disposition, the diagnosis in her finding of unfitness was Posttraumatic Stress Disorder, VASRD Code 9411, rated at 10%; and Contact Dermatitis, VASRD Code 7806, rated at 0%; with a final combined rating of 10%.

 Director

 Air Force Review Boards Agency