RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1001268 SEPARATION DATE: 20040105

BOARD DATE: 20120417

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSgt/E-5 (3P051B, Combat Arms Journeyman) medically separated in 2004 for depression. The CI’s initial symptoms occurred after a sexual assault in January 2001. She underwent intensive inpatient and outpatient treatment, but did not respond adequately to perform within her Air Force Specialty (AFS). She was issued a permanent S4 profile and referred for a Medical Evaluation Board (MEB). Depression was forwarded to the Physical Evaluation Board (PEB) as a medically unacceptable condition IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file are addressed below. The PEB adjudicated the psychiatric condition as unfitting, rated 10%, citing criteria of Department of Defense Instruction (DoDI) 1332.39. A second condition, tobacco abuse, was adjudicated as a category III condition; which is not a ratable condition IAW DoD and VA regulations, and will not be discussed further. The CI appealed to the Formal PEB (FPEB) for a 30% rating with placement on the Temporary Disability Retired List (TDRL). The FPEB affirmed the PEB findings, and the CI was medically separated with a 10% service disability rating.

CI CONTENTION: The CI states, “The board failed to address the severity of my condition.” She does not elaborate further or note any additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20031017** | | | **VA (11 Mo. After Separation) – All Effective 20042106** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Depression | 9434 | 10% | Major Depression | 9434 | 10% | 20041206 |
| Tobacco Abuse | CAT III | | No VA Rating | | | 20041206 |
| ↓No Additional MEB Entries↓ | | | 0% x 3 / NSC x 2 | | | 20041206 |
| **Combined: 10%** | | | **Combined: 10%** | | | |

ANALYSIS SUMMARY: The PEB rating, 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 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 consider if the definition of §4.129 is met for any psychiatric condition resulting in medical separation; i.e., “a mental disorder that develops in service as a result of a highly stressful event.” If the Board judges that §4.129 attaches, it must recommend a minimum 50% rating for a retroactive 6-month period on the Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD 4.130 criteria at 6 months for its permanent rating recommendation, based on the facts in evidence which are most probative for that interval.

Depression: In February 2001 the CI was deployed to Saudi Arabia. A few days before her deployment, she was sexually and physically assaulted by an individual inside her home. She did not report the assault or discuss it with others; and, denied any history of psychiatric symptoms prior to the incident. While deployed she began to experience episodes of depression, and underwent mental health care without disclosure of the assault. She was diagnosed with adjustment disorder and treated with an anti-depressant. She discontinued mental health care after redeployment; but, periodically sought care over the subsequent 2 years, including an episode of post-partum depression. The sexual assault was disclosed during this period; and, the axis I diagnosis was depression, with consideration given to a late onset of posttraumatic stress disorder (PTSD). In May 2003, during a stressful overseas tour, she reported suicidal ideation; and, underwent a 7 day hospital admission for major depression. Her condition was stabilizing afterwards, but her profile and security limitations were incompatible with her AFS; and, her duties had been modified by her commander accordingly. Retraining and retention were discussed; but, the CI did not believe that she could maintain her own standards for continued military service, and MEB proceedings ensued.

At the time of the MEB psychiatric narrative summary (NARSUM) with an addendum dated 6 months prior to separation, the CI was compliant with medications and outpatient therapy; and, was felt to be slowly improving with treatment. The NARSUM documented a recent rebound of “neurovegetative symptoms of depression including hypersomnia, decreased motivation, anhedonia, and decreased energy;” which were at least partly attributed to situational stressors (separation from her husband and uncertainty about the future). The mental status examination (MSE) was notable only for a “mildly anxious and dysphoric” mood. There was no active suicidal ideation, delusional or hallucinatory symptoms, speech disturbance, objective cognitive impairment, or other abnormality. The Global Assessment of Functioning (GAF) assignment was 60, indicative of mild to moderate impairment. The DoDI 1332.39-derived assessment of social and industrial impairment was “mild,” and assessment of military impairment was “marked.” the Axis I diagnosis was “major depressive disorder, single episode, moderate.”

The first psychiatric evaluation in evidence after separation was the Department of Veterans’ Affairs (DVA) mental health Compensation and Pension (C&P) rating exam 11 months later. This documented that the CI had discontinued counseling and psychotherapy following separation; but, remained on mood stabilizing medications (Wellbutrin and Prozac), which were documented to be effective and free of side effects. Symptoms had markedly improved and were noted to be mild and occasional. She still manifested some emotional lability (crying easily) and social reticence. Her marriage was intact; and, she was engaged in part-time employment as a firearms instructor, pending completion of an associate’s degree. The MSE was significant only for a “mildly to minimally depressed mood” and “mildly reduced range” of affect. The axis I diagnoses was “major depressive disorder in partial remission;” and, the GAF assignment was 70, indicative of slight to mild impairment. The VA psychiatrist specifically opined that the diagnostic criteria for PTSD were not met. The VA’s §4.130 rating determination based on this exam was 10%.

The Board first deliberated whether the DoD mandate for application of VASRD §4.129, as previously elaborated, was appropriately applied to its recommendations in this case. Although somewhat remote from separation, it is clear that the 2001 assault was the precipitant of the CI’s psychiatric disorder; and, it would be hard to argue that it did not qualify as a “highly stressful event” per the §4.129 language. Although there were some aggravating factors such as pregnancy and private stressors which were not directly linked to service, these were contributory and not etiologic. It is noted that the VA did not apply §4.129; but, this case presented during an earlier period when compliance with §4.129 was not rigid. The Board members concluded that the preponderance of support lay with Board application of the §4.129 provisions. The Board then turned to its TDRL and permanent rating recommendations based on this conclusion. The MEB evidence was most probative to the TDRL rating recommendation, while the post-separation VA C&P evidence was the only probative source for arriving at the permanent rating recommendation. All members agreed that the §4.130 criteria for a TDRL rating higher than 50% at the time of placement on TDRL were not met; and, therefore the minimum 50% TDRL rating prescribed by §4.129 is applicable. As regards the permanent rating recommendation, all members agreed that the §4.130 threshold for a 50% rating was not approached and that the criteria for a 0% rating were exceeded. The deliberation thus settled on arguments for a 30% versus a 10% permanent rating recommendation. The §4.130 description for a 30% rating is “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks;” while that for 10% is “occupational and social impairment due to mild or transient symptoms which decrease work efficiency, only during periods of significant stress, or; symptoms controlled by continuous medication.” The VA C&P evidence confirms that the CI suffered residual mild symptoms; but, for the most part, her condition was under good control on medication. There was mild social impairment, but no documented occupational impairment. Members agreed, as also judged by the VA rater, that this impairment was more closely aligned with the 10% criteria than with the 30% criteria. There may have been some non-disclosed psychiatric interference with work efficiency, but clearly there were no intermittent periods of occupational incapacitation. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a permanent disability rating of 10% for the depressive disorder in this case.

Remaining Conditions. The other conditions identified in the core DES file were headache and hypertension. The NARSUM documented a history of headache, which was ascribed to a medication side effect. Outpatient notes related it to emotional stressors. It was noted as impairment in the commander’s statement, but comments directed to actual AFS impediments were all linked to the mental health issues. There was a single incapacitating episode of headache 8 months prior to separation, but otherwise it was documented that there was no work loss due to headache. The condition was not profiled or submitted by the MEB as medically unacceptable. The hypertension condition was asymptomatic and controlled on medication. Both of these conditions were reviewed by the action officer and considered by the Board. It was determined that neither could be argued as unfitting, and the Board therefore has no reasonable basis for recommending any additional unfitting conditions for service disability 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 the depressive disorder was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the depressive disorder, the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DoD directed and a 10% permanent rating at 6 months IAW VASRD §4.130. In the matter of the headache and hypertension conditions, or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional service disability rating.

RECOMMENDATION: The Board recommends that the CI’s prior separation be modified to reflect that the CI was placed on the TDRL at 50% for a period of 6 months (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:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** | |
| **TDRL** | **PERMANENT** |
| Depressive Disorder | 9434 | 50% | 10% |
| **COMBINED** | **50%** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20101119, 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

XXXXXXXXXX

Dear XX

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. § 1554a), PDBR Case Number PD-2010-01268.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the disposition at the time 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 records to reflect placement on the Temporary Disability Retired List without change to your assigned disability rating and separation with severance pay, upon final disposition.

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

PDBR PD-2010-01268

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 XXXXXXXXXXXX be corrected to show that:

a. She was not discharged on 5 January 2004 with entitlement to disability severance pay; rather, on that date she was released from active duty and on 6 January 2004 her name was placed on the Temporary Disability Retired List (TDRL), with a diagnosis of Depressive Disorder, VASRD code 9434, rated at 50%.

b.  On 5 July 2004 she was removed from the TDRL and discharged with severance pay with a final combined disability rating of 10%.

Director

Air Force Review Boards Agency