RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1001079 SEPARATION DATE: 20051128

BOARD DATE: 20101208

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SUMMARY OF CASE: This covered individual (CI) was an active duty MA3/E4 (Military Police, Master at Arms) medically separated from the Navy in 2005 after 3 years of service. The medical basis for the separation was Post Traumatic Stress Disorder (PTSD). The CI had a history of recurrent childhood and pre-service sexual assaults and had intense memories and distress that interfered with her MA duties of investigating assaults or responding to related situations. The CI was initially diagnosed with Anxiety Disorder Not Otherwise Specified (NOS) and placed on Limited Duty (LIMDU). The CI’s symptoms, which were longstanding since childhood, included anxiety, insomnia, problems focusing, as well as recurrent panic attacks precipitated by stress. During treatment the CI was diagnosed with PTSD in addition to her Anxiety Disorder. Individual therapy and psychiatric medication reduced the CI’s symptoms, but the CI remained restricted from weapons access and was unable to resume the duties of her Master-at-Arms billet. The CI underwent a Physical Evaluation Board-Existed Prior to Entry (PEB-EPTE) Discharge Outpatient Board that determined the CI’s PTSD and Generalized Anxiety Disorder conditions were not compatible with continued duty, existed prior to entry, and were not service aggravated. The Informal PEB adjudicated the PTSD as compensable, unfitting, rated 10%; with likely application of SECNAVINST 1850.4E which was in effect at the time. The PEB adjudicated the Generalized Anxiety Disorder as a Related Category II diagnosis. The CI did not appeal and was thus medically separated with a disability rating of 10%.

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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. 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. Please see attached list of contentions regarding why the PDBR should make the changes request in Item 3.” This case is court remanded under the *Sabo et al v. United States* class action suit.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20051101** | | | **VA (4.5 Mo. after Separation) – All Effective 20051129** | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | | **Exam** |
| PTSD | 9411 | 10% | PTSD & Panic Disorder w/o Agoraphobia | 9411 | 30% | | 20060406 |
| Generalized Anxiety Disorder | Category 2 | |
| No Additional MEB/PEB Entries | | | Lumbar strain, R. & L. Ankle, Hemorrhoids | | | 0% | |
| R. & L. Knee, Bilateral ears | | | NSC | |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 30%** | | | | |

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ANALYSIS SUMMARY: The CI was found unfit for PTSD and her second AXIS I diagnosis of “Generalized Anxiety Disorder” was a “Related Category II Diagnosis”. The IPEB determined that the PTSD was compensable and the PEB Work card (JDETS) note that “EPTE/S factor(s) – indeterminate given documentation provided” was interpreted to indicate service aggravation with an EPTS=0% deduction. The mental health symptoms from PTSD and Generalized Anxiety Disorder were not independently evaluated or separated regarding individual contribution to disability by any examiner. Therefore, all of the CI’s mental health symptoms and disability are considered under the CI’s unfitting PTSD rating.

PTSD Rating Recommendation [Including Generalized Anxiety Disorder]: The PEB 10% rating, as described above, was likely derived 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, 38 CFR 4.130, criteria at six months for its permanent rating recommendation. The MEB exam would rate no higher than 50% (independent rating is 10%-30%); therefore the minimum 50% TDRL rating IAW §4.129 is appropriate. The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the VA psychiatric rating evaluation 4.5 months after separation. The probative value of the VA rating examination 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. The VA history indicated that the CI had a sexual assault during service (20021231), “raped by an enlisted man in service” while she was intoxicated. This was not confirmed by the military treatment records available to the Board, but the CI was uniformly noted to be an accurate and valid historian by all examiners. Verification was not considered critical to post-separation rating of the CI’s diagnosed unfitting PTSD. At the time of the VA psychiatric rating examination 4.5 months after separation the CI was enrolled in a community college. She continued to endorse intrusive thoughts, irritability, sleep disturbance and avoidance. Symptoms of depression, daily anxiety, crying and panic attacks less than once per week were noted with difficulties with heightened anxiety and relationship strain with a significant degree of social withdrawal. Mood was described as anxious with an appropriate affect. The CI had no thought, memory, or judgment impairment. There were no homicidal or suicidal thoughts or psychotic features, and the CI had never been hospitalized for a mental health condition. The CI was diagnosed with PTSD, Chronic, Delayed onset and Panic Disorder without Agoraphobia. The examiner specified severity of moderate for occasional “impaired work, family and other relationships” and discussed the relationship of the CI’s PTSD and Panic Disorder:

“In this case her panic disorder is secondary to PTSD. In contrast to PTSD, panic attacks are unexpected and occur spontaneously. They are associated with symptoms of choking, numbness, tingling, difficulty breathing, heart racing and fear of losing control or dying. Since PTSD patients are often in a state of hyper arousal, the threshold for panic is low and it is a disorder frequently co morbid with PTSD.”

The VA examiner also made an independent assessment of service aggravation of a pre-service condition. Compared to the service exam there was worsening social impairment, however, the global assessment of functioning (GAF) was in the range of mild symptoms (GAF=65) which was improved from the PEB-EPTE GAF of 53 (range of moderate symptoms). The VA assigned a §4.130 rating of 30% based on this examination (without application of §4.129). The general description in §4.130 for a 30% rating of “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks” is applicable to the level of impairment evidenced by both the MEB and VA evaluations. Speculation would be required to apply the 50% description of “reduced reliability and productivity.” The next VA evaluation was three years after discharge and indicated no remissions with a slight exacerbation of symptoms close to the 3-year timeframe that did not reflect on the six month post-separation rating timeframe, and the VA rating of 30% was confirmed. The Board’s deliberation was primarily focused on a 10% vs. 30% vs. 50% permanent rating recommendation. All members agreed that the 70% threshold was not approached. The Board considered a 50% rating premised on reasonable doubt and the speculative nature of the true impairment at six months. The CI’s symptoms were chronic, episodic outside of periods of significant stress, and with consideration of panic attacks, were considered moderate. The combination of PTSD and Panic Disorder symptoms and occasional moderate impairment of “work, family and other relationships” is closest to the 30% rating criteria. The Board agreed that there was not reasonable doubt in the CI’s favor to justify a recommendation for the higher 50% rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), 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 (Lumbar Strain, R. & L. Ankle, Hemorrhoids). Lumbar strain and sprained ankles conditions were noted in the Disability Evaluation System (DES) package. Neither the LIMDU, Non Medical Assessment (NMA), nor narrative summary from the PEB-EPTS Board identified any conditions other than the CI’s mental health diagnoses. The only documented physical limitations were those attributed to the adjudicated conditions. No link to fitness can be drawn for the back or ankle conditions. No other conditions were contended in the application or rated at 10% or higher by the VA within 12 months of separation. The Board therefore has no basis for consideration of any other conditions eligible for additional rating at separation. The Hemorrhoids were rated at 0% by the VA, but were not mentioned in the DES package. 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 Hemorrhoids and any contended conditions not covered above remain eligible for Board for Correction of Naval Records (BCNR) consideration.

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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. In the matter of the Post-Traumatic Stress Disorder condition, the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed; and by a vote of 2:1, a 30% permanent rating at 6 months IAW VASRD §4.130. The single voter for dissent (who recommended a 10% permanent 9411 rating) did not elect to submit a minority opinion. In the matter of the Lumbar strain and right and left ankle conditions, 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.

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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 30% disability retirement as below.

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| --- | --- | --- | --- |
| **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 20100814, 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

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USN, XXX-XX-XXXX

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 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 28 November 2005 thru 27 May 2006.

b. Final separation from naval service due to physical disability effective 28 May 2006 with a disability rating of 10 percent and entitlement to disability severance pay.

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)