RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1001031 DATE OF PLACEMENT ON TDRL: 20020827

BOARD DATE: 20111121 Date of Permanent SEPARATION: 20070307

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve TSgt/E-6 (3P071, Security Forces) medically separated for posttraumatic stress disorder (PTSD). The CI first experienced PTSD symptoms in 1971-1972 from combat in Vietnam and he experienced a significant recurrence of symptoms during a deployment to Saudi Arabia in 2002, resulting in a brief psychiatric hospitalization in Germany before returning to the states. Despite continuing psychotherapy and medication trials, the CI did not improve adequately to fully perform within his career field. He was consequently issued a permanent S4 profile and referred for a Medical Evaluation Board (MEB). PTSD was forwarded to the Physical Evaluation Board (PEB) as a medically unacceptable condition IAW AFI 48-123. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. An Informal PEB adjudicated the PTSD condition as unfitting, rated 30%, with application of the DoDI 1332.39, and placed the CI on the Temporary Disability Retired List (TDRL). After more than four years on TDRL, the PEB assigned a permanent separation rating of 10% for the PTSD condition. The CI appealed to the Secretary of the Air Force Personnel Council, which reaffirmed the PEB adjudication (specifically citing the criteria of DoDI 1332.39), thus effecting medical separation with a 10% service 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 CFR4.129 and DOD policy, to the extent such increase will not adversely affect my total compensation, including but not limited to compensation pursuant to CRSC.” This case is court remanded under the *Sabo et al v. United States* class action suit. The CI’s application lists the following additional conditions: Type II diabetes mellitus, erectile dysfunction, obstructive sleep apnea, and bilateral hearing loss. A contention for service rating of these conditions is presumed.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service IPEB – Dated 20070105** | | | | **VA – All Effective Date 20040429** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **TDRL** | **Sep.** |
| PTSD | 9411 | 30% | 10% | PTSD | 9411 | 50% | 20050809 |
| No Additional MEB/PEB Entries | | | | Not Service Connected x 8 | | | 20050809 |
| **Final Combined: 10%** | | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY: The PEB rating, as described above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act 2008 mandate for DoD adherence to the 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 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 a minimum TDRL rating of 50% remains applicable as above, and as held by Federal court in the *Sabo v. United States* class action settlement, the Board must 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 MEB examination performed near the conclusion of TDRL (five months before permanent separation). Also probative were a VA compensation and pension (C&P) exam and an interim TDRL exam, performed, respectively, 19 and 21 months prior to permanent separation. For purposes of the permanent rating recommendation, it was judged that the final MEB (end-TDRL) examination carried the highest probative value. It was the most proximate to the final separation rating benchmark and fully reflects the stress of transition to civilian life at the time of separation, which is the core intent of §4.129 and intrinsic to permanent rating. It is noted for the record that the Board recognizes the significant interval (19 months) between the most proximate VA evaluation and the date of final separation. DoDI 6040.44, under which the Board operates, specifies a 12-month interval for special consideration to VA findings. This does not mean that the VA information was disregarded, as it was a valuable source for clinical information and opinions relevant to the Board’s evaluation. In matters germane to the severity and disability at the time of separation, however, the information in the above referenced MEB evaluation was assigned the preponderant probative value as a basis for the Board’s rating recommendations.

Posttraumatic Stress Disorder. The CI reported the onset of PTSD symptoms in connection with traumatic events experienced during his Vietnam deployment in 1971-1972. During that time, he reported constant rocket and mortar attacks, months of body bag detail, severe exposure to violence and mutilation, friends’ deaths, and direct combat. The symptoms included suicidal thoughts, depression, insomnia, nightmares, angry affect, avoidance of cues that remind him of combat, and anxiety. The CI joined the Reserve in 1982, and in 2002 was deployed to Saudi Arabia. After a week in theater, the CI experienced a severe recurrence and exacerbation of his PTSD symptomatology. This was managed by a psychiatric admission in Germany, followed by redeployment. A trial of pharmacotherapy and outpatient psychotherapy was unsuccessful in restoring him to full military functioning. In his MEB exam, the CI related thoughts of hurting himself and others, violent episodes, depression, anxiety, social withdrawal, strained family relations, and nightmares. The MEB psychiatrist made an Axis I diagnosis of severe PTSD, and assigned a global assessment of functioning (GAF) score of 60 (connoting moderate psychiatric dysfunction). This evaluation was followed by an extended period of TDRL as previously noted. Although there is no VA C&P exam proximal to the date of separation, an exam done 21 months pre-separation records moderate PTSD symptoms. The examiner recorded symptoms of withdrawal, irritability, anger with aggressive impulses, intrusive recollections, and nightmares, with continued sleep disturbance. Occupationally, the CI remained in a job he had held for 23 years but he did not interact well with coworkers and preferred to work alone. The assigned GAF score at this point was 51, which remains in the range of moderate psychiatric impairment. A periodic TDRL re-evaluation, performed contemporaneously with the VA C&P evaluation just described, recorded similar symptoms and exam findings with a GAF score of 62. At the final TDRL MEB (five months prior to permanent separation), the CI reported a scope and severity of PTSD symptoms which were fairly equivalent to the preceding C&P evidence. The CI was being treated with two psychoactive medications through his primary care physician, and was not under formal psychiatric care. He reported emotional lability and withdrawal that was impacting his marriage, and a constricted social life. The mental status exam was significant for a mildly dysphoric mood with a somewhat restricted affect. There was no suicidal or homicidal ideation, and no evidence of psychosis. The assigned GAF was 72, indicating mild symptoms; and the DoDI 1332.39-defined assessments were mild social and industrial impairment and moderate military impairment. The psychiatrist’s summary of occupational and social impairment follows:

He continues to maintain his primary employment as an excavator operator and supervises one person. Despite general dissatisfaction with the position, he has had no significant occupational problems since his last evaluation and reports being able to retire from that job in five years. His symptoms do appear to contribute to reported problems in his marriage and other family and social relationships.

This was followed by an opinion that the CI manifested minor improvement overall, with fewer occupational problems and less aggressive behavior. The psychiatrist stated that the CI’s symptoms “create mild impairment in a civilian environment and would very likely result in greater impairment in any military environment.” It was noted that the CI had not sought any mental health treatment since being placed on TDRL in 2002, emphasizing that this had been “recommended at both of his previous TDRL evaluations;” and a guarded prognosis was ascribed partly to an “apparent lack of motivation for intervention.” In an appeal, the CI stated that he was unaware of the requirement for “formal therapy” and said that he had a group of friends that had had similar experiences to which he could talk. The Board notes, however, that the final PEB did not (formally, at least) assign a deduction to its DoDI 1332.39-derived rating based on issues of non-compliance. The Board’s VASRD §4.130-derived rating recommendation will assess only the occupational and social impairment in evidence, independently of any speculation that anticipated improvement may have been hampered by the lack of more aggressive psychiatric intervention.

That said, the Board directs its attention to its rating recommendations based on the evidence presented above. With regard to the permanent rating recommendation, all members agreed that the §4.130 threshold for a 50% rating was not met in light of the intact occupational functioning at a fairly high level and that the criteria for a 0% rating were well-exceeded (not to mention pre-empted by the PEB’s higher rating). The deliberation settled therefore on arguments for 10% versus 30% permanent rating recommendation. The MEB TDRL examination was more consistent with the general description for a §4.130 rating 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…)” based primarily on social impairment; although, a 10% rating was defensible based on the CI’s relative high level of functioning in the workplace. In deliberating a recommendation for a permanent rating of 10%, however, the Board conceded that the CI’s symptoms at the time of medical separation could not be fairly characterized as “mild or transient” or “controlled by continuous medication;” and it is clear that some of his psychiatric lability and lack of impulse control was spilling into the workplace or at least distracting him from optimal performance. After due deliberation and in consideration of all evidence and reasonable doubt, the Board recommends 30% as the fair permanent separation rating for PTSD in this case.

Remaining Conditions. Several additional non-acute conditions or medical complaints were documented in the DES file. None of these conditions were significantly clinically or occupationally active during the MEB period, none carried attached profiles, and none were implicated in the commander’s statement. 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 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. 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 condition, the Board unanimously recommends a permanent 30% rating at final separation IAW VASRD §4.130. 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.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows: Permanent 30% disability retirement as below.

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

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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 (Section 1554, 10 USC), PDBR Case Number PD-2010-01031.

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.

Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2010-01031

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, be corrected to show that:

a.  Upon final Temporary Disability Retired List (TDRL) disposition, the diagnosis in his finding of unfitness for Posttraumatic Stress Disorder, VASRD Code 9411,was rated at 30% rather than 10%.

b.  On 7 March 2007, he was not discharged with disability severance pay; rather, on that date he was released from active duty and on 8 March 2007 his name was placed on the Permanent Disability Retired List.

Director

Air Force Review Boards Agency