RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: coast guard

CASE NUMBER: PD1001086 SEPARATION DATE: 20061121

BOARD DATE: 20111129

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO2/E-5 (AMT2, Aviation Maintenance Technician) medically separated for panic disorder and agoraphobia which began in 2005. He did not respond adequately to treatment and was unable to perform within his specialty rating and underwent a Medical Evaluation Board (MEB). Panic disorder with agoraphobia was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. Anxiety disorder with social anxiety and adjustment disorders with disturbances of emotion were also identified and forwarded as second and third diagnoses. No other conditions appeared on the MEB’s submission, and no other conditions with fitness implications were identified in the Disability Evaluation System (DES) file. The Informal PEB (IPEB) adjudicated the panic disorder and agoraphobia condition as unfitting, rated 10% IAW with the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “After being discharged with a 10% disability rating by the USCG, I was found to be 50% disabled for the same disability by the VA. I was awarded a combined rating of 70% disabled by the VA, effective November 22, 2006. The USGC also did not include any other potential disqualifying conditions in the MEB process. According to the Coast Guard PDES manual COMDTINST M1850.2D, Chapter 3 section f., the MEB “conducts a thorough physical examination to evaluate the member’s general health. Additionally, all impairments noted shall be separately evaluated in accordance with the VA Physician Guide for Disability Examinations, including psychiatric examination when indicated. It shall obtain and examine available records to formulate a conclusion regarding the member’s present state of health and the recommendations for future action.” This was not done, and combined with other errors in the application of the VASRD, resulted in the erroneous award of a medical discharge at 10% rating with disability severance pay. I am certain that a review would find that I should have been awarded a higher than 29% rating resulting in a medical retirement after 10 years of active service.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060829** | | | **VA (17 Mo. After Separation) – All Effective 20061122** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Panic Disorder/Agoraphobia\* | 9412 | 10% | Anxiety Disorder/Agoraphobia | 9400 | 50% | 20080411 |
| ↓No Additional MEB Entries↓ | | | Right Shoulder Impingement | 5201-5024 | 10% | 20080412 |
| L5-S1 Degenerative Jt. Disease | 5242 | 10% | 20080412 |
| Bilateral Tinnitus | 6260 | 10% | 20080411 |
| Dermatitis | 7806 | 10% | 20080412 |
| 0% x 1 / Not Service Connected x 2 | | | 20080411 |
| **Combined: 10%** | | | **Combined: 70%** | | | |

\*MEB form lists two diagnoses (anxiety disorder and adjustment disorder) not listed by the PEB

ANALYSIS SUMMARY: The Military Services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. The Department of Veterans’ Affairs (VA) however can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time. The CI asserts that the Coast Guard did not evaluate all his medical conditions during the DES process. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected service improprieties in the processing of his case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. Furthermore, the Board makes note that some of the CI’s contended conditions are derived from VA evaluations performed well after separation and that his current VA ratings are higher than those reflected in the above rating chart. Although these conditions and ratings were assigned an effective date to the time of separation, the earliest VA rating examination underpinning them was performed 17 months after separation. The Board’s operative instruction, DoDI 6040.44, specifies a 12 month interval for special consideration to VA findings. This does not mean that the later VA evidence was disregarded, but the Board’s recommendations are directed to the severity and fitness implications of conditions at the time of separation. In this circumstance, therefore, the evidence from the service record is assigned significantly more probative value as a basis for the Board’s recommendations. The CI’s contention regarding evaluation of all his medical conditions in the DES process is not eligible for Board recommendations but may be eligible for submission to the Board for Corrections of Military Records of the Coast Guard.

Panic Disorder and Agoraphobia Condition. The CI initially presented to the flight medicine clinic 31 January 2006 complaining of difficulty being around other people in the context of going through divorce proceedings. He was assessed by psychiatry as having an anxiety disorder and adjustment disorder, and treated with psychotherapy and one psychotropic medication. The CI was grounded from flying duties due to the use of a psychotropic medication. There was no history of alcohol or substance abuse. Inpatient treatment was never required. The CI’s symptoms at the time of the MEB summary (dated 21 July 2006) and mental health evaluation 10 August 2006 could best be described as mild. By that time he and his wife had reconciled and his condition had improved significantly with treatment. He stated that “the medication is working great.” He still had some difficulty sleeping, but low mood had resolved, appetite was improved and he experienced a better ability to successfully handle new environments without debilitating anxiety symptoms (though not at all times). He still experienced episodes of sweating, heart racing and a queasy stomach in new environments. The mental status exam (MSE) performed 10 August 2006 (three months before separation) revealed a mildly anxious mood, with a normal, broad, full-ranging affect. There was no evidence of a thought disorder and no suicidal or homicidal tendencies. He did still experience some sleep difficulties. The global assessment of functioning (GAF) was 65 (“some mild symptoms, generally functioning pretty well”). Because the medication treatment was incompatible with aviation duties but he experienced minimal occupational impairment, cross training was discussed with him. However he had no desire to stay in the Service performing a different job, and thus was separated from the Coast Guard. At the time of the VA compensation and pension (C&P) exam (11 April 2008, 17 months after separation) the CI’s continued to experience symptoms of difficulty sleeping (also was attributed to back pain) and anxiety (difficulty shopping and going into gas stations or stores). There were no panic attacks, or problems with memory or concentration. He reported that the counseling and medication continued to be helpful. He had full time employment in a management position and had missed no work (held that job for less than one year). He remained married without reported difficulties. All Board members agreed the evidence of the examinations at the time of the MEB clearly did not approach the 50% rating, therefore Board deliberations centered on a 10% versus a 30% rating at the time of separation. Social and occupational impairment consistent with a 30% evaluation (“Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks…”), could be surmised from some of the documented symptoms at the time of the PEB including anxiety symptoms in new environments, avoidance of new environments and sleep impairment. However, depressed mood, suspiciousness, and memory loss were not present. Although anxiety in new environments was reported, there was no indication that it contributed to impairment in occupational functioning. In fact, the MEB summary indicated that retention on active duty in a non-flying job was an option; however the CI declined. The Board considered that the CI’s intact occupational functioning and symptoms controlled with medication except for transient symptoms in new environments more nearly approximated the 10% rating (“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 additionally considered that the most significant of the CI’s symptoms were related to social impairment, and that his occupational impairment was minimal. While the CI continued to experience symptoms at the time of the C&P evaluation, the exam’s probative value is considerably diminished due to its remote timing from separation. Nevertheless, the CI had missed no days from work due to his condition and no marital difficulties were reported. Despite the VA’s recognition that the C&P exam did not document occupational and social impairment or decrease in work efficiency, a 50% rating was assigned. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB appropriately subsumed the MEB’s secondary diagnoses (anxiety disorder and adjustment disorder) under panic disorder with agoraphobia. After due deliberation, considering the preponderance of the evidence, the Board failed, on balance, to find adequate reasonable doubt favoring the CI in support of a recommendation for the higher rating than that adjudicated by the PEB for the panic disorder and agoraphobia condition.

Remaining Conditions. No other conditions were noted in the narrative summary (NARSUM) or found elsewhere in the DES file. The Board notes the CI was performing duties as an aviation maintenance technician until January 2006 when he presented to the flight surgeon with symptoms of anxiety. No other active medical conditions were noted. The CI was treated for hand pain in 2002. He was diagnosed with high frequency hearing loss associated with tinnitus in 2004. The CI was seen for low back pain in August 2005 however there were no further service treatment record entries for complaint of low back pain. A February 2006 primary care entry for skin rash otherwise indicates no other active medical conditions or complaints. No service treatment records regarding shoulder pain is in evidence of the service treatment record. None of these conditions were clinically or occupationally significant during the MEB period. 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 Board thus has no basis for recommending any additional unfitting conditions for separation rating. Although the CI lists right shoulder impingement, L5-S1 degenerative joint disease, left ear hearing loss, bilateral tinnitus and dermatitis on his application, even if their presence in the DES file is conceded, there was no evidence for concluding that any of them interfered with duty performance to a degree that could be argued as unfitting.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the panic disorder and agoraphobia condition and IAW VASRD §4.130, the Board unanimously recommends no change in the PEB adjudication. 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Panic Disorder and Agoraphobia | 9412 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100913, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX

President

Physical Disability Board of Review

U.S. Department of

Homeland Security

United States

Coast **Guard**

Dear XXXXXXXXXXXXX:

**Commandant**

**United States Coast Guard**

Mail St2/' 7801

21002 SI.

Washington. DC 20593·7801

Staff Symbol: CG·1

MAR 1 2012

I am the Designated Decision Authority for the Coast Guard on applications submitted to the

Department of Defense Physical Disability Board of Review (DoD PDBR). In your case (Case

Number PD-2010-01086). I accept the recommendation ofthe DoD PDBR with no

recharacterization of separation or modification of the disability rating. Enclosed is a copy of the

Board's recommendation and record of proceedings for your information

A copy of this decision has also been provided to the DoD PDBR and the Department of

Veterans Affairs.

If you have any further questions, please contact the Coast Guard Personnel Service Center at

Rear Admiral, U.S. Coast Guard

Assistant Commandant for Human Resources

Enclosures: (1) PDBR President memo dated December 8, 2011