RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD101080 SEPARATION DATE: 20060430

BOARD DATE: 20110314

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Corporal (1371, Combat Engineer) medically separated from the Marine Corps Reserve in 2006. The medical basis for the separation was Posttraumatic Stress Disorder (PTSD) following mobilization and a seven-month deployment to Iraq. Criterion A combat stressors were documented and Diagnostic and Statistical Manual of Mental Disorders (DSM IV) criteria for an Axis I diagnosis of PTSD were met. In addition to experiencing rocket and mortar attacks, the CI frequently witnessed the arrival and temporary open storage of fellow Marine casualties. He did not seek mental health treatment while deployed. Upon return he began to experience significant PTSD symptoms when subjected to stressors or reminders of his combat tour. The CI had frequent suicidal thoughts and depressive and dissociative symptoms, and was treated on an outpatient basis by the local Veterans Administration (VA) Mental Health clinic. Despite weekly group, individual therapy, and medication, the CI continued to show significant symptoms of PTSD that impaired his fitness for duty. When the CI stopped taking his medications his condition deteriorated, and he showed suicidal signs again. Further combat or even routine military duty was expected to further aggravate his condition. The CI was placed on Temporary Not Physically Qualified (TNPQ) status. His commander was unable to fully employ him in his military occupational specialty (MOS) without providing sufficient supervision, and recommended separation immediately. Consequently, the CI was referred to the Medical Evaluation Board (MEB). The MEB forwarded prolonged PTSD and depressive disorder to the Physical Evaluation Board (PEB). The PEB adjudicated the PTSD condition as unfitting, rated 0%; with likely application of SECNAVINST 1850.4E/DoDI 1332.39. The PEB adjudicated the depressive disorder as Category II (conditions that contribute to the unfitting condition). The CI made no appeals and was medically separated with a 0% disability rating.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 20060313** | **VA (4 Mo. After Separation) – All Effective 20050601** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Posttraumatic Stress Disorder | 9411 | 0% | Posttraumatic Stress Disorder | 9411 | 50% | 20060830 |
| Depressive Disorder | Cat II |
| **TOTAL Combined: 0%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 50%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PTSD (including Depressive Disorder). The PEB 0% 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 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 most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the VA psychiatric rating evaluation four months after separation. There is no further VA or civilian provider evidence covering the six-month interval or later. 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. Since the VA exam was still fairly close to separation and removed from the six-month rating interval, the MEB narrative summary (NARSUM) evaluation three months pre-separation (on 20 January 2006) provides a useful baseline and is assigned relevant probative value in the Board’s efforts to arrive at a fair permanent rating recommendation. However, the CI had a MEB NARSUM 15 months pre-separation (20 January 2005) and the three-month pre-separation NARSUM exam appeared to report the exact same findings as this earlier exam without significant modification (kept note of “pending a full psychiatric evaluation on 22 December 2005, through VA …” with only a Global Assessment of Functioning (GAF) changed from 60 to “55 - 60”), and the pre-separation NARSUM, therefore, carries a lower probative value. The CI’s symptoms at the time of the MEB exam could best be characterized as moderate. The CI’s PTSD symptoms included problems with sleep, frequent nightmares, panic attacks, avoidance of outside activities, hyperarousal, and an affective sense of numbness. The CI’s sleep had become so impaired that he drank nightly to fall asleep and often to the point of passing out (prior to deployment, CI was reportedly a nondrinker). In addition, the CI used marijuana occasionally in an effort to sleep. The CI was in treatment by the Worchester VA for three months before the MEB evaluation.

The CI had an emergency room evaluation in September 2005 due to panic attacks and suicidal thoughts. During this incident, his GAF was 35 (level of major impairment in several areas of work, family relations, judgment, thinking or mood). After engaging in treatment, the CI enrolled in school, stopped drinking, and was fully cooperative in his treatment sessions. However, with several different medications and group and individual therapy, his symptoms were still severe enough that he “was occupationally impaired, was having a hard time keeping jobs, and was doing little socially.” The exam noted sleep impairment, “dissociative symptoms to include depersonalization and occasionally not remembering what he is doing or where he came from for a brief period,” increased anger and irritability, depression to include decreased interest, energy, anhedonia, suicidal thoughts, guilt, and loss of appetite, and a number of ‘aches and pains’ that are associated with fatigue.” No inpatient psychiatric care was required. The MEB exam noted that the CI was single, had no children and was in a supportive relationship for the past six months. The CI had been going to school on the GI Bill, but had withdrawn for the semester due to difficulty concentrating, that was attributed to his PTSD. The mental status exam (MSE) indicated depressed mood, with congruent affect, no suicidal ideation and intact attention and concentration. There was no indication of psychosis and his judgment was intact. The MEB psychiatrist documented the CI’s social/industrial impairment as “moderate,” and assigned a GAF score of 55 - 60. Pre-separation VA psychiatric treatment notes had indicated more severe symptoms, difficulty with employment and relationships, and generally lower GAF scores.

The VA psychiatric Compensation & Pension (C&P) examination four months post-separation documented PTSD and depressive symptoms. The CI was unemployed and had withdrawn from school due to PTSD-attributed symptoms. The CI had been undergoing outpatient treatment by the VA with two psychotherapeutic medications and counseling, but had discontinued group therapy because he felt enraged about “what was going on, that nothing was really happening for him” and had stopped taking his anti-depressant medication because of its side effects. The VA exam highlighted the CI’s symptoms of difficulty sleeping, irritability, flashbacks, nightmares, a foreshortened sense of future and depression. The CI was unemployed and was having frequent nightmares, though not as terrorizing as before. The examiner reported the CI was having a number of dissociative symptoms including depersonalization and occasionally not remembering what he was doing or what was happening in his life. Other symptoms included panic attacks (no details regarding duration or frequency), increased anger and irritability, sense of numbness, hyperarousal, loss of appetite, a number of aches and pains associated with fatigue, and depression which involved decreased interest, energy and anhedonia. He reported frequent suicidal thoughts and denied any homicidal ideations or delusions other than constantly obsessing with “trying to figure out what happened to him in Iraq.” He had not been able to hold a job. He reported that he had little money and his PTSD symptoms prevented him from working at the present time. At the time, he had withdrawn from school because of his inability to concentrate. The CI had a good social support system, was in regular contact with family, and was still in the same satisfactory relationship. The CI reported his girlfriend said he is constantly angry, irritable and woke up with sweats with nightmares. The MSE by the VA examiner indicated the CI’s mood state was that of “an individual who experienced high levels of inner psychic agitation and irritability.” He acknowledged some suicidal ideations, but denied any homicidal ideations or delusions other than constantly obsessing about what happened to him in Iraq. His attention and concentration was somewhat diminished, but he reported it was improving. There was no drug/alcohol dependency. The VA examiner assigned a GAF score of 55 (MEB GAF 55 - 60) in the moderately impaired range. The VA rated this exam as 50%.

The Board directs its attention to its rating recommendations based on the evidence just described. All members agreed that the VASRD §4.130 criteria for a rating higher than 50% were not met at the time of separation, and therefore the minimum 50% TDRL rating (as explained above) is applicable. Regarding the permanent rating recommendation, all Board members agreed that the VASRD §4.130 criteria for a 10% rating were well-exceeded, and that the requirements for a 70% rating were not met. The deliberation therefore settled on arguments for a 30% versus 50% permanent rating recommendation. The MEB exam could be rated from 30% to 50% as the CI was not able to perform his military (even non-field or deployed) duties without supervision. In conjunction with VA pre-separation treatment notes, the CI’s pre-separation rating would tend towards the 50% rating level. The VA post-separation exam indicated sustainment of impairment with the addition of panic attacks and non-specified suicidal ideation. The CI was not able to maintain civilian employment or school attendance. The general descriptions for the 50% rating, “occupational and social impairment with reduced reliability and productivity” and with the CI having difficulty with school and work appeared to be occasional. After due deliberation, considering the totality of the evidence, the Board recommends 30% as the fair and equitable permanent rating for PTSD in this case.

Other Conditions. There were no other conditions contended or rated by the VA at 10% or higher within 12 months of separation. 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 SECNAVINST 1850.4E and/or DODI 1332.39 for rating PTSD appeared operant in this case and the PTSD condition was adjudicated independently of those instructions by the Board. In the matter of PTSD, the Board unanimously recommends an initial rating of 50% in retroactive compliance with VASRD §4.129 as DoD directed and a by a vote of 2:1, the Board members agreed upon a 30% permanent rating at six months IAW VASRD§4.130. The single voter for dissent (who recommended 50% permanent rating) did not elect to submit a minority opinion. 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: TDRL at 50% for six 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.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20060430, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

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 retroactive 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 30 April 2006 thru 29 October 2006.

 b. Final separation from naval service due to physical disability effective 31 October 2006 with a disability rating of 30 percent and placement on the Permanent Disability Retired List.

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)